

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0130
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<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 2 DP 236331, 135 Seaforth Crescent SEAFORTH NSW 2092
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Paul Dennis Barrett
<b>Applicant:</b>	Paul Dennis Barrett

<b>Application Lodged:</b>	08/02/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	17/02/2022 to 03/03/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 26.12% 4.4 Floor space ratio: 8.14%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 300,000.00
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### EXECUTIVE SUMMARY

This report has been submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Development Application DA2022/0130 for alterations and additions to an existing dwelling house. The proposal specifically relates to the construction of a suspended hardstand parking platform at the property frontage, in addition to minor alterations and additions to the existing multi storey dwelling house to provide additional floor space.

The application is referred to the DDP due to the balustrading of the hardstand parking platform having a maximum building height of 10.72m, which represents a 26.12% variation to Clause 4.3 - Height of Buildings of Manly LEP 2013. Any variations to a principal development standard that exceed 10% and relate to a class 1 or 10 structure (i.e. dwelling house and parking space) must be referred to the DDP

for determination. The height breach is directly a consequence of the constrained 52.3% sloping gradient that falls away from the street and does not result in any unacceptable amenity impacts, specifically with regards to view sharing, solar access, privacy and visual bulk. The parking hardstand platform is consistent with adjacent parking structures to the north and south of the site and the balustrading only sits 1.12m above the crown of the road.

The proposal also involves minor variations (i.e. under 10%) to Clause 4.3A - Special Height Provisions and Clause 4.4 - Floor Space Ratio of Manly LEP 2013. The applicant has prepared well-founded written requests pursuant to Clause 4.6 - Exceptions to development standards of Manly LEP 2013 and adequately justified that compliance with the applicable development standards is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variations to the standards.

The proposed development involves variations to the Manly DCP 2013 side setback provision. These variations are due to the irregular shaped allotment and footprint of the existing dwelling house. When considering these variations on merit the proposal is found to be acceptable, noting that the non-compliance results in negligible amenity impacts.

One submission was received following the public exhibition period. The submission raised concern of vehicular sight lines when exiting adjacent properties and concern that the proposal would impeded on adjacent easements and right of footways. A detailed assessment of these issues has been conducted and the application has been found to be satisfactory.

Accordingly, it is recommended that the DDP approve the application, subject to the conditions attached to this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for alterations and additions to an existing dwelling house including a new hardstand parking space. In particular, the works consist of:

### **Lower Floor**

- Demolish the existing external stairs.
- New external stairs.
- New storage room.

### **Level 1 and 2**

- Demolish the existing external stairs.
- Demolish windows in Bedroom 3.
- Demolish existing bathroom and laundry (Internal).
- New external stairs.
- New bathroom and linen cupboard.

### **Level 3 and 4**

- No works proposed.

### **Level 5**

- No works proposed.

### **Level 6 – Entry**

- No works proposed.

### **Carport Level**

- Convert to storage area under proposed suspended driveway.

### **Proposed Handstand Parking**

- New suspended concrete driveway and handstand parking space.
- New stairs.
- New bin storage area.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

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

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

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

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 DP 236331 , 135 Seaforth Crescent SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the western side of Seaforth Crescent, Seaforth. The site is irregular in shape with a surveyed area of 649.8sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a five level dwelling house that is generally three storeys at any one point. Access to the dwelling is provided via an inclinator from the existing carport situated below the street level.</p>

The site is well landscaped, particularly within the rear yard, and contains a number of native trees.

The site is constrained with a steep topography and experiences a fall of approximately 29.7m that slopes away from the frontage to the rear. This represents an approximate slope of 52.3%.

The site is constrained by numerous easements and right of footways.

### Description of Surrounding Development

The surrounding built environment is characterised by multi-storey dwelling houses on sloping sites. A number of suspended hardstand parking spaces are located to the north and south of the subject site.

Map:



### SITE HISTORY

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

- **Development Application No. 77/2013** for alterations and additions to an existing two (2) level dwelling including an additional two (2) levels with rear decks, access stairs and tree removal approved by Council with a deferred commencement condition on 6 November 2013. The deferred commencement condition was subsequently satisfied within the prescribed period.
- **Development Application DA2019/1111** for alterations and additions to a dwelling house including a swimming pool withdrawn by the applicant due to issues raised by Council with

respect to the siting of the swimming pool and associated decking.

- **Development Application DA2020/1324** for alterations and additions to a dwelling house including a swimming pool approved by Council on 22 February 2021.
- **Pre-lodgement Meeting PLM2021/0097** held on 18 May 2021 to discuss works pertaining to construction of an elevated carparking area and driveway. The PLM notes stipulate that the works would only be supported if the existing street tree was retained. The works proposed under the subject Development Application retain the street tree in question.

## APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 24 February 2022.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant requesting the following amendments/additional information:

- **Southern Side Setback:** The proposed external access stairs for to the storage area encroached into the neighbouring property to the south. Council did not consider this to be orderly development of land and requested that staircase be located wholly within the subject site.
- **Clause 4.6 requests:** Council requested that a Clause 4.6 written request be submitted for the numeric contravention of Clause 4.3 - Special Height Provisions of Manly LEP 2013. In addition, Council requested a revised written request for the numeric contravention of Clause 4.3 - Height of Buildings to correctly reference the maximum building height.

The applicant subsequently submitted amended plans to demonstrate that the works did not encroach into the neighbouring property. In addition, revised/additional Clause 4.6 written requests were submitted to Council's satisfaction.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April

Section 4.15 Matters for Consideration	Comments
	2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and revised/additional written requests pursuant to Clause 4.6 of Manly LEP 2013 to justify the breaches to Clauses 4.3, 4.3A and 4.4 of Manly LEP 2013.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public	No matters have arisen in this assessment that would justify the

Section 4.15 Matters for Consideration	Comments
interest	refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/02/2022 to 03/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Peter John Nicholson	135 A Seaforth Crescent SEAFORTH NSW 2092

One submission was received following the public exhibition period. The following issues were raised in the submission:

- **Vehicular Sight Lines**

The submission raised concern that the proposal would impact upon vehicular sight lines when exiting nearby properties.

Comment:

Council's Development Engineers have reviewed the application with respect to vehicular access and off-street parking and found the development to be acceptable in this regard. Furthermore, the hardstand platform is an open structure, which will assist in facilitating safe traffic movement along Seaforth Crescent.

- **Easements and Right of Footways**

The submissions requested that all easements and right of footways be respected.

Comment:

It is noted that the front of the site is burdened by a number of easements and right of footways. The applicant submitted legal advice (prepared by Maddocks Lawyers, dated 2 March 2022), which stipulates that the proposed development does not impede on existing easements and right of footways. Furthermore, Council's Development Engineers have reviewed the proposal in this regard and raised no concerns.

## Conclusion

The concerns raised within the submission have been adequately addressed above. The issues raised do not warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to the existing dwelling, a new suspended parking platform and sub-floor storage, as described and illustrated in the reports and plans. A Arboricultural Impact Assessment accompanies the application and is assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"><li>• 3.3.1 Landscaping Design</li><li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li><li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable</li></ul> <p>As suggested by Council in the Pre-lodgement advice, the proposed development works is designed to retain large existing street Gum tree. The existing property landscape within the rear of the property is retained and thus continues to support the landscape character of the Foreshore Scenic Protection Area.</p> <p>The existing large Gum is protected through the construction of a elevated driveway and hardstand, and the Arboricultural Impact Assessment reports that the "proposed hardstand will be raised over the existing hardstand which will require the installation of piers either on or through the existing re-enforced concrete driveway below. This significantly reduces the level of encroachment to only the pier location which can allow the retention of major tree roots providing the pier location can be flexible to allow the relocation of a pier in the event a major tree root is located", and as noted in section 8. Conclusion, all existing trees in proximity are to be retained.</p> <p>No concerns are thus raised subject to the engagement of a Project Arborist to supervise excavation works and select pier footing location, and conditions of consent shall be imposed.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following relevant provisions:</p> <ul style="list-style-type: none"><li>• SEPP (Coastal Management) - Coastal Environment Area</li><li>• Manly LEP Clause 6.5 (Terrestrial Biodiversity)</li></ul> <p>The submitted arboricultural assessment and Council's Landscape referral identify tree protection measures and conditions to prevent</p>



Internal Referral Body	Comments
	impacts to native trees/wildlife habitat. As such, the proposal is considered to be consistent with the applicable provisions.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) - and not as an area proximate to littoral rainforest or coastal wetlands (Clause 11) as incorrectly attributed by Watermark Planning in Feb 2022 Statement of Environmental Effects.</p> <p>Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>

Internal Referral Body	Comments
	<p><b>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</b></p> <p><b>Harbour Foreshores &amp; Waterways Area</b></p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>The subject site is located adjacent to W8 (Scenic Waters – Passive Use) Zones.</p> <p>On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met.</p> <p><b>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</b></p> <p>The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development.</p> <p>On internal assessment it is determined that the proposed development satisfies the requirements of the DCP.</p> <p><u>Landscape character Assessment</u></p> <p>The subject site is located within the Landscape Character Type 4</p> <p>On internal assessment it is determined that the proposed development within the landscape satisfy the relevant criteria.</p> <p><b>Manly LEP 2013 and Manly DCP</b></p>

Internal Referral Body	Comments
	<p><b>Foreshores Scenic Protection Area Management</b></p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p>Development Engineering has no objection to the proposed car spaces and storage.</p> <p>However, the proposed storage room is located within the right of footway "D".</p> <p>The owner/s of the benefited lot/s must concur the proposal because their right will be affected.</p> <p>The detail of the concur shall be provided to Council for further assessment.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>As this site drains into the Pittwater estuary, the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to creeks or the waterway.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished.</p> <p>The proposal, subject to conditions, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater and its surrounding environment if conditions are adhered to.</p>
Property Management and	<p>The proposal seeks to construct an elevated driveway on Council</p>

Internal Referral Body	Comments
Commercial	road reserve. As per the Roads and Assets Referral Response dated 20/03/2022, a condition requiring an annual lease for the suspended driveway will be imposed on any consent.
Road Reserve	There is no impact on existing road infrastructure. Development Engineering to ensure driveway is appropriately engineered. In accordance with former Manly Council Policy, an annual lease for the elevated and suspended driveway crossing will be required. Council's Property Team to be provided with a referral to ensure this condition is included in the consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid, who responded confirming that a formal assessment was not required.
Aboriginal Heritage Office	<p><b>Development Application No. DA2022/0130</b></p> <p><b>Description: Alterations and additions to a dwelling house</b></p> <p><b>Address: 135 Seaforth Crescent SEAFORTH</b></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and

Council Policies have been considered in the merit assessment of this application.

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

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

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was submitted with this application (see BASIX Certificate No. A436827\_02, dated 1 December 2021). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

The proposal was referred to Ausgrid, who responded confirming that a formal assessment was not required.

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Foreshores and Waterways Area and therefore, the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above

provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

## **SEPP (Coastal Management) 2018**

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

### **Chapter 2 Coastal Management**

The site is identified within the Coastal Use Area and Coastal Environment Area pursuant to this SEPP. Accordingly, the proposal is considered against Clauses 2.10, 2.11 and 2.12 of the policy as follows:

#### **2.10 Development on land within the coastal environment area**

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

*(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

*(b) coastal environmental values and natural coastal processes,*

*(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

*(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

*(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

*(f) Aboriginal cultural heritage, practices and places,*

*(g) the use of the surf zone.*

*(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*

*(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*

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

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

*(3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment:

The site is identified within the Foreshores and Waterways Area pursuant to SREP (Sydney Harbour Catchment) 2005. Therefore, this clause is not applicable.

**2.11 Development on land within the coastal use area**

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*

*(a) has considered whether the proposed development is likely to cause an adverse impact on the following—*

*(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

*(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*

*(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*

*(iv) Aboriginal cultural heritage, practices and places,*

*(v) cultural and built environment heritage, and*

*(b) is satisfied that—*

*(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*

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

*(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

*(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

*(2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment:

The site is identified within the Foreshores and Waterways Area pursuant to SREP (Sydney Harbour Catchment) 2005. Therefore, this clause is not applicable.

**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of*

coastal hazards on that land or other land.

Comment:

Given the nature of the works and separation from the foreshore, Council is satisfied that the proposal is unlikely to increase the risks of coastal hazards within the locality.

**Chapter 4 Remediation of land**

**4.1 Object of this Chapter**

*(1) The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land.*

*(2) In particular, this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—*

*(a) by specifying when consent is required, and when it is not required, for a remediation work, and*

*(b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*

*(c) by requiring that a remediation work meet certain standards and notification requirements.*

Comment:

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 as the land is considered to be suitable for the residential land use.

Conclusion

Having regard to the above assessment, it is concluded that the proposal is consistent with the relevant requirements within SEPP (Resilience and Hazards) 2021.

**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	10.72m	26.12%	<b>No</b>
Special height provisions	Not exceed RL62.92 (highest point of road in centre)	RL64.04	1.78%	<b>No</b>
Floor Space Ratio	0.4:1 (259.92sqm)	0.433:1 (281.07sqm)	8.14%	<b>No</b>

#### Compliance Assessment

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

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### **Clause 4.3 - Height of Buildings**

##### Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.72m
Percentage variation to requirement:	26.12%

The top of the balustrading at the rear of the proposed hardstand parking space measures at 10.72m above the existing ground level, which represents a 26.12% variation to Clause 4.3 - Height of Buildings of Manly LEP 2013.

##### Assessment of request to vary a development standard:

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

##### Clause 4.6 Exceptions to development standards:

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

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

**Comment:**

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

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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

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

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

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

**Comment:**

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicant's written request argues, in part:

- *"The proposed variation to the building height control is 26.12% or 2.221 metres. It is for a very limited area where it is not visible from the street or easily for side neighbours. The apparent bulk through the variation is negligible and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).*
- *The small area of variation to the height occurs to allow for safe and compliant parking and has similar bulk to the existing roofed non-compliant structure.*
- *As the site slopes, at the rear most point the breach occurs, but for the majority of the length, the height is well under the height limit. The breach is required in this instance to achieve compliant and safe parking and compliance with the development standard would be unreasonable.*
- *The variation is provided in line with both side neighbours and is entirely in character. Compliance with the development standard would be unreasonable.*

- *Solar access impacts as a result of the small height variation are negligible with neighbours having parking platforms adjoining. Accordingly, compliance with the development standard based on this would be unreasonable.*
- *The small variation has no impact on privacy for neighbours, being confined to a parking area and not a living space. Accordingly, the variation is reasonable in the circumstances of the case.*
- *The development of the site is constrained by the slope, falling away dramatically to the rear of the proposed parking structure.*
- *The final design with a variation to the height is a result of the existing site constraints and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying Cl1.3(g) and (f).*
- *Strict numerical compliance with the height control would not result in a better urban design outcome with the street view being that of a parking planform at street level with no roof. Compliance with the development standard based on this would be unreasonable.*
- *The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site resulting in the underside of the platform being hidden from view from Seaforth Crescent satisfying Cl1.3(g). The streetscape appeal is unaffected by the small variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable parking for a dwelling is proposed. Compliance with the development standard based on this would be unreasonable.*
- *The inclusion of the small height variation to facilitate parking has no impact on the natural environment. The small variation sits in the location of the existing parking structure and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor varied roof form and height satisfying Cl1.3 (b). The natural environment is unaffected by the small departure to the development standard, and it would be unreasonable for the development to be refused on this basis.*
- *The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.*
- *The variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The small variation to the height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*
- *The variation does not result in a parking structure or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The development allows for safe and compliant parking on site, which would otherwise be unfeasible. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.*
- *The variation confined to the compliant parking platform is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and safe and accessible parking. These are not simply benefits of the development as a whole but are a direct result of the breach of the maximum height control.*
- *The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e., the development is an orderly and*

*economic and development of the land, notwithstanding the height variation".*

**Development Assessment Planner Comment:**

Council's Development Assessment Planner agrees generally with the applicant's justification to contravene Clause 4.3 - Height of Buildings of Manly LEP 2013.

In particular, it is agreed that the non-compliance is a direct result of the significantly steep topography that falls away from the street and is necessary in order to provide for balustrading to ensure safe and convenient parking. The height and nature of the parking structure (i.e. open hardstand parking space) is consistent with existing parking structures on adjacent properties to the north and south of the subject site. Furthermore, the hardstand does not result in unacceptable amenity impacts to surrounding properties, specifically with regards to view sharing, solar access, privacy and visual bulk. The existing carport is accessed via a steep driveway and does not provide for safe and convenient parking. The proposed hardstand provides for orderly development of land and strict compliance with Clause 4.3 - Height of Buildings of Manly LEP 2013 would preclude safe and convenient parking on the site.

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

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

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

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

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

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

**Comment:**

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

*a) to provide for building heights and roof forms that are consistent with the topographic*

*landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The height of the proposed parking hardstand corresponds with the levels of open parking structures on surrounding properties to the north and south. In this regard, it is considered that the proposal responds to the prevailing height of future context of the locality.

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

Comment:

The open hardstand parking structure does not provide unreasonable bulk within the front setback area. It is noted that the hardstand balustrading sits only 1.12m above the crown of the road.

*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:

Noting that the average eye height sits approximately 1.6m above the ground/floor level and that the parking hardstand balustrade sits 1.12m above the crown of the road, standing views towards the Sydney Harbour catchment will be maintained over the top of the development from the road and road reserve. It is further noted that the balustrading is 50% open/transparent.

In regards to views enjoyed from private properties, it is noted that upslope properties to the east (i.e. along David Place) are elevated well above the proposed development and thus, existing view lines towards Sydney Harbour will be maintained over the top of the site. Moreover, dwelling houses to the north and south of the site are situated below the footprint of the proposed hardstand and will not experience any view impacts.

*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:

Dwelling houses located to the south of the site are situated further to the west of the carport (i.e. downslope) and will not be subject to further shading as a consequence of the numeric height non-compliance. This is illustrated on the applicant's shadow diagrams.

*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 carport has been appropriately sited to ensure the retention of existing native trees within the public and private domain.

## Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

### Comment:

The parking hardstand platform provides safe and convenient parking to an existing dwelling house, which is a permissible land use within the R2 zone. In this regard, it is considered that the proposal provides for the housing needs of the community within a low density residential environment.

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

### Comment:

The proposal does not change the existing residential land use.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and Clause 4.3 - Height of Buildings.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of buildings Development Standard associated with a single dwelling house (Class 1 building).

## Clause 4.3A - Special Height Provisions

### Description of non-compliance:

Development standard:	Special Height Provisions
Requirement:	Development not to exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot (RL62.92)

Proposed:	Top of balustrading sited at RL64.04
Percentage variation to requirement:	1.78%

The site is identified on the Manly LEP 2013 Height of Buildings Map as being located within the 'Special Height Provisions' area and thus, the proposal is subject to the provisions within Clause 4.3A of Manly LEP 2013. Within this area, development not to exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot. This area has been identified as RL62.92. The top of the hardstand parking balustrading measures at RL64.04, which represents a 1.78% variation to Clause 4.3A - Special Height Provisions of Manly LEP 2013.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3A - Special Height Provisions development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of*



*the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*  
*(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request argues, in part:

- *"The proposed variation of 1.78% is minor in scale being a balustrade which allows for views though to the water from the street. The additional height provided through the variation is negligible and not to the detriment of the view, being consistent with the Seaforth Crescent streetscape satisfying CI1.3(g).*
- *The small area of variation to the height occurs to allow for safe and compliant parking and has similar height to neighbouring structures.*
- *The variation is provided in line with both side neighbours and is entirely in character. Compliance with the development standard would be unreasonable, resulting in either non-compliant balustrading or access to parking.*
- *Views are retained from the street and for neighbours.*
- *The development of the site is constrained by the slope, falling away dramatically to the rear of the proposed parking structure.*
- *It is also constrained by a street tree.*
- *There is no option to provide compliant parking in another form and as this option does not result in view loss, it is reasonable and meets the objects of the Act.*
- *The final design with a variation to the height is a result of the existing site constraints and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying CI1.3(g) and (f).*
- *Strict numerical compliance with the Special Height provision would not result in a better urban design outcome with the street view being that of a parking planform at street level with no roof, with a view through the balustrade. Compliance with the development standard based on this would be unreasonable.*
- *The proposed development will not present with excessive bulk from the public domain with the open balustrade satisfying CI1.3(g). The streetscape appeal is unaffected by the small variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objective of the zone ensuring retention of the street view. Compliance with the development standard based on this would be unreasonable.*
- *The inclusion of the small height variation to facilitate safe parking has no impact on the natural environment. Retention of the water view satisfies CI1.3(b). The natural environment is unaffected by the small departure to the development standard, and it would be unreasonable for the development to be refused on this basis.*
- *The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying CI1.3(f). Compliance with the development standard based on this would be unreasonable.*
- *The variation to the special height provision as detailed above will have no social impacts for the site or local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The small variation to the special height provision as detailed above will have no economic impacts for the site or the local area satisfying CI1.3(b) and accordingly refusal of the*

*development based on this reason would be unreasonable.*

- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*
- *The variation does not result in a parking structure or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The development allows for safe and compliant parking on site, which would otherwise be unfeasible. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case allowing for the retention of views and satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.*
- *The variation confined to the compliant tandem parking platform with balustrade is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and safe and accessible parking. These are not simply benefits of the development as a whole but are a direct result of the breach of the maximum height control.*
- *The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e., the development is an orderly and economic and development of the land, notwithstanding the height variation".*

#### **Development Assessment Planner Comment:**

Council's Development Assessment Planner agrees generally with the applicant's justification to contravene Clause 4.3A - Special Height Provisions of Manly LEP 2013.

In particular, it is agreed that the non-compliance is a direct result of the significantly steep topography that falls away from the street and is necessary in order to provide for balustrading to ensure safe and convenient parking. The height and nature of the parking structure (i.e. open hardstand parking space) is consistent with existing parking structures on adjacent properties to the north and south of the subject site. Additionally, the parking hardstand balustrading is 50% open transparent and is sited only 1.12m above the crown of the road, which enables view retention from standing positions within the road reserve. The proposed hardstand provides for orderly development of land and strict compliance with Clause 4.3A - Special Height Provisions of Manly LEP 2013 would preclude safe and convenient parking on the site.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Special Height Provisions development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objective of the standard, pursuant to Clause 4.3A – 'Special Height Provisions' of the MLEP 2013 is:

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

Comment:

Noting that the average eye height sits approximately 1.6m above the ground/floor level and that the parking hardstand balustrade sits 1.12m above the crown of the road, standing views towards the Sydney Harbour catchment will be maintained over the top of the development from the road and road reserve. It is further noted that the balustrading is 50% open/transparent to assist in view retention.

In regards to views enjoyed from private properties, it is noted that upslope properties to the east (i.e. along David Place) are elevated well above the proposed development and thus, existing view lines towards Sydney Harbour will be maintained over the top of the site. Moreover, dwelling houses to the north and south of the site are situated below the footprint of the proposed hardstand and will not experience any view impacts.

For these reasons, it is considered that the proposal satisfies this clause.

**Zone objectives**

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The parking hardstand platform provides safe and convenient parking to an existing dwelling house, which is a permissible land use within the R2 zone. In this regard, it is considered that the proposal provides for the housing needs of the community within a low density residential environment.

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

Comment:

The proposal does not change the existing residential land use.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and Clause 4.3A - Special Height Provisions.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Special Height Provisions Development Standard associated with a single dwelling house (Class 1 building).

### **Clause 4.4 - Floor Space Ratio**

#### Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.4:1 (259.92sqm)
Proposed:	0.433:1 (281.07sqm)
Percentage variation to requirement:	8.14% (21.15sqm)

The site is subject to a 0.4:1 FSR development standard. The proposed FSR equates to 0.433:1 (281.07sqm), which does not comply with the development standard. It is noted that the existing FSR on the site is compliant and equates to 0.372:1 (241.8sqm). The additional gross floor area resulting from the proposal is confined to a portion of the storage area under the hardstand parking space (i.e. areas where floor to ceiling heights are more than 1.4m) and the store room on the lower ground floor.

Additionally, the site is an 'undersized allotment' as defined within the Manly DCP 2013, noting that the 0.4:1 FSR requirement is typically based off an average site area of 750sqm. The subject site is 649.8sqm in area. Therefore, when applying the proposed gross floor area of 281.07sqm to an area of 750sqm the proposed FSR would be 0.375:1, which complies with the development standard.

#### Assessment of request to vary a development standard:

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

#### Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*  
*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*  
*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*  
*(a) the consent authority is satisfied that:*  
*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*  
*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*  
*(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicant's written request argues, in part:

- *"The proposed variation to the FSR control is minor at just 8.1% or 21.11 m2. It is for a very limited area where it is not visible from the street or easily for side neighbours. The apparent bulk through the variation is negligible and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).*
- *The small variation to the FSR occurs within undercroft and sub-floor areas.*
- *Solar access impacts as a result of the FSR variation are negligible with neighbours having similar bulk adjoining. Accordingly, compliance with the development standard based on this would be unreasonable.*
- *The small variation has no impact on privacy for neighbours, being confined primarily for storage spaces.*
- *Strict numerical compliance with the FSR control would not result in a better urban design outcome and the street view would be unchanged. Compliance with the development standard based on this would be unreasonable.*

- *The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site and location of the undercroft areas resulting in the new storage areas being hidden from view satisfying C11.3(g). The streetscape appeal is unaffected by the small variation to the FSR standard, and it would be unreasonable to require compliance with development standard based on this.*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.*
- *The inclusion of the small FSR variation to facilitate enclosure of the undercroft spaces has no impact on the natural environment. The small variation sits within the built form and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor variation satisfying C11.3(b). The natural environment is unaffected by the small departure from the development standard, and it would be unreasonable for the development to be refused on this basis.*
- *The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying C11.3(f). Compliance with the development standard based on this would be unreasonable.*
- *The small variation to the FSR as detailed above will have no social impacts for the site or local area satisfying C11.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The small variation to the FSR as detailed above will have no economic impacts for the site or the local area satisfying C11.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*
- *The variation does not result in a building bulk beyond that which is found in the immediate context. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying C11.3(c). Compliance with the development standard based on this would be unreasonable.*
- *Removal of the non-compliance would not result in alter the perceived bulk and scale due to the minor nature, siting and topography.*
- *The variation confined to the undercroft areas is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity. These are not simply benefits of the development as a whole, but are a direct result of the breach of the maximum FSR control.*
- *The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e., the development is an orderly and economic and development of the land, notwithstanding the FSR variation".*

#### **Development Assessment Planner Comment:**

Council's Development Assessment Planner agrees generally with the applicant's justification to contravene Clause 4.4 - Floor Space Ratio of Manly LEP 2013.

In particular, it is agreed that the additional gross floor area is located within storage and subfloor areas that do not significantly increase the bulk and scale of the existing dwelling house when viewed from the Sydney Harbour Catchment or adjacent properties. The additional gross floor area is also sited below the crown of the road. In addition, the existing building envelope is largely retained and the additional FSR does not contribute to unreasonable amenity impacts, specifically with regards to solar access, views and visual bulk. The storage areas are not habitable rooms and will not result in unacceptable visual or aural privacy impacts, given they are low trafficable areas. Overall, there are no



benefits from maintained from full compliance with the FSR standard in this instance.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the FSR development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

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

Comment:

The additional gross floor area relates to subfloor and storage areas and does not alter the perceived bulk and scale of the existing multi-storey dwelling house.

*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 additional gross floor area does not result in the removal of important landscape features.

*c) to maintain an appropriate visual relationship between new development and the existing*

*character and landscape of the area,*

Comment:

The additional gross floor area relates to subfloor and storage areas and does not alter the perceived bulk and scale of the existing multi-storey dwelling house. In this regard, the proposal will continue to maintain an appropriate visual relationship with the surrounding area.

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

Comment:

The existing building envelope is largely retained and the additional FSR does not contribute to unreasonable amenity impacts, specifically with regards to solar access, views, privacy and visual bulk.

*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:

This objective is not relevant as the site is within a residential zone.

## **Zone objectives**

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The additional gross floor area provides additional storage areas associated with the dwelling house, thereby providing for the housing needs to the community within a low density residential environment.

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

Comment:

The proposal does not change the existing residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and Clause 4.4 - Floor Space Ratio of Manly LEP 2013.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor Space Ratio Development Standard associated with a single dwelling house (Class 1 building).

## Manly Development Control Plan

### Built Form Controls

<b>Built Form Controls - Site Area: 649.8sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1150sqm site area	1 dwelling on 649.8sqm site - existing and unchanged	N/A	N/A
	Dwelling Size: minimum 124sqm gross floor area required (based off 5 bedrooms and 3 bathrooms)	281.07sqm	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (nil setback for parking structures)	nil setback - consistent with prevailing building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 4.43m (1/3 of existing max. wall height)	Hardstand: 0.2m Dwelling: 1.68m	up to 95.49%	<b>No</b>
	South: 3.47m (1/3 of existing max. wall height)	Hardstand/Stairs: nil setback Dwelling: 0.38m (lower level stairs)	up to 100%	<b>No</b>
	Windows: no windows within 3m of side boundaries	2x windows setback 1.68m from northern side boundary	44%	<b>No</b>
4.1.4.4 Rear Setbacks	8m	16.6m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (389.88sqm) of site area	62.4% (405.45sqm)	-	Yes
	Open space above ground 25% (101.36sqm) of total open space	19.85% (80.47sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (162.18sqm) of open space	72.07% (292.2sqm)	-	Yes
	3 native trees	> 3 native trees	-	Yes
4.1.5.3 Private Open	18sqm	> 18sqm	-	Yes

Space				
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage (2.45m)	5.03m	105.31%	<b>No</b>
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.3 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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

##### **3.1.1 Streetscape (Residential areas)**

The Manly DCP 2013 streetscape provision sets out the following considerations for garages, carports or hardstand parking areas:

**3.1.1.4 Garages, Carports and Hardstand Areas**

*a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*

- i) its roof form, material choice and detailing by being subservient to the associated dwelling; and*
- ii) being compatible with the streetscape and the location in relation to front setback criteria.*

*b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.*

**Comment:**

The proposed hardstand parking platform is considered to meet this requirement given it is an open structure that does not dominate the street frontage. In addition, the proposed hardstand parking space is consistent with hardstand structures to the north and south of the site in both its nature (i.e. open parking structure) and in relation to its front setback. Figures 1 and 2 below depicts similar parking structures adjacent to the subject site.

**Figure 1:** *hardstand parking space at 133A Seaforth Crescent - south of the subject site*



**Figure 2:** *hardstand parking space at 137 Seaforth Crescent - north of the subject site*





For these reasons, it is considered that the proposal satisfies the Manly DCP 2013 streetscape provision.

#### **4.1.3 Floor Space Ratio (FSR)**

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation.

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment size of 750sqm. The subject site is 649.8sqm in area. Therefore, when applying the proposed gross floor area of 281.07sqm to an area of 750sqm the proposed FSR would be 0.375:1, which complies with the development standard.

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

##### Description of non-compliance

The control prescribes a minimum side setback that is 1/3 of the maximum wall height. For the purpose of calculating the side setbacks the maximum wall height has been taken from the existing dwelling house, noting that the works proposed under this application do not increase the maximum wall height. The proposed side setbacks are as follows:

- Northern setback: hardstand setback 0.2m and new works to dwelling setback 1.68m - does not comply with 4.43m requirement (1/3 of wall height).

- Southern setback: hardstand/stairs setback 0m and new works to dwelling setback 0.38m - does not comply with 3.47m requirement (1/3 of wall height).

Additionally, the proposal includes two new windows setback 1.68m from the northern side boundary, which does not comply with the 3m separation requirement for windows.

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 proposed hardstand parking platform is considered to meet this requirement given it is an open structure that does not dominate the street frontage. In addition, the proposed hardstand parking space is consistent with hardstand structures to the north and south of the site in both its nature (i.e. open parking structure) and in relation to its front setback.

Furthermore, the additional floor space proposed to the dwelling house are sited on the lower floors and confirm to the existing side setbacks. In this regard, the works will not be visible from Seaforth Crescent and will not be visually imposing when viewed from the Sydney Harbour Catchment.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed works result in negligible amenity impacts, specifically with regards to privacy, solar access, views and visual bulk. In addition, the maintenance of the existing side setbacks for the dwelling will ensure that adequate separation is maintained between buildings. Council's Development Engineers have reviewed the proposal with respect to vehicular access and parking and found the development to be acceptable in this regard. Therefore, Council can be satisfied that the hardstand parking space will not preclude safe and adequate traffic conditions. Overall, the proposal is considered to meet this objective.

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

Comment:

Flexibility is afforded in this circumstance as the numeric variations to the side setback provision will not

give rise to unreasonable streetscape or amenity impacts.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

The proposal complies with the Manly DCP 2013 total open space and landscaped area numeric requirements. Furthermore, the works do not necessitate the removal of native canopy trees. In this regard, the proposal is considered to meet this objective.

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

Comment:

The site is not bushfire prone.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

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

The design of the carport and driveway does not allow vehicles to enter and exit the site in a forward direction, which does not satisfy the prerequisite. Furthermore, the width of the hardstand exceeds the maximum requirement. Nevertheless, Council's Development Engineers have reviewed the proposal with respect to vehicular access and off-street parking and found the proposal to be acceptable in this regard. It is further noted that the size and nature of the hardstand platform corresponds with adjacent parking structures to the north and south of the site. Therefore, the application is supported on merit in this instance.

#### **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 2021**



The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$3,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$300,000.

## **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings, Clause 4.3 Special Height Provisions and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The proposed development involves alterations and additions to an existing dwelling house to provide for a suspended hardstand parking platform and additional floor space to the existing dwelling house.

The proposed development involves variations to applicable height and floor space ratio development standards, in addition to the Manly DCP 2013 side setback numeric requirement. Despite these variations, the works do not significantly alter the envelope of the existing dwelling house and the

hardstand parking platform demonstrates consistency with adjacent parking structures to the north and the south of the site. The numeric non-compliances also result in negligible amenity impacts, specifically with regard to view sharing, solar access, privacy and visual bulk.

Accordingly, it is recommended that the DDP approve the application, subject to the conditions attached to this report.

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Buildings, Clause 4.3A Special Height Provisions and Clause 4.4 Floor Space Ratio development standards pursuant to Clause 4.6 of the Manly LEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0130 for Alterations and additions to a dwelling house on land at Lot 2 DP 236331, 135 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA04 (Revision A) - Site Plan	7 April 2022	Action Plans
DA12 (Revision A) - Proposed Lower Floor Plan	7 April 2022	Action Plans
DA13 (Revision A) - Proposed Level 1 & 2 Floor Plan	7 April 2022	Action Plans
DA14 (Revision A) - Proposed Storage Floor Plan	7 April 2022	Action Plans
DA15 (Revision A) - Proposed Hardstand Floor Plan	7 April 2022	Action Plans
DA16 (Revision A) - North Elevation (House)	7 April 2022	Action Plans
DA17 (Revision A) - South Elevation (House)	7 April 2022	Action Plans
DA18 (Revision A) - West Elevation (House)	7 April 2022	Action Plans
DA19 (Revision A) - Long Section (House)	7 April 2022	Action Plans

DA20 (Revision A) - North Elevation (Hardstand)	7 April 2022	Action Plans
DA21 (Revision A) - South Elevation (Hardstand)	7 April 2022	Action Plans
DA22 (Revision A) - West Elevation (Hardstand)	7 April 2022	Action Plans
DA23 (Revision A) - Long Section (Hardstand)	7 April 2022	Action Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A436837_02	1 December 2021	Action Plans
Geotechnical Assessment Ref. AG 21379	17 November 2021	Ascent Geotechnical Consulting
Arboricultural Impact Assessment	20 December 2021	Hugh The Arborist

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

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

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	11 November 2021	Watermark Planning c/o Paul Baret

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

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

## 2. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

### 3. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a

safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;  
  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 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

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$3,000.00 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 2021. The monetary contribution is based on a development cost of \$300,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

## **5. Security Bond**

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

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

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

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

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

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

## **6. Stormwater Disposal**

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

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

**7. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). 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 areas 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.

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

Reason: Protection of the receiving environment.

**8. Traffic Management and Control**

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

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

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

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of driveway which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- 1 ) the structural details of the driveway shall be submitted. No load bearing on the existing road embankment from the proposed structure
- 2 ) all utility services are plotted on the submitted plan. The cost of any utility relocation shall be borne with the application
- 3 ) the tree protection plan of the street tree must be provided
- 4 ) a construction management plan shall be submitted.
- 5 ) safety devices must be install on he proposed driveway

The fee associated with the assessment and approval of the application is to be in accordance



with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

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

10. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

11. **Waste Management Plan**

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

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

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

12. **Use of a Portion of a Road Reserve application**

Prior to issue of the Construction Certificate, the applicant must enter into an approval for the portion of the elevated driveway that is located on Council's road reserve. The relevant form "Use of a Portion of a Road Reserve Application" can be found on Council's website.

Reason: To ensure compliance with the the Roads Act 1993.

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or

easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://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**

### **15. Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such excavation works and the locations of pier footings for the suspended structure in proximity to tree 1 (Sydney Red Gum) as identified in the Arboricultural Impact Assessment, including compliance to:

- i) section 8 Conclusion, works as described for tree 1,
- ii) section 10. Recommendations generally,
- iii) section 11. Arboricultural Work Method Statement and Tree Protection Requirements for trees 1, 2, 3, and 4.
- iv) section 12. Hold Points.

All tree protection measures specified must:

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

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

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

### **16. Public Liability Insurance - Works on Public Land**

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

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

**17. Installation and Maintenance of Sediment and Erosion Control**

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

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

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**18. Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,
- iv) any exempt species tree(s) to be removed as referred above in item i) shall be replaced at a ratio of 1:1 with a locally native tree species,

b) Tree protection shall be undertaken as follows:

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

Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.

e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

19. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and an Erosion and Sediment Control Plan prepared by a suitably qualified consultant prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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 identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

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

23. **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.

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

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

24. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

25. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

26. **Condition of Retained Vegetation - Project Arborist**

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

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

Reason: Tree protection.

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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

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

28. **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.