

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0670
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 1 DP 953749, 18 Margaret Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Melissa Anne Downes
Applicant:	Complete Trade Pty Ltd

Application Lodged:	02/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/06/2022 to 28/06/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.4 Floor space ratio: 12.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 569,739.50
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EXECUTIVE SUMMARY

This development application seeks consent for Alterations and Additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to a variation of the Floor Space Ratio development standard of greater than 10%.

Three submissions were received which raised concern with solar access, privacy, side boundary fence, inaccurate information and non-compliance with Manly Development Control Plan (MDCP) and Clause 4.4 Floor Space Ratio of the Manly Local Environment Plan (MLEP).

A detailed planning assessment of the FSR non-compliance has been conducted under Clause 4.6 of MLEP and the numerical non-compliances to the wall height, side setback, rear setback and total open space as well as privacy and solar access have been addressed under relevant provisions of the

MDCP.

The clause 4.6 request for the non-compliance with FSR standard arises from a 11.8m² increase in floorspace within the existing storage/ roof space. The existing dwelling has an FSR 0.63:1 (183.8m²) of which presents a variation of 6.2%. The proposed development will result in a variation of 12.8%. As the increase to the floor area is within the roof space, there will be no increase the bulk or scale of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for alterations and additions to an existing dwelling. The works include the following:

Ground Floor:

- Demolition of internal walls,
- A portion of existing concrete in the front and rear yard to be removed to improve landscaping conditions on the site,
- New open plan lounge and kitchen,
- Reconfiguration of stairwell (toilet and storage under),
- New ensuite and wardrobes to front bedrooms,
- New external deck area including external seating areas and BBQ with pergola above,
- New side boundary fence.

First Floor:

- Demolition of internal walls and structures,
- Raising of the roof to accommodate revised layout,
- New layout comprising upper lounge, study and bathroom,
- Revised stairs and landing,
- New master suite with ensuite and walk in robe,
- Revised roof to rear terrace area,
- Replacement roof over first floor to be colorbond.

Planners note: The application, as lodged, included a new front boundary fence and carport, increased roof height of the first floor, and the addition of multiple windows along the north and south elevation. Concern was raised by Councils internal referral bodies, Development Engineers and Heritage with the design of the proposal and compliance with the MLEP, MDCP and Australian Standards.

A RFI letter was sent to the applicant requesting the plans be amended to meet heritage requirements for the site, comply with Australian Standards and provide evidence of compliance with part 3.4.1 Sunlight Access and Overshadowing of the MDCP in the form of elevational shadow diagrams. The applicant provided amended plans addressing concerns raised in the Heritage referral by way of reducing the height of the roof so that it will not be visible from the street, changing the design and location of the side elevation windows, amending the schedule of colours and finishes and retaining the front fence and existing carport. The retention of the existing carport satisfies Council Development Engineers, as there was no change to the previously approved car parking arrangements on the site.

The applicant also provided elevational shadow diagrams which demonstrated compliance with part 3.4.1 Sunlight Access and Overshadowing of the MDCP.

The application was not re-notified as the amended plans provide a reduce environmental impact. However, those persons who put in submissions were notified of the changed plans and given the opportunity to make further comments.

The assessment of the application is based on amended plans from Complete Trade dated 23.01.2023.

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 - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

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

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 953749 , 18 Margaret Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Margaret Street.

The site is regular in shape with a frontage of 7.47m along Margaret Street and a depth of 38.1m. The site has a surveyed area of 287.4m².

The site is located within the R1 General Residential zone and accommodates two storey residential dwelling with attached carport.

The site has a slight slope from the front boundary down to the rear.

The site has a small area of lawn at the front with vegetation along the boundaries. The rear of the site has medium height shrubs along the southern side boundary and rear yard is paved. There are no known threatened species on the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by single residential dwellings to the south, east and west. To the north of the site are residential flat buildings.

Site Inspection

A site inspection was conducted 2 August 2022.

Map:



SITE HISTORY

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

Development Application 3949/91

Approved - 3 May 1991

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Heritage referral, Development Engineers referral, and over shadowing of adjoining properties.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/06/2022 to 28/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Craig Malcolm Smith	16 Margaret Street FAIRLIGHT NSW 2094
Mr Timothy Robert Alexander	Level 1 2 Winslow Street KIRRIBILLI NSW 2061
Corona Projects Pty Ltd	PO Box 1749 BONDI JUNCTION NSW 1355

The following issues were raised in the submissions:

- Overshadowing,
- Privacy,
- Heritage significance,
- Non-compliance with DCP and LEP,
- Side Fence,
- Site survey,
- Noise.

The above issues are addressed as follows:

- **Over shadowing**

The submissions raised concerns that the proposed development will result in unreasonable over shadowing to the private open space and living area windows of the adjoining properties at no. 16 Margaret Street and 13 Laurence Street. The submission from no. 16 Margaret Street requested hourly elevational shadow diagrams to fully assess the impact of the overshadowing to the internal living areas.

Comment:

Over shadowing and solar access has been addressed in more detail under part 3.4.1 Sunlight Access and Overshadowing of this report. In summary, the application is accompanied by shadow diagrams which shows the existing overshadowing compared to the proposed overshadowing as a result of the development. From the shadow diagrams provided it is shown that the proposal does not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm on the Winter Solstice.

Elevational shadow diagrams demonstrate that the living area windows of no. 16 Margaret Street are currently overshadowed for more than 2 hours on the winter solstice. Due to the orientation of the allotments, properties sited to the south of an adjacent building are more vulnerable to overshadowing. The hourly elevational shadow diagrams provided, show there will be no change to the level of overshadowing to the living room windows on the ground floor northern elevation of no. 16 Margaret Street as a result of the proposed development.

- **Privacy**

The submissions raised concern with privacy and overlooking from the proposed development. No. 13 Laurence Street raised concerns with the proposed deck off the ground floor living area and the potential overlooking of their swimming pool area. No. 16 Margaret Street requested all new southern elevation windows have some form of privacy screening and privacy screening along the southern edge of the ground floor deck to protect privacy to the private open space and living areas of no. 16 Margaret Street.

Comment:

Privacy has been addressed in detail under part 3.4.2 Privacy and Security. In summary, due to the reduced side and rear setback privacy screening is recommended along the southern and eastern edge of the rear deck to protect privacy to the adjoining properties. One new window is proposed and one window enlarged along the southern elevation. The proposed new window is located off a bathroom and a condition is recommended requiring the window to have opaque glazing. No privacy treatment for the enlarged window is not considered necessary as the window is located off a bedroom, which is considered a low use room, is not directly across from any windows on the adjoining property of no. 16 Margaret Street and does not provide direct overlooking of the private open space of adjoining properties. The proposed design and recommended conditions will maintain a reasonable level of privacy and security for the site and adjoining properties.

- **Heritage significance**

The submissions raised concerns that proposal did not respect the heritage significance of the site and streetscape.

Comment:

The application was reviewed by Councils Heritage Officer who did not initially support the proposal. The applicant has worked with Council and has amended the design of the proposal to generally meet heritage requirements. A condition is recommended requiring the proposal to have particular colours and materials to comply with heritage requirements. The amended

design along with conditions recommended by Councils Heritage Officer provides a design that meets the Heritage requirements of the MLEP and MDCP.

- **Non-compliance with MDCP and MLEP**

The submissions raised concern that the proposal does not comply with several objectives and controls of the MDCP and FSR control of the MLEP and results in unreasonable amenity impacts to no. 16 Margaret Street.

Comment:

Where the proposal fails to achieve the numeric requirements under a relevant control of the MDCP, a detailed merit discussion has been undertaken under the relevant sections of this report and have found to be acceptable.

A Clause 4.6 written request to vary a development standard accompanies this application. This document have been reviewed and the assessment has found the proposed variations to CI 4.4 are considered acceptable, and can be supported on its merits. The assessment o can be found within this report under Clause 4.6 Exceptions to development standards.

Concerns relating to potential amenity impacts upon adjoining properties, as a result of the non-compliant development standards of the MLEP, have been addressed under the relevant sections of this report.

In summary, the alterations to the dwelling will maintain the existing setbacks to the front, side and rear. The proposed new rear deck will increase opportunities for overlooking of the private open space of nos. 16 Margaret Street and 13 Laurence Street. This impact has been addressed under parts 3.4.2 Privacy and Security and 4.1.4 Setbacks (front, side and rear) and Building Separation of this report. A condition has been recommended requiring privacy screens be erected along the eastern and southern edges of the new deck area to maintain privacy between sites.

- **Side Boundary Fence**

The submissions raised concerns that the proposed side boundary fence running the length of the dwelling would restrict access to the northern side of no. 16 Margaret Street. The submission also raised concern with the removal and replacement of the side boundary fence located in the rear yard would impact on privacy between the site and no. 16 Margaret Street.

Comment:

The site currently has side boundary fencing with no. 16 Margaret Street within the front and rear yard. The application proposes to replace the rear boundary fence. The application also proposes to build a new side boundary fence (where there is currently none) along the side of the dwelling between the two properties. Concern has been raised by the owners of the no. 16 Margret street that the new fence running the length of the dwelling will impede their access to services and storage sheds along the side of their dwelling. As noted in the submission, there is no register easement or the like in place to allow no. 16 Margaret Street access to their services and sheds through the subject site. Any access arrangements are a civil matter between the affected parties. A condition will be included in the consent requiring this portion of the fence running parallel to the dwelling to be constructed wholly within the subject site.



Photo 1: View along the southern side boundary, showing the proposed location of the new side boundary fence.

The proposed replacement fencing at the rear is subject to the Dividing Fences Act and requires owners consent from all affected parties. No owners consent has been provided by the owners of no. 16 Margret Street. A condition will be included in the consent requiring the replacement fencing located at the rear of the site to be deleted from the plans.

- **Site Survey**

The submissions raised concerns that site survey was inaccurate and requested a new survey.

Comment:

The survey has been reviewed and meets Councils lodgment requirements.

A standard condition will be included in the consent requiring a boundary identification survey to be submitted which identifies the property boundaries as shown on the boundary identification survey and shows the setbacks between the property boundaries and the approved works are consistent with those nominated on the Approved Plans. This will ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

- **Noise**

The submissions raised concerns that proposed outdoor entertaining area would result in unreasonable Noise impacts to the neighboring properties.

Comment:

The proposal is for alterations and additions to a residential development. The development is not expected to produce noise above the level of normal residential use and what is consistent with the surrounding residential area. The proposal complies with the relevant objectives of the MDCP.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The application proposed to modify the existing building including the external carport. However, the carport is only approximate 4.6 m long which does not comply with current Australian Standard 2890.1. It means a vehicle may obstruct the footpath area on Margaret Street when a B85 is parking on the carport.</p> <p>The minimum parking space must be 5.4 m long in accordance with AS 2890.1. The applicant shall consider to amend the carport.</p> <p>Planners note: Due to concerns raised by both Councils Development Engineers and Heritage Officer, the applicant has proposed to retain the existing carport and parking on the site. While the existing carport does not comply with the current Australian Standards it was previously approved under Development Application 3949/91 and will remain as it.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is a heritage item and adjoins a heritage item

Internal Referral Body	Comments		
	I61 - Group of Dwellings - 2A -25, 27, 29 Margaret Street and 38 The Crescent		
	I62 - Street Trees - Margaret Street		
	Details of heritage items affected		
	Details of the items as contained within the Manly inventory is as follows:		
	Group of Dwellings		
	<u>Statement of Significance</u>		
	The streetscape has moderate significance for its range of architectural styles and textural interest.		
	<u>Physical Description</u>		
	The street contains an interesting range of generally small scale residential architecture with a number of fine examples of particular styles in the period c. 1910 - c. 1940. Notable individual buildings are No. 22 (Strathmore) brick flats with strong vertical elements and decorative brickwork; Nos. 27 and 7 - Federation style cottages and the pair of cottages Nos. 16 and 18, also showing Federation influence. Generally the street is well planted. The streetscape is not yet seriously affected by infill.		
	Street Trees		
	<u>Statement of Significance</u>		
	Listed for its aesthetic importance to the streetscape.		
<u>Physical Description</u>			
treet tree planting. Mixed tree species; Norfolk Island Pine, Brush Box and Hill's Fig.			
Other relevant heritage listings			
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register			
RAIA Register of 20th Century Buildings of Significance	No		
Other	N/A		
Consideration of Application			
Amended plans have been received which have addressed the			

Internal Referral Body	Comments
	<p>majority of Heritage's concerns with the original proposal. This includes more sensitive window choices, lowering the upper level extension, the roof and changes to the external materials and colours. Heritage also notes the effort of the applicants to address our concerns. Heritage's only outstanding matter would be with the proposed metal roof colour of Windspray. Heritage prefers Jasper or Wallaby and will condition this requirement.</p> <p>Therefore Heritage no longer objects to the proposal and requires one condition.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A454826 dated 1 April 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (173m ²)	FSR: 0.67:1 (195.3m ²)	12.8%	No

Compliance Assessment

Clause	Compliance with Requirements

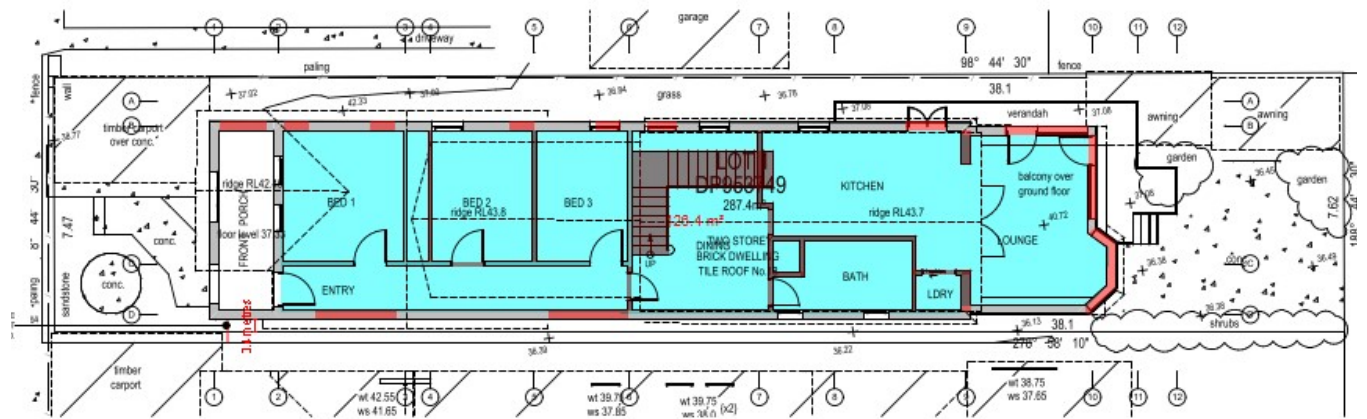
Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

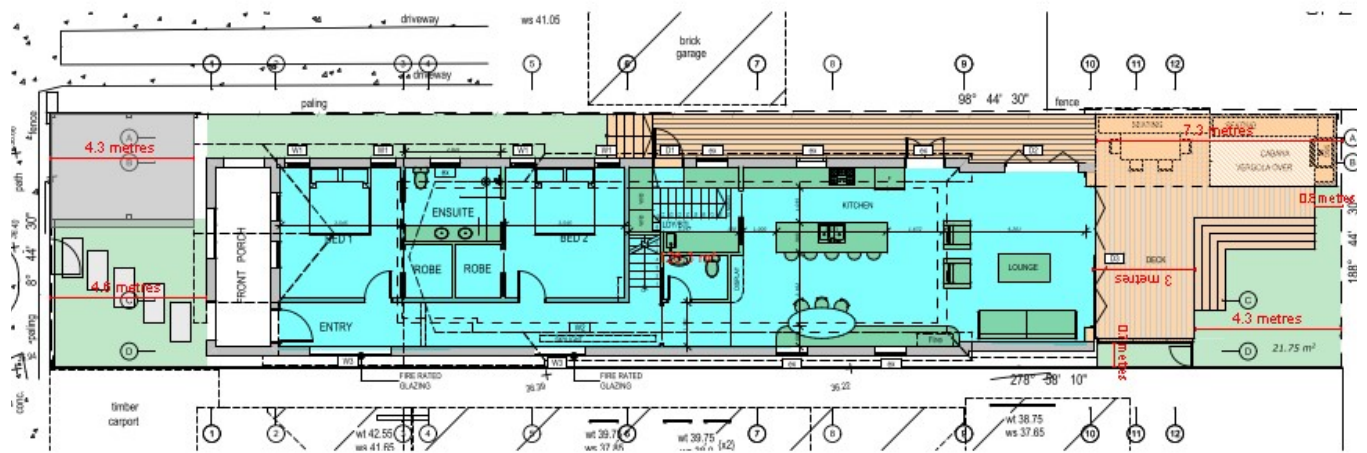
4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (173m ²)
Proposed	0.67:1 (195.3m ²)
Percentage variation to requirement:	12.8%



EXISTING GROUND FLOOR LEVEL - DEMOLITION



PROPOSED GROUND FLOOR LEVEL

Image 1: Existing and proposed ground floor FSR

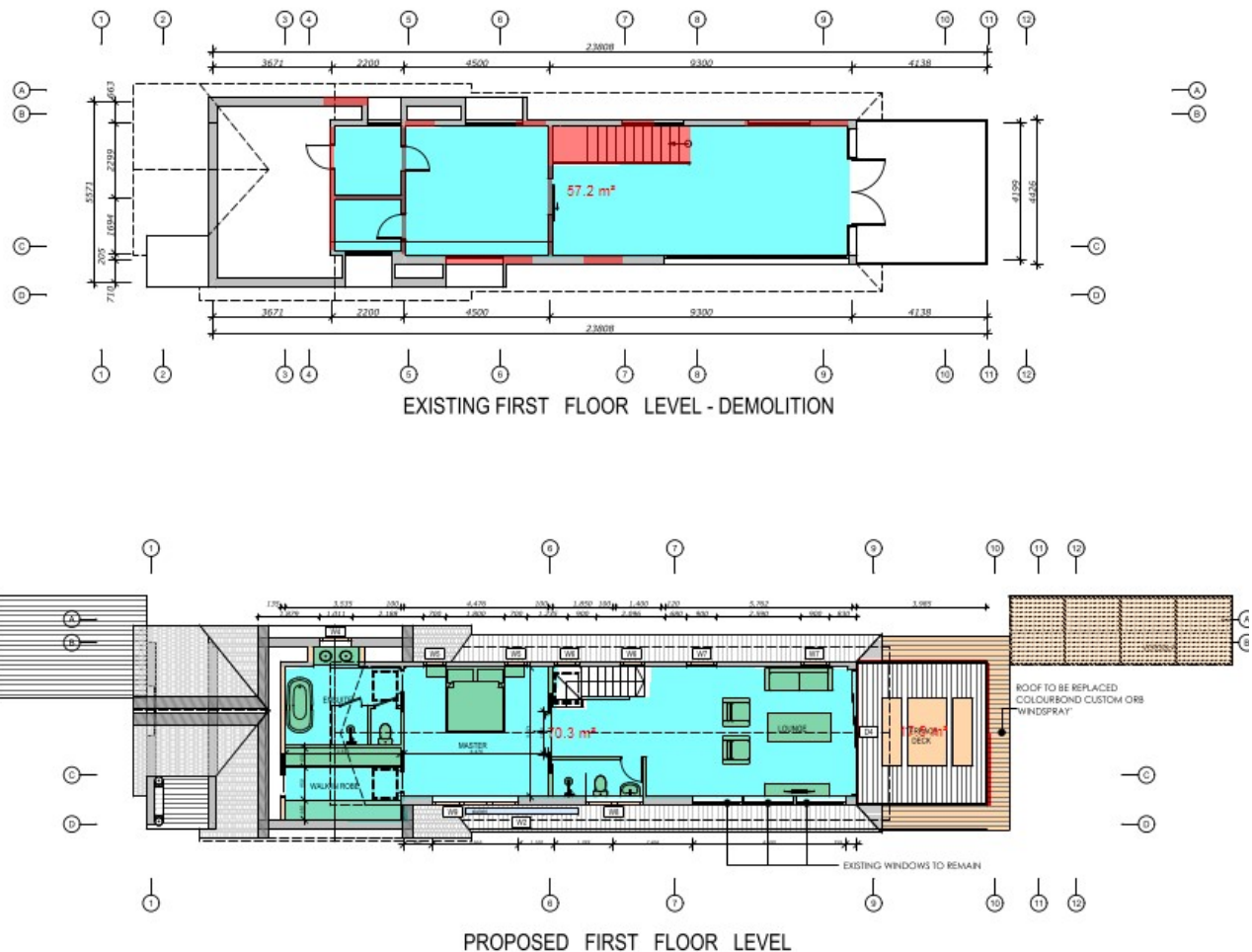


Image 2: Existing and proposed first floor FSR

Assessment of request to vary a development standard:

The following assessment of the variation to 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 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).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The works occur within the existing principle floors and the building and the existing area created by the generous floor to ceiling height of the existing building,*
- *The works do not [create] any new perceptible bulk and scale to the building,*
- *The additions will not impact the outlook from surrounding buildings,*
- *The building remains consistent in height, bulk and scale to other recent developments in the area,*
- *The proposal will not detract from the established character of the streetscape or retained significance of the heritage item,*
- *The new structure and use will not result in any adverse or no material impacts to views, privacy and solar access,*
- *There is no material alteration to the level of impact of the building to the local scenic qualities of the Sydney Metropolitan environment,*
- *The proposal does not result in unacceptable solar impacts nor does it interrupt views,*
- *The site is flanked by a driveway to the north... The additional space around the building creates space for the height to be accepted without impact,*
- *The proposed contemporary attic addition allows for the interpretation of the original roof form and does not dominate the existing dwelling,*
- *The over additional FSR elements does not contain any windows and will not introduce any opportunities for overlooking,*
- *The site and the surrounding locality can support the increased height, as the primary controls for setbacks are generally maintained, and the proposal would not unreasonably overshadow or present a bulk and scale impact upon surrounding adjoining properties,*
- *The proposed non-compliance does not generally result in any adverse environmental impacts, when compared to a development that would be wholly compliant the maximum FSR standard,*
- *The building would be manifestly under utilised in terms of usable floor area, if fully realised on the current footprint,*
- *The variation of the standard allows for a development that is consistent with the established*

and desired future character of the area,

- *The proposed non-compliance is minor and will not be noticeable to the general public,*
- *The variation of the FSR standard does not result in significant additional bulk and scale or overshadowing from the proposal and will not have adverse impact on adjoining existing and future potential developments,*
- *Compliance with the standard would be incongruous with the recent approvals in the area and desired future built form character in the surrounding area,*
- *The proposed structure and use is designed with regard to building modulation, orientation and window positioning as to consider the aural and visual privacy of surrounding buildings,*
- *The proposal would not result in an improved planning outcome than if strict compliance were to be achieved.*

It is agreed that the proposal promotes good design and amenity of the built environment, in that the proposed additional floor space is entirely within the footprint of the existing roof cavity, and therefore will not result in streetscape impacts or unreasonable impacts for adjoining neighbours. The replacement first floor is located towards the rear of the property, with the roof line lower than that of the existing heritage listed facade. Therefore, the needs and amenity of the occupants is being improved through only a minor built form addition that does not sacrifice the visual quality of the site or adjoining areas.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

streetscape character,

Comment:

The building bulk and scale is consistent with the pattern of surrounding development and does not create any unreasonable obstruction to landscape and townscape features. The design of the proposal and external appearance is consistent with the streetscape guidelines of the Manly local planning controls.

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 proposal maintains elements of landscape area in the front and rear setback and does not obscure views of important local features (such as beaches, St Patricks Estate, Manly Wharf or other similar prominent urban / coastal features).

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

Comment:

The proposal will be maintaining the existing facade to the street and replacing the existing first floor addition with an amended first floor which compliment the heritage listed elements of the dwelling. The amended first floor will maintain the existing setbacks to the boundaries and will have a slight roof height increase, however, the addition will vastly improve the existing character and landscape of the area.

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

Comment:

The propose FSR does not create unreasonable privacy, overshadowing or unreasonable view impacts. Overall, the overshadowing and building bulk is consistent with the existing building and adjacent buildings that have first floor additions along Margaret Street.

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

Comment:

The subject site is not a business zone and this objective is not relevant to the house alterations and additions.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The proposal maintains a detached dwelling, which contributes to a variety of housing typology for the local area.

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

Comment:

The proposal continues to maintain a residential land use.

Conclusion:

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

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

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

Planning Circular 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).

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 287.4m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5m	6.9m	6.15%	No
	S: 6.6m	7.1m	7.5%	No
	E: 6.5m	7.6m	16.9%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.8m	N/A	Yes
	Pitch: maximum 35 degrees	15 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	4.6m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.3m (based on wall height)	First floor - 1.9m	17.4%	No
	S: 2.3m (based on wall height)	First floor - 1.2m	47.9%	No
	Windows: 3m	N - 1.9m S - 1.2m	36.7% 60%	No No
4.1.4.4 Rear Setbacks	8m	Ground floor - 7.3m First floor - 7.6m External - 0.1m	8.75% 5% 98.75%	No No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	43.7% (125.5m ²)	20.4%	No
	Open space above ground 25% of total open space	14.22%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35%	41.8% (52.5m ²)	N/A	Yes

	(44.03m ²) of open space			
	1 native trees	0 trees	N/A	No
4.1.5.3 Private Open Space	18m ² per dwelling	18m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	N/A	Yes - existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

3.4.1.1 Overshadowing Adjoining Open Space

This control requires all development (including alterations and additions) to not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm on the Winter Solstice (being 21 June). The shadow diagrams provided indicate that the proposed alterations and additions to the existing dwelling achieves compliance with the requirements of this control.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

This control stipulates that, for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the Winter Solstice. Additionally, for all adjacent buildings, regardless of the orientation of the allotments, there must be no reduction in solar access to any window where existing windows enjoy less than the minimum number of sunlight hours as previously specified.

Shadow diagrams for the Winter Solstice have been provided with this application, which demonstrate the overshadowing to no. 16 Margaret Street (the property to the south) at 9am, 12noon and 3pm on the winter solstice. The dwelling at no. 16 Margaret Street does not meet the requirement of 2 hours of sunlight to the living room windows on the winter solstice. Due to the orientation of the allotments, properties sited to the south of an adjacent building are more vulnerable to overshadowing. Notwithstanding, updated elevational shadow diagrams have been provided which show there will be no change to the level of overshadowing to the living room windows on the ground floor northern elevation of no. 16 Margaret Street and does not result in a reduction in solar access to any window where existing windows enjoy less than the minimum number of sunlight hours as previously specified.

3.4.2 Privacy and Security

Merit consideration:

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

- ***Objective 1) To minimise loss of privacy to adjacent and nearby development by:***
 - appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and***
 - mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.***

Comment:

The proposed windows and door have been designed to comply with heritage requirements.

Southern Elevation:

The alterations and additions include the addition of two windows along the ground floor, one new window and one enlarged window on the upper floor. The two new ground floor windows have a sill height of 1.8m which are generally below eye height and are unlikely to cause unreasonable privacy impacts to the adjoining property. The new window on the first floor is located off a bathroom. A condition will be included in the consent requiring the window to have opaque or frosted glass. The enlarged window w9 is located off the master bedroom. Privacy treatment is not considered necessary as this window is located off a low use room, being a bedroom. Furthermore, the window is not directly opposite any windows of the adjoining property and does not overlook the private open space of the adjoining properties.



Photo 2: View from first floor of site looking along the southern boundary shred with no. 16 Margaret Street.

Northern Elevation:

Several new windows are proposed along the ground and first floor of the northern elevation and are unlikely to cause any unreasonable privacy impacts to the adjoining properties. The upper floor windows will be replacing existing windows with smaller windows. The ground floor windows are opposite a driveway, garage and mostly screened by an existing fence and landscaping.



Photo 3: view along northern site boundary showing exiting vegetation and side fence which will retain privacy between sites

Ground Floor:

The rear of the dwelling has a small elevated deck located off the Lounge and a seating area along the northern boundary next to a small shed in the north-east corner of the site. The proposal includes a deck area across the rear of the dwelling and the conversion of the shed to an outdoor kitchen with seating. The existing outdoor dining area is to be retained. The elevated nature of the deck and the proposed setbacks to the side and rear boundaries will increase the potential to overlook the private open space of the adjoining properties at nos. 16 Margaret Street and 13 Lawrence Street. A condition is recommended requiring 1.5m high privacy screens along the eastern and southern edges of the deck to help mitigate any potential overlooking of the adjoining private open space. The conditioned privacy screens, existing boundary fence and vegetation as well as the separation between the deck area and adjoining private open space will maintain privacy between properties.



Photo 4: View from existing rear deck looking towards the rear eastern boundary shared with no. 13 Laurence Street



Photo 5: View from existing rear deck looking over the southern side boundary shared with no.16 Margaret Street

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

Comment:

The proposal will achieve this objective.

- **Objective 3) To encourage awareness of neighbourhood security.**

Comment:

Existing levels of neighbourhood security are maintained.

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

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

Description of Non-compliance

Under Clause 4.1.2.1 Wall Height of Manly Development Control Plan 2013, the required wall height is as follows:

- North Elevation: 6.5m
- South Elevation: 6.6m (based on gradient 1:38)

The proposal presents a numerical non-compliant wall height of 6.9m along the northern elevation and 7.1m along the southern elevation.

However, this noncompliance arises from the rebuilding of an existing wall of equal height. As this is a continuation of an existing situation, the proposed non-compliance will not result in unreasonable amenity or streetscape impacts and is considered to meet the objectives of this control.

4.1.3 Floor Space Ratio (FSR)

The proposal presents a FSR of 0.67:1 (195.3m²), which represents a variation of 12.8% to the 0.6:1 (173m²) FSR requirement.

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

Furthermore, it is noted that the site is not an 'undersized allotment, as defined by the MDCP.

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

Description of non-compliance

4.1.4.2 Side Setbacks and Secondary Street Frontages

This control requires development to provide side setback distances which are calculated at one third of the proposed wall height. The following applies to the subject site:

The **required side setback** is as follows:

- Northern boundary: 2.3m
- Southern boundary: 2.3m

The **proposed side setback** is as follows:

- Northern boundary:
 - First floor; 1.90m (resulting a maximum variation of 17.4%)
 - Deck: Nil (resulting in a variation of 100%) - existing
- Southern boundary:
 - First floor: 1.2m (resulting in a variation of 47.9%)
 - Deck: 0.7m (resulting in a variation of 69.5%)

Multiple windows are proposed along the northern and southern boundary elevations, all of which are located within 3m to the property boundary.

4.1.4.4 Rear Setbacks

This control requires development to be setback 8m from the rear boundary line.

The proposed development provides for the following rear setback distances:

- Deck: 0.1 - 4.3m (presenting a variation of 98.75 - 46.25%)
- Ground floor: 7.3m (presenting a variation of 8.75%) - Existing
- First floor: 7.6m (presenting a variation of 5%) - Existing

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 development seeks to retain the existing setbacks of the first floor to the northern and southern boundaries. The proposed remodeling of the first floor will provide an addition that is more in keeping with the aesthetic of the original dwelling and adjoining dwellings, than the current 1970s addition. In this instance, the proposal will improve the existing streetscape. Further, the rear setback non-compliance will not be viewed from the street frontage and, therefore, the proposed non-compliance will not create any unreasonable impact upon the street frontage.

- ***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 application includes the replacement of existing windows and the addition of new windows along the north and south elevation of ground and first floor. The windows have been designed and located to comply with heritage requirements. Additionally, the windows have been located so as to not provide direct or close views into the windows or private open space of the adjoining properties.

Concern was raised in a submission that the rear deck area would result in overlooking of the private open space and swimming pool area of no. 13 Laurence Street, which is located to the east of the site. The proposed deck area is 1m above ground level and 0.8m from the rear boundary. A condition requiring a 1.5m high privacy screen along the eastern edge of the deck is recommended. The location and height of the privacy screen will limit views from the deck area into the private open space and swimming pool area of the adjoining properties.

The proposed development retains the two storey nature of the dwelling. In this instance, it is unlikely that there will be adverse or unreasonable overshadowing to adjoining and nearby properties. Nor will it unreasonably impact upon the air movement.

As above, the maintenance of the two storey nature of the dwelling ensures that there will be no unreasonable impact upon any views that may be obtained from adjoining or nearby properties to and from public/private places.

As detailed under Objective 1, the proposal seeks to maintain the existing setback distances of the dwelling to the rear boundary. In this instance, the character and rhythm of buildings to the existing streetscape will not be adversely impacted. Noting that the retention of the existing setbacks, while less than the required setback distance, will not be readily discernible from

adjoining properties or the street frontage.

The existing vehicle manouvering on the site will not be amended as part of this proposed development.

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

Comment:

The proposed development is considered to be appropriately sited and integrates well into the existing dwelling and streetscape. Flexibility is required for alterations and additions to an existing dwelling. Flexibility has been exercised in the assessment of this application.

- **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:

No significant vegetation is proposed to be removed to facilitate the proposal.

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

Comment:

The subject site is not located within bushfire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 55% of the site to consist of total open space (TOS). To be included as TOS open space areas must be at least 3mx3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway and hardstand parking space with carport above is excluded).

The application proposes 31.7% (913.3m²) of the site as TOS, which does not satisfy the numeric requirement.

The site has an existing TOS of 85m² or 29.5%.

Merit consideration:

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

- **Objective 1) To retain and augment important landscape features and vegetation**

including remnant populations of native flora and fauna.

Comment:

The proposal does not result in the removal of any important landscape features, or vegetation including any significant native flora and fauna. The proposal will be removing the existing paving in the rear of the site and replacing it with soft landscaping.

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

Comment:

The proposed development includes deep soil landscaped areas within the front and rear yards to ensure an appropriate landscaping outcome. No significant vegetation is proposed for removal.

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

Comment:

The proposed development does not result in unacceptable amenity impacts, specifically with regard to view sharing, solar access, and visual bulk.

Concern was raised in a submission that the rear deck area would result in overlooking of the swimming pool area of no. 13 Laurence Street and private open space and living areas on no. 16 Margaret Street. The proposed deck area is 1m above ground level and 0.8m from the rear boundary and 0.7m from the southern boundary. A condition requiring a 1.5m high privacy screen along the eastern and southern edge of the deck is recommended. The location and height of the privacy screen will limit views from the deck area into the private open space and swimming pool area of the adjoining properties, while still allowing occupants of the site to enjoy views over Manly.

Sufficient TOS is provided on the site, particularly within the rear yard, to meet the recreational needs of the occupants of the dwelling.

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

Comment:

The site contains sufficient pervious areas to assist in water infiltration, in turn minimising stormwater runoff. Furthermore, suitable conditions have been included with this consent to ensure that stormwater is managed and disposed of in an acceptable manner.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The subject site provides one (1) existing car space, with no additional parking spaces being proposed. The proposal includes a single carport, maintaining the existing number of off-street parking spaces.

For the subject site to provide two (2) car spaces, landscaping and open space would be lost, and the streetscape would be adversely impacted. Therefore, whilst the proposal is numerically inconsistent with Schedule 3 of MDCP that requires two (2) parking spaces, the provision of additional car parking within the subject site is not achievable within the existing site context, nor do the proposed works generate a demand for additional car parking.

4.1.10 Fencing

Clause 4.1.10 requires that front fencing achieve a maximum height of 1.0m. The development proposes a solid electric fence of 1.7 - 1.8m in height in front of the existing carport. The existing front boundary fence is to be retained and complies with heritage requirements.

An inspection of the street and local area revealed a number of examples high front fences in front of carports of sold garage doors on the boundary. The proposed electric fence would therefore not be out of character with this established pattern.

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

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$5,697 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$569,740.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 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.

PLANNING CONCLUSION

This proposal, for Alterations and Additions to a Dwelling House has been referred to the DDP due to a breach of more than 10% of the FSR

The concerns raised in the objections have been addressed in the relevant sections of the report.

The proposed FSR equates to 0.67:1 (195.3m), which represents a 12.8% variation to the development standard. Despite this, the proposed development complies with the MDCP undersized allotment provision for the purposes of calculating FSR and the numeric non-compliance to the FSR development standard does not result in an unacceptable environmental planning outcome.

An assessment against relevant provisions within the MDCP has concluded that the proposal does not meet the numeric requirements for the wall height, side setback, rear setback and TOS provisions. However, these variations do not result in any unacceptable streetscape, environmental or residential amenity impacts, and do not preclude the proposed development from achieving the underlying objectives of these MDCP provisions. Therefore, an appropriate level of flexibility needs to be afforded to the application of these numeric provisions, in accordance with the intent of Section 4.15 (3A)(b) of the EPA Act.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. 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 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0670 for Alterations and additions to a dwelling house on land at Lot 1 DP 953749, 18 Margaret Street, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A.01.2 - Site Analysis - Issue B	23/01/2023	Complete Trade
A.02.1 - Site Plan Existing - Issue B	23/01/2023	Complete Trade
A.02.2 - Site Plan - Proposed - Issue B	23/01/2023	Complete Trade
A.02.3 - Ground Floor Plan - Issue B	23/01/2023	Complete Trade
A.02.4 - First Floor Plan - Issue B	23/01/2023	Complete Trade
A.02.5 - Roof Plan - Issue B	23/01/2023	Complete Trade
A.03.1 - Northern Southern Elevation - Issue B	23/01/2023	Complete Trade
A.03.2 - Eastern Western Elevation - Issue B	23/01/2023	Complete Trade
A.04.1 - Sections Plan - Issue B	23/01/2023	Complete Trade

A.05.1 - Window and Door Schedule - Issue B	23/01/2023	Complete Trade
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Waste Management Plan	30/03/2022	Nick Frier C/O Complete Trade

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
A.02.02 - Landscape Plan - Issue B	31/03/2022	Complete Trade

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
A.02.02 - Waste Management Plan - Issue B	31/03/2022	Complete Trade

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. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	29/06/2022

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

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

3. **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.

4. 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

5. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,697.40 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$569,739.50.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- Window W8 located off the first floor bathroom is to have opaque glazing.
- No approval is granted for the 'Proposed Timber side Fence on Boundary 1.3m High From Building Line To Rear Boundary'.
- The 'Proposed Timber Boundary Fence 1.8m High' must be wholly within the subject site.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

9. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

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

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

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

10. External Metal Roof Colour

The proposed Windspray metal roof colour is not supported. The roof colour must be amended to Colourbond Wallaby or Jasper. Details of the colour are to be submitted to Council's Heritage Officer for approval prior to the issuing of the construction certificate.

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

Reason: Maintenance of the significance of the heritage item

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. **Compliance with Standards**

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

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

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

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

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

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

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

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

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

14. **Privacy Screens**

A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern and eastern edge of the Ground Floor deck located off the Lounge as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

15. **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.

16. **Demolition Works - Asbestos**

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

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

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

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

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

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

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

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

18. **Waste Management During Development**

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

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

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

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

19. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.