

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2023/1718 |
|----------------------------|-------------|

|   |   |
|---|---|
| <b>Responsible Officer:</b>               | Michael French  |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 1090708, 2 B Battle Boulevard SEAFORTH NSW 2092                |
| <b>Proposed Development:</b>              | Alterations and additions to a dwelling house including a swimming pool |
| <b>Zoning:</b>                            | Manly LEP2013 - Land zoned R2 Low Density Residential                   |
| <b>Development Permissible:</b>           | Yes   |
| <b>Existing Use Rights:</b>               | No  |
| <b>Consent Authority:</b>                 | Northern Beaches Council  |
| <b>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | MMW Properties Pty Ltd  |
| <b>Applicant:</b>                         | Watershed Design Pty Ltd  |

|                                  |   |
|----------------------------------|---|
| <b>Application Lodged:</b>       | 04/12/2023                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 13/12/2023 to 18/01/2024                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 1                                       |
| <b>Clause 4.6 Variation:</b>     | Nil                                     |
| <b>Recommendation:</b>           | Approval                                |

|                                 |               |
|---------------------------------|---------------|
| <b>Estimated Cost of Works:</b> | \$ 655,000.00 |
|---------------------------------|---------------|

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the following:

- Addition of a new garage, with an adjoining storage area.
- Addition of a ground floor deck and internal staircase.
- Addition of a first-floor that comprises of an internal staircase, landing, master bedroom, WIR, ensuite, study and a balcony.
- Addition of a swimming pool, with an adjoining pool deck.
- Associated landscaping works.

### 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 - 6.2 Earthworks

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

## SITE DESCRIPTION

|                                   |  |
|-----------------------------------|--|
| <b>Property Description:</b>      | Lot 1 DP 1090708 , 2 B Battle Boulevarde SEAFORTH NSW 2092   |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the eastern side of Battle Boulevarde.</p> <p>The site is irregular in shape with a frontage of 18.035m extending toward Battle Boulevarde and a depth of 66.03m. The site has a surveyed area of 576.7m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the Manly Local Environmental Plan 2013 and accommodates a two-storey dwelling.</p> <p>The site has a significant downward slope towards the southern frontage of the site.</p> <p>The site has a mix of vegetation throughout and contains no details of any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> |

Adjoining and surrounding development is characterised by a mix of dwellings within an R2 Low Density Residential zone.

Map:



## SITE HISTORY

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

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

## 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 Matters for Consideration   | Comments   |
|--|--|
| 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&amp;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&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended Architectural Plans that address concerns regarding view loss and setback concerns, as well as the removal of the inclinor initially proposed within the eastern side setback area. As elaborated elsewhere in this report, the amended proposal satisfactorily resolves these issues.</p> <p><u>Clause 61</u> of the EP&amp;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&amp;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&amp;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) <b>Environmental Impact</b><br/>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) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>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 application has been publicly exhibited from 13/12/2023 to 18/01/2024 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 1 submission/s from:

| Name:                 | Address:                               |
|-----------------------|--|
| Mrs Ronda Mary Bergin | 2 C Battle Boulevard SEAFORTH NSW 2092 |

The following issues were raised in the submissions:

- View Loss
- Access to Sunlight/Overshadowing
- Visual Privacy

The above issues are addressed as follows:

- **View Loss**

The submission raises concerns that the proposed addition will result in an unreasonable view loss impact, obstructing water and district views.

Comment:

Assessment against *Clause 3.4.3 Maintenance of Views* is undertaken elsewhere within this report. The proposed development, as amended is considered to have an acceptable view loss impact.

- **Access to Sunlight/Overshadowing**

The submission raises concern that the addition may lead to diminished access to sunlight, notably in the vicinity of the pool area.

Comment:

The proposal wholly complies with the requirements of *Clause 3.4.1 Sunlight Access and Overshadowing*. There is no additional shadowing to the private open spaces of any adjoining sites. In this regard, the proposal as amended is supported in relation to overshadowing



impacts.

- **Visual Privacy**

The submissions raises concern that the addition will result in visual privacy issues.

Comment:

The proposal wholly complies with the requirements of *Clause 3.4.2 Privacy and Security*. The three (3) balconies located on the southern side of the dwelling have privacy screens along the eastern elevation. Moreover, the sole first-floor east-facing window (W02) is located the required 3m from the side boundary, and does not directly overlook any private open spaces. Additionally, the inclusion of the proposed inclinator within the eastern side setback area has been omitted from the Architectural Plans. Consequently, the amended development is deemed to have an acceptable visual privacy impact.

## REFERRALS

| Internal Referral Body         | Comments  |
|--------------------------------|---|
| Landscape Officer              | <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable</li> </ul> <p>The proposed development is for alterations and additions, including an additional storey, a new garage, swimming pool, inclinator and landscaping on the site.</p> <p>Landscape Plans are submitted with the application. It is noted that no prescribed trees are impacted by the proposed development works. The landscape proposal includes new landscape works including native tree planting, green roof on the garage structure, and at grade gardens, stone planters and lawn areas. Existing natural rock shelf is retained with partial modification.</p> <p>No objections to the proposed landscape outcomes are raised by Landscape Referral subject to conditions of consent.</p> |
| NECC (Development Engineering) | <p>The submitted stormwater management plans including OSD are acceptable. The proposed access is off an existing right of way that benefits the site which is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>   |

## 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. A498259\_04 dated 20 October 2023).

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

### **SEPP (Biodiversity and Conservation) 2021**

#### **Chapter 6 – Water catchments**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

#### **Part 6.2 Development in regulated catchments - Division 2 Controls on development generally**

##### **6.6 Water quality and quantity**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Development Engineer who has raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

## 6.7 Aquatic ecology

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
  - (i) a controlled activity approval under the Water Management Act 2000, or*
  - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
  - (i) the erosion of land abutting a natural waterbody, or*
  - (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:*

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

Comment:

The proposal was not referred to Council's Coastal Officer, Riparian Lands Officer, Water Management, Environmental Health, or Bushland & Biodiversity Officer in this instance as the proposal did not necessitate it. It is considered that the above-mentioned concerns have been adequately satisfied by the proposal.

## 6.8 Flooding

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.*

*(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—*



- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

## **6.9 Recreation and public access**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—*

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—*

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

It is considered that the above-mentioned concerns have been adequately satisfied by the proposal.

## **6.10 Total catchment management**

*In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.*

Comment:

The proposal was not referred to Council's Coastal Officer, Riparian Lands Officer, Water Management, Environmental Health, or Bushland & Biodiversity Officer in this instance as the proposal did not necessitate it. Consultation with adjoining local government areas was not required and not undertaken in this instance.

## **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        | 8.5m                               | N/A         | Yes      |
| Floor Space Ratio    | FSR: 0.4:1  | FSR: 0.38:1 (220.6m <sup>2</sup> ) | N/A         | Yes      |

### Compliance Assessment

| Clause   | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings                            | Yes                          |
| 4.4 Floor space ratio                              | Yes                          |
| 4.5 Calculation of floor space ratio and site area | Yes                          |
| 6.2 Earthworks                                     | Yes                          |
| 6.4 Stormwater management                          | Yes                          |
| 6.8 Landslide risk                                 | Yes                          |
| 6.12 Essential services                            | Yes                          |

### Detailed Assessment

#### 6.2 Earthworks

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

*(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*

*(b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

#### Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the

locality.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development.

*(f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

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

Comment:

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2013, WDCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **Manly Development Control Plan**

### Built Form Controls

| Built Form Controls -<br>Site Area: 576.7m <sup>2</sup>    | Requirement  | Proposed  | %<br>Variation*  | Complies  |
|--|--|---|--|---|
| 4.1.1.1 Residential<br>Density and Dwelling<br>Size        | Density: 1 dwellings<br>(1150m <sup>2</sup> )  | 1 (existing-unchanged)  | N/A  | Yes   |
|  | Dwelling Size: 90sqm   | complies  | N/A  | Yes   |
| 4.1.2.1 Wall Height  | W: 8m (based on<br>gradient 1:4+)  | 5.6m  | N/A  | Yes   |
|  | E: 8m (based on<br>gradient 1:4+)  | 5m  | N/A  | Yes   |
| 4.1.2.2 Number of<br>Storeys                               | 3  | 3   | N/A  | Yes   |
| 4.1.2.3 Roof Height  | Height: 2.5m   | complies  | N/A  | Yes   |
|  | Parapet Height: 0.6m   | complies  | N/A  | Yes   |
|  | Pitch: maximum 35<br>degrees   | complies  | N/A  | Yes   |
| 4.1.4.1 Street Front<br>Setbacks                           | Prevailing building line<br>/ 6m   | 5.2m, consistent with<br>prevailing setback   | N/A  | Yes   |
| 4.1.4.2 Side Setbacks<br>and Secondary Street<br>Frontages | 2.6m (based on wall<br>height)(first-floor<br>addition)(west)<br>2.7m (based on wall<br>height)(first-floor<br>balcony)(west)<br>1.9m (based on wall<br>height)(ground-floor<br>dwelling- existing)<br>(west)<br>2.3m (based on wall<br>height)(ground-floor<br>balcony)(west)   | 7.4m<br>8m<br>1.7m (existing-unchanged)<br>1.9m (existing-unchanged)<br>(new privacy screen 2.2m<br>from side boundary) | N/A<br>N/A<br>10.5%<br>17.4%                               | Yes<br>Yes<br><b>No</b><br><b>No</b>              |
|  | 2.7m (based on wall<br>height)(first-floor<br>addition)(east)<br>2.8m (based on wall<br>height)(first-floor<br>balcony)(east)<br>1.7m (based on wall<br>height)(ground-floor<br>dwelling- existing)<br>(east)<br>2.1m (based on wall<br>height)(ground-floor<br>balcony)(east)<br>1.1m (based on wall<br>height)(garage)(east) | 2.3m<br>3m<br>1.1m<br>1.3m (existing-unchanged)<br>(new privacy screen 1.5m<br>from side boundary)<br>1.1m              | 14.8%<br>N/A<br>35.3%<br>38.1%<br>N/A                      | <b>No</b><br>Yes<br><b>No</b><br><b>No</b><br>Yes |
|  | Windows: 3m  | 3m  | N/A  | Yes   |
|  | 4.1.4.4 Rear Setbacks  | 8m  | 0.6m (ground-floor deck)<br>3.4m (first-floor addition and | 92.5%<br>57.5%                                    |

|   |   |                               |      |           |
|---|---|-------------------------------|------|-----------|
|   |   | existing dwelling)            |      |           |
| 4.1.5.1 Minimum Residential Total Open Space Requirements<br>Residential Open Space Area: OS4 | Open space 60% of site area                     | 53.4% (307.95m <sup>2</sup> ) | 11%  | <b>No</b> |
|   | Open space above ground 25% of total open space | compliant                     | N/A  | Yes       |
| 4.1.5.2 Landscaped Area   | Landscaped area 40% of open space               | 34% (119.31m <sup>2</sup> )   | 15%  | <b>No</b> |
|   | 3 native trees                                  | existing- unchanged           | N/A  | Yes       |
| 4.1.5.3 Private Open Space  | 18sqm per dwelling                              | complies                      | N/A  | Yes       |
| 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas               | Maximum 50% of frontage up to maximum 6.2m      | complies                      | N/A  | Yes       |
| 4.1.9 Swimming Pools, Spas and Water Features   | 1m height above ground                          | 4.3m                          | 330% | <b>No</b> |
|   | 1m curtilage/1.5m water side/rear setback       | 1.9m/2.1m/complies            | N/A  | Yes       |
| Schedule 3 Parking and Access   | Dwelling 2 spaces                               | 2 spaces                      | N/A  | Yes       |

#### Compliance Assessment

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes  | Yes                          | Yes                         |
| 3.1.1 Streetscape (Residential areas)  | Yes                          | Yes                         |
| 3.3.1 Landscaping Design   | Yes                          | Yes                         |
| 3.3.2 Preservation of Trees or Bushland Vegetation   | Yes                          | Yes                         |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)  | Yes                          | Yes                         |
| 3.4.1 Sunlight Access and Overshadowing  | Yes                          | Yes                         |
| 3.4.2 Privacy and Security   | Yes                          | Yes                         |
| 3.4.3 Maintenance of Views   | Yes                          | Yes                         |
| 3.4.4 Other Nuisance (Odour, Fumes etc.)   | Yes                          | Yes                         |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes                          | Yes                         |
| 3.5.1 Solar Access   | Yes                          | Yes                         |
| 3.5.3 Ventilation  | Yes                          | Yes                         |
| 3.5.5 Landscaping  | Yes                          | Yes                         |
| 3.5.7 Building Construction and Design   | Yes                          | Yes                         |
| 3.6 Accessibility  | Yes                          | Yes                         |
| 3.7 Stormwater Management  | Yes                          | Yes                         |



| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.8 Waste Management   | Yes                          | Yes                         |
| 3.10 Safety and Security   | Yes                          | Yes                         |
| 4.1 Residential Development Controls   | Yes                          | Yes                         |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision                                  | Yes                          | Yes                         |
| 4.1.1.1 Residential Density and Dwelling Size  | Yes                          | Yes                         |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) | Yes                          | Yes                         |
| 4.1.3 Floor Space Ratio (FSR)  | Yes                          | Yes                         |
| 4.1.4 Setbacks (front, side and rear) and Building Separation                          | No                           | Yes                         |
| 4.1.5 Open Space and Landscaping   | No                           | Yes                         |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)             | Yes                          | Yes                         |
| 4.1.7 First Floor and Roof Additions   | Yes                          | Yes                         |
| 4.1.8 Development on Sloping Sites   | Yes                          | Yes                         |
| 4.1.9 Swimming Pools, Spas and Water Features  | No                           | Yes                         |
| 4.4.1 Demolition   | Yes                          | Yes                         |
| 4.4.2 Alterations and Additions  | Yes                          | Yes                         |
| 4.4.5 Earthworks (Excavation and Filling)  | Yes                          | Yes                         |
| 5 Special Character Areas and Sites  | Yes                          | Yes                         |
| Schedule 1 – Maps accompanying the DCP   | Yes                          | Yes                         |

#### Detailed Assessment

#### **3.4.3 Maintenance of Views**

In response to concerns related to view loss resulting from the proposed addition, a site inspection to the adjoining site at 2C Battle Boulevards, Seaforth, was conducted on 20 February 2024. Height poles were not considered necessary as a satisfactory amount of information was available to determine the extent of impact.



***Figure 1: South-westerly view from Rear Entertaining area (over western side boundary) (standing position)***



***Figure 2: South-westerly view from Rear Entertaining area (over western side boundary)(seated position)***





***Figure 3: South-westerly view from western side of Pool Area (over western side boundary) (standing position)***

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

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

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Comment:

The affected view corridors obtained from 2C Battle Boulevard are toward a south-westerly direction over the western side boundary, and includes views of The Spit, Spit Bridge, Beauty Point, and Middle Harbour, including the land/water interface.

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment:

The affected view corridors obtained from 2C Battle Boulevard are observed from seated and standing positions from the rear entertaining area, from within the pool, and from standing positions along the adjoining paved patio area. Views are obtained towards a south-westerly direction across the side boundary. It should be noted that all views toward the south/south-west of the site are obtained and maintained elsewhere within the site, notably from the upper floor, south facing balcony, located toward the front of the dwelling.

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Comment:

Considering the preservation of primary view corridors from other unaffected parts of the dwelling, paired with the proposed loss of views, the extent of view loss is assessed as moderate and on balance of the available development opportunities of the subject site, acceptable.

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more*



*planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comment:

The proposal includes minor and acceptable non-compliances with *Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages* and *Clause 4.1.4.4 Rear Setbacks*. These variations were deemed acceptable in this instance as they achieve consistency with the objectives of the controls, as detailed elsewhere in this report. It is a salient point that where these non-compliances contribute to the view loss experienced by the adjoining site at 2C Battle Boulevard, and are largely driven by the dimensions of the existing dwelling and the limited size and width of the subject site.

Consideration was given to the possibility of a more skillful design that would provide the applicant with similar development potential while reducing the extent of impact on the views obtained over the western side boundary of the adjoining site. Amended plans were received that proposed a reduction in the size of the of the first-floor, whilst also maintaining compliance with the Height of Building's Development Standard. Notably, relocating the first-floor addition further west on the site would prevent compliance with the development standard due to the site's slope. Therefore, the amended proposal is deemed supportable under these circumstances.

The proposal is considered to adequately demonstrate a reasonable sharing of views, especially considering that the affected view corridors are obtained across a side boundary. Furthermore, views lost from the above-discussed section of the site are predominantly retained elsewhere within the dwelling, therefore views are generally maintained. It should also be noted that surrounding dwellings are at a similar height to the proposed development.

Considering the above assessment, it is determined that the proposed view loss is acceptable in this instance.

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

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

Description of non-compliance

*Clause 4.1.4.2 Side setbacks and secondary street frontages* requires that built structures are setback a minimum of one third of the height of the adjacent external wall of the proposed building.

*Clause 4.1.4.4 Rear Setbacks* requires that the distance between any part of a building and the rear boundary must not be less than 8m.

The development proposes non-compliances along both the western and eastern side setbacks, with maximum variations of 17.4% and 38.1% respectively. Large parts of the new works do however comply with the setback control.

The development proposes a rear setback of 0.6m, causing a variation of 92.5%. This variation is attributed to a deck at ground level and is of no impact to any adjoining property.

Over variations to the setback are related to the form of the dwelling being altered as well as its cross

fall.

The proposed works within the side and rear setback areas are considered to have an acceptable impact upon the streetscape character, as well as adjacent and surrounding dwellings. Given that the works forming a non-compliance are not deemed excessive and do not propose an unreasonable amenity impact in this instance, strict compliance with the requirements of this clause is not required, subject to the proposal meeting the objectives of the clause. In this regard, assessment against the objectives of this clause is conducted below.

Merit consideration:

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

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

Comment:

The proposal is considered to sufficiently maintain and enhance the existing streetscape, encompassing the desired spatial proportions of the street, street edge, and landscape character.

*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 bulk and scale of the built form is minimised/softened by the site topography. The proposal does not unreasonably increase the bulk and scale of the dwelling, and as such, will not unreasonably minimise equitable access to light, sunshine and air movement. The siting of the proposed works provides sufficient space/screening to and from surrounding and adjacent properties. The proposed development is not considered to unreasonably impact view sharing, as discussed elsewhere within this report. The proposed works will not adversely impact traffic conditions.

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

Comment:

The development is not considered to have any impact on access within the site. The proposed works are not considered to unreasonably impact amenity.

*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:

All mature canopy trees and vegetation are proposed to remain on site. The nature of development is not considered to unduly detract from the context of the site. It is considered that the *provisions of State Environmental Planning Policy No 19 - Urban Bushland* have been adequately satisfied.

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

Comment:

The site is not within a bushfire zone. No further assessment is required.

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

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

*Clause 4.1.5.1 Minimum Residential Total Open Space Requirements* requires the following of sites within the OS4 zone:

- *A minimum Total Open Space equating to 60% of the site area.*
- *A minimum Landscaped Area equating to 40% of the site area.*

The development proposes a Total Open Space calculation of 53.4% (307.95m<sup>2</sup>), causing a variation of 11%.

The development proposes a Landscaped Area calculation of 34% (119.31m<sup>2</sup>), causing a variation of 15%.

It should be noted that the development proposes an increase in the Total Open Space calculation from an existing 237.14m<sup>2</sup>, and an increase in Landscaped Area from an existing 115.57m<sup>2</sup>.

Nevertheless, as the proposal does not wholly comply with the requirements of the subject clause, assessment against the objectives of the clause has been outlined below.

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 will adequately retain important landscape features and vegetation.

*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 increase in Landscaped Area will result in a greater opportunity for the planting of trees and maintenance of existing vegetation.

*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 is not considered to unreasonably impact view sharing, sunlight access, visual and acoustic privacy.

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

Comment:

It is considered that the proposal will maintain the necessary permeable surfaces for water infiltration to the water table.

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

Comment:

The proposal is not expected to assist in the spread of weeds and the degradation of private and public open space.

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

Comment:

The proposal is not expected to adversely impact wildlife habitat or the potential for wildlife corridors.

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

#### **4.1.9 Swimming Pools, Spas and Water Features**

*Clause 4.1.9.1 Height above ground* pursuant to the Manly Development Control Plan requires the following:

*a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:*

- i) would not detract from the amenity or character of the neighbourhood; and*
- ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

The proposal does not comply with the requirements of this clause in the following regard:

- The finished floor level of the pool concourse is sited at a height of 4.3m above the natural ground level.

Given the significant downward slope toward the front of the site and the location of the existing works, the proposed non-compliance is reasonable in its context, and strict compliance with the requirements of this clause is not necessary in this instance. In this regard, assessment against the objectives of this clause is conducted below:

#### Merit consideration

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

#### Comment:

The pool is considered to maintain adequate visual and acoustic privacy from the streetscape and surrounding sites.

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

#### Comment:

The development is located such that the established character of the streetscape and the locality is maintained. The proposal does not detract from the amenity or character of the neighbourhood.

*Objective 3) To integrate landscaping;*

#### Comment:

The location and size of the pool is such that there is ample space for the addition of further vegetation on site.

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

#### 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 MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **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 \$6,550 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$655,000.

### **CONCLUSION**

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

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

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

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

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

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

### **RECOMMENDATION**

THAT Council as the consent authority grant Development Consent to DA2023/1718 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 1 DP 1090708, 2 B Battle Boulevard, SEAFORTH, subject to the conditions printed below:

### **Terms and Reasons for Conditions**

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section

4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

| Approved Plans |                 |                                  |                      |                  |
|----------------|-----------------|----------------------------------|----------------------|------------------|
| Plan Number    | Revision Number | Plan Title                       | Drawn By             | Date of Plan     |
| DA02           | H               | EXISTING SITE & ROOF PLAN        | Watershed Architects | 19 March 2024    |
| DA03           | I-WIP           | PROPOSED SITE & ROOF PLAN        | Watershed Architects | Work in Progress |
| DA04           | H               | GARAGE FLOOR PLAN                | Watershed Architects | 19 March 2024    |
| DA05           | H               | LOWER GROUND FLOOR PLAN          | Watershed Architects | 19 March 2024    |
| DA06           | H               | LOWER GROUND FLOOR PLAN          | Watershed Architects | 19 March 2024    |
| DA07           | I-WIP           | PROPOSED FIRST FLOOR PLAN        | Watershed Architects | Work in Progress |
| DA08           | H               | SECTION AA                       | Watershed Architects | 19 March 2024    |
| DA09           | H               | SECTION BB                       | Watershed Architects | 19 March 2024    |
| DA10           | H               | SECTION CC                       | Watershed Architects | 19 March 2024    |
| DA11           | H               | SECTION DD                       | Watershed Architects | 19 March 2024    |
| DA12           | H               | BATTLE BOULEVARD-ELEVATION SOUTH | Watershed Architects | 19 March 2024    |
| DA13           | H               | ELEVATION- WEST                  | Watershed Architects | 19 March 2024    |
| DA14           | H               | ELEVATION- NORTH                 | Watershed Architects | 19 March 2024    |
| DA15           | H               | ELEVATION- EAST                  | Watershed Architects | 19 March 2024    |

| Approved Reports and Documentation |                |                                  |                  |
|------------------------------------|----------------|----------------------------------|------------------|
| Document Title                     | Version Number | Prepared By                      | Date of Document |
| BASIX Certificate                  | A498259_04     | Efficient Living Pty Ltd         | 20 October 2023  |
| Geotechnical Report                | Issue No 1     | Crozier Geotechnical Consultants | 16 November      |

|                       |   |   |      |
|-----------------------|---|---|------|
|                       |   |   | 2023 |
| Waste Management Plan | - | - | -    |

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

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

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

## 2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the

development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

### 3. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an 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 following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer

Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,550.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$655,000.00.

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

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

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

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

provision of new or augmented local infrastructure and services.

## **5. Security Bond**

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the 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](http://www.northernbeaches.nsw.gov.au)).

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

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **6. On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 600mm.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

### **7. On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm-1, 2/A and 3/A, dated 30 October 2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**9. Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking.

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

Reason: Compliance with this consent.

**10. 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 Certifier prior to the issue of any Construction Certificate.

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

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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

12. **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 Certifier 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.

13. **Compliance with Standards**

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

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

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

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

15. **Sydney Water "Tap In"**

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

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

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 16. Pre-Construction Dilapidation Report

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

2A and 2C Battle Blvd

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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

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

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

## DURING BUILDING WORK

### 17. Tree and Vegetation Protection

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

- i) all prescribed trees within the site,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites,
- ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained; and structures are to bridge tree roots at or >25mm (Ø) diameter,
- iii) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- iv) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

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

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken as compliant to AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

**18. Road Reserve**

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

Reason: Public safety.

**19. 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.

**20. Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**21. 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 Certifier, 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.

**22. Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

**23. Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

## **BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**24. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (insert details), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained,
- d) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- e) the following plant species: *Raphiolepis* and *Pennisetum*, shall not be planted and shall be replaced with non self-seeding species of similar form and size,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

**25. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of

inspection, must be submitted after the completion of works. The report must:

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

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

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

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

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

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original 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), and Civil Engineers' certification.

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 disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment 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 is to be submitted.

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

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

**27. Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking.

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

Reason: Compliance with this consent.

**28. Swimming Pool Requirements**

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

- (a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and

relevant Australian Standards (including but not limited) to:

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

### 29. Landscape Maintenance

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

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

Reason: To maintain local environmental amenity.

### 30. Geotechnical Recommendations

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

**Signed**



**Michael French, Planner**

The application is determined on 24/04/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**