

## REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 12 September 2018

149 A Seaforth Crescent Seaforth - Construction of a dwelling house

### DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0832
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 565073, 149 A Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Frederic Leforestier Lydie Marie Germaine Leforestier
Applicant:	Environa Studio
Application lodged:	21/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	23/05/2018 to 08/06/2018
Advertised:	Not Advertised
Submissions Received:	6
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,898,967.00

### 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 Local Environmental Plan 2013 - 6.10 Limited development on foreshore area

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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

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

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 565073 , 149 A Seaforth Crescent SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Seaforth Crescent.</p> <p>The site is irregular in shape with a frontage of 7.16m along Seaforth and a average depth of 86mm. The site has a surveyed area of 1141m<sup>2</sup>.</p> <p>The site is located within the E3 Environmental Management zone and accommodates vehicular access via an existing driveway from Seaforth Crescent to an existing hardstand car space to the front of the property.</p> <p>The surrounding area includes the harbour foreshore and in particular, Peach Tree Bay. The properties in the area are characterised by multi-storey dwellings on a hillside which slopes steeply down to the Middle harbour foreshore area. On the harbour side of Seaforth Crescent the area has a</p>

variety of garages to the front of the allotments and at street level.

The site is currently vacant.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by multi-storey dwellings.

Map:



## **SITE HISTORY**

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

- **DA2017/1339** Construction of a new dwelling house was **Withdrawn** by the applicant on 13/02/2018.
- **DA35/2003- Part 2** New Building Dwelling was on **Approved** on 10/12/2003.
- **DA35/2003-** New Building Dwelling was on **Approved** on 19/06/2003.

## **PROPOSED DEVELOPMENT IN DETAIL**

The development application seeks consent for excavation and the construction of a detached dwelling house with a double garage, swimming pool, inclinotor, and decking.

Specifically, the works involve the following:

### **Ground floor**

- Bedroom 4.  
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- Study.
- Laundry.
- Bathroom.
- Powder room.
- Deck.

### First floor

- Bedroom 2 and 3.
- Rumpus room.
- Bathroom.
- Deck

### Second floor

- Kitchen and dining room.
- Lounge room.
- Covered hallway.
- Deck.

### Third Floor

- Bedroom 1 with balcony (deck), walk-in robe and en suite.
- Study.
- Lift.

### Other

- Double Garage.
- Inclinator.
- Sea wall.
- Swimming pool and outbuilding.
- Landscaping.
- External stairs.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

### 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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development</p>

Section 4.15 Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	<p>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> The proposed development will / will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will / 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 un/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.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mrs Georgina Carollo	72 Seaforth Crescent SEAFORTH NSW 2092
Ms Leisa Barry Mr John Collis Barry	153 Seaforth Crescent SEAFORTH NSW 2092
Mr Tony Jarrett	149 Seaforth Crescent NSW
Boston Blyth Fleming Pty Ltd Mr Alan David Masterton	1 / 9 Narabang Way BELROSE NSW 2085
Mrs Koula Zerefos Mr Jim Zerefos Design Collaborative Pty Ltd	151 Seaforth Crescent SEAFORTH NSW 2092
Mrs Susie Dixon	145 Seaforth Crescent SEAFORTH NSW 2092

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



- **View Loss.**
- **Inadequate Clause 4.6 (Special Height Provision)**
- **Bulk and Scale (incorporating wall height, number of storeys and roof height).**
- **Impact on streetscape.**
- **Driveway Access and Parking**
- **Roof Material.**
- **Privacy (acoustic and visual)**
- **Boundary encroachment.**
- **Mature height of landscaping.**
- **Tree removal.**
- **Swimming Pool**

The matters raised within the submissions are addressed as follows:

- **View loss.**

Comment:

Concern was raised in regards to view loss from private and public spaces to Peach Tree Bay. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Inadequate clause 4.6 (Clause 4.3A- Special Height Provision).**

Comment:

See comments under Clause 4.6 of the Manly LEP in this report. In summary, the proposed written request from the applicant has been considered and is found to have adequately demonstrated the matters required to be demonstrated by subclause (3)(a) and (b).

- **Bulk and scale (incorporating wall height, number of storeys and roof height).**

Comment:

The scale of the proposed dwelling is larger than that of adjoining properties, however appropriate for the size and constraints of the allotment. The proposed design of the house is sympathetic to the topographic and landscape of Seaforth Crescent and the foreshore area, allowing for significant landscaping throughout the site, consistent with the numerical control under the Manly DCP. It is also noted that the proposed dwelling house itself will not be readily visible from the streetscape. The bulk and scale of the proposed dwelling house is not unreasonable, and doesn't warrant the refusal of the application.

- **Impact upon streetscape.**

Comment:

The proposed garage and inclinator will be visible from the streetscape. The proposed size, scale and siting of the garage is not unreasonable given the existing development within the streetscape. Nos. 149, 151 153 which incorporate similar size garages along the front boundary each property.

- **Driveway access and parking.**

Comment:

Concern was raised in regards to access to and from the existing shared driveway, as a result of

the proposed garage. The application was referred to both Council's traffic engineer and development engineer. Council's development engineers reported the following in relation to the shared driveway:

*"The exact space/aisle width is about 6.9m in average between the proposed garage and retaining wall. The B85 vehicle shall be able to manoeuvre in accordance with the appendix B of AS 2890.1.2004. The vehicle can drive in and out in a front direct with a several point turn. It is not the prefect situation, though it is acceptable on the shared driveway. However, the cars of No. 149 may have difficulty driving in and out in a front direction after the installation of the garage. It is because cars may use the land of No.149A as a turning area. In reality, there is no ROW arrangement between two owners (on land title). It is not the responsibility of the owner at No.149A to donate their land to serve others."*

Concerns were also raised in regards to impact of trucks and other larger vehicles using the existing shared driveway during construction. To help mitigate potential impacts during construction of the dwelling house a construction traffic management plan and dilapidation report has been included as part of this recommendation, prior to construction certificate and commencement of works:

- **Roof material.**

Comment:

Concern was raised in regards to the visual impact of the proposed external roof of the proposed dwelling. A standard condition has been imposed as part of this recommendation, ensuring that the external roof of the proposed dwelling is finished with a medium to dark range to minimise solar reflection.

- **Privacy (visual and acoustic).**

Comment:

Concern was raised about resulting privacy impacts (acoustic and visual) from the dwelling house, swimming pool and inclinator. Thee proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal is complies with the relevant provisions and underlying objectives under Clause 3.4.1 of the Manly DCP.

- **Boundary encroachment.**

Comment:

The deck proposed south-west of the garage is to conditioned to be removed from any approved plans. The deck is located on Council land and no owners consent has been provided.

- **Mature height of landscaping.**

Comment:

Concern was raised in regards to the visual impact that may result from the landscaping proposed as part of this application. It is noted from the landscape plan that new tree planting only occurs to the north and north-east of No. 149 Seaforth Crescent. The proposed trees at a mature state are unlikely to result in any unreasonable view loss from No. 149 Seaforth Crescent.

- **Tree removal**



Comment:

Council's landscape officer raised no objection to the removal of trees on site as indicated in both the landscape architectural plan and arboricultural report. It is noted that the proposal meets the minimum native tree requirement under Clause 4.1.5.2 of the Manly DCP.

- **Swimming Pool**

Comment:

Concern was raised in regards to the height and resulting privacy impacts of the swimming pool as part of this application. The development proposes a variation to the 1m height control for swimming pools. As assessment against the underlying objectives of this clause is included as part of this application under clause 4.1.9 of the Manly DCP. In summary, the height of swimming pool is not considered unreasonable given the physical separation proposed and the steep topography of the site.

Concern was also raised in regards to the acoustic impact of the swimming pool mechanics including the pool filter. A recommended condition of consent has been included as part of this recommendation to ensure that the pool filter box is centrally located and sound insulated to ensure no unreasonable aural impact to adjoining properties.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The landscape component of the proposal is acceptable, subject to completion of the proposed landscaping and protection of existing vegetation.
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against Manly LEP 2013 Clause 6.5 (Terrestrial Biodiversity).</p> <p>Existing vegetation on the site comprises predominantly exotic understory and mid-story with a number of locally native canopy trees. Several priority weeds (as declared under the NSW <i>Biosecurity Act</i>) also occur. The proposal will require removal of nine trees, none of which are native to Australia. Targeted and general tree protection measures are provided in the submitted arborist report to safely retain trees proposed for retention. Proposed landscaping includes locally native understory species, revegetation and weed control.</p> <p>Implementation of measures recommended in the biodiversity management plan, arborist report and landscape plans, will serve to protect existing biodiversity values and result in an appropriate planning outcome for the site.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>DA2018/0832 149A Seaforth Cres Seaforth has been assessed in relation to coastal considerations. The submitted report have been reviewed against:</p> <p>Sydney Harbour Regional Environment Plan (SREP) and DCP State Environment Planning Policy (Coastal Management)</p> <p>Manly LEP</p> <ul style="list-style-type: none"> <li>* Clause 6.4 Stormwater management</li> <li>* Clause 6.8 Landslide Risk</li> <li>* Clause 6.9 Foreshore scenic protection area and ('Foreshore Scenic Protection' in SEA)</li> <li>* Clause 6.10 Limited development on foreshore area ('Foreshore Building Line' in SEA)</li> </ul> <p>Manly DCP</p> <ul style="list-style-type: none"> <li>* 3.7 Stormwater Management</li> </ul> <p>The proposal is supported with conditions</p>
NECC (Development Engineering)	Development engineer has no objection to the application subject to the following condition of consent.
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit, The site of proposed development is not a listed heritage item in its own right, however, it is located in the proximity of the foreshore area and visible from the Harbour.</p> <p>Given the nature of the proposal, the impact on heritage values is assessed as acceptable.</p> <p>Based on the above, I have no objections to this proposal from heritage perspective.</p> <p><b>Proposal is acceptable without conditions.</b></p> <p>Kind Regards Zoran Popovic  Heritage Adviser</p>
Traffic Engineer	<p><b>Traffic:</b> The development is for a single dwelling. Therefore the site is anticipated to produce the same volume as the existing being 2 vehicles in the peak hour movement. Traffic raise no objection.</p> <p><b>Parking:</b> Same as existing. Traffic Raise no objection.</p> <p><b>Car Park layout:</b> Car port at top of the hill remains relatively unchanged.</p> <p><b>Pedestrian:</b> The proposal does not change the pedestrian access along the frontage of the property. Traffic raise no objection.</p>

External Referral Body	Comments
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External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and an Aboriginal heritage (due diligence) archaeological report carried out did not identify any unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP 55 - Remediation of Land

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

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

A BASIX certificate has been submitted with the application (see Certificate No. 889944S\_02).

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

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

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

## SEPP (Infrastructure) 2007

### Ausgrid

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

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

### Comment:

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

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

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was considered necessary.

## 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	11.35m	33% (2.85m)	No
Special height provisions	RL59.40	RL59.67	4.5% 270mm	No
Floor Space Ratio	FSR: 0:40:1	FSR: 0:29:1	N/A	Yes

	456.4m <sup>2</sup>	334m <sup>2</sup>		
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#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.3A Special height provisions	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

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

The following assessment of the variation to Clause 4.3 Building Height development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	11.35m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	33% (2.85m)

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings , the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

#### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

#### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP

2013 are:

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

*a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposed building height of the proposed dwelling house is reasonable given the fall of the land. The dwelling house sits below the cliff which is located along the south-eastern boundary, and will not be clearly visible from the streetscape and as such the impact upon the streetscape will be negligible. The four storey dwelling house allows for a minor footprint on the land, which results in a greater level of landscaping across the subject site, maintaining consistency with the existing landscape character.

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

Comment:

The perceived bulk of the building is reduced as it is set back behind the existing bulk to the south. This reduces the amount of building visible from the street while maintaining the amenity of the house.

*c) to minimise disruption to the following:*

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

Comment:

The impacts on views from the proposed development are considered acceptable, having regard to *Tenacity Consulting v Waringah* [2004] NSWLEC 140.

*d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of their impacts on habitable rooms of the adjoining properties and public open spaces.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The building height non-compliance does not create amenity impacts over land in recreation or



environmental protection zones, that might conflict with bush land and surrounding land uses.

### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

#### The underlying objectives of the E3 Environmental Management zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

##### Comment:

The proposal has reasonable measures to ensure ecological, scientific, cultural and aesthetic protection, subject to conditions.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

##### Comment:

The proposal for a new dwelling house is compliant with the numerical requirement for Floor Space Ratio under the Manly, LEP, 2013. As a result, the proposed development is limited to a reasonable extent so as to ensure there is no adverse effect on the above values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

##### Comment:

The proposed dwelling would not have an unreasonable impact on existing tree canopies. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

##### Comment:

The compliant rear setback between the dwelling house and foreshore, ensures the development does not have a negative impact.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

##### Comment:

The proposal involves appropriate landscaping and is compliant with the landscaped open space control required by the Manly DCP 2013. Subject to conditions, the proposal will be consistent with this objective.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The slope of the land, proposed vegetation and existing vegetation provides a situation in which the development provides adequate regard to the surroundings.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

(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.*

Comment:

In this situation, the sloping nature of the site and compliance with floor space ratio development standard and open space requirements allows the proposed development to be consistent with the objectives for Height of buildings despite not having strict compliance with the numerical requirement.

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

Comment:

The proposed building height is a satisfactory outcome as the proposal allows for greater level of floor space and outdoor living space, while the existing amenity is not unreasonably impacted and the bulk and scale remains consistent within the streetscape.

(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.

(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.*

Comment:

The applicant's written request outlines the reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and provides the following environmental planning justification for the contravention of the

development standard as follows:

(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*

Comment:

The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

*(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:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

*(b) the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 18-003 dated 21 February 2018, 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 where the variation to a numerical standard is not greater than 10%. Following the release of PS18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the building height standard by more than 10%.

As the development varies development standard by more than 10% the concurrence of the Secretary is assumed subject to determination through Councils Development Determination Panel.

The following assessment of the variation to Clause 4.3A Special Height Provisions development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	RL59.40
Proposed:	RL59.67
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical

If numerical enter a % variation to requirement

4.5% (270mm)

The proposal must satisfy the objectives of Clause 4.3 – Special Height Provisions, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

**Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3A of the MLEP 2013 is a development standard.

**What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3A – ‘Special Height Provisions’ of the MLEP 2013 are:

*\*Note: Clause 4.3A Special Height provisions of the MLEP 2013 does not contain objectives for the development standard. However, this standard is subservient to Clause 4.3 Height of Buildings which contains relevant objectives to Clause 4.3A Special Height Provisions.*

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

*a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

At street level, the proposal will appear is largely consistent in terms of height and bulk within the streetscape (only 140mm higher than that of No. 151 Seaforth Crescent). The proposed garage is consistent with the front setback of adjoining garages, maintaining the prevailing building line along the low side of Seaforth Crescent.

In this regard, the proposed building height is consistent with the topographic landscape and the prevailing building height within the sites vicinity.

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

Comment:

The overall scale and height of the garage is consistent with the surrounding and nearby development located within the E3 Environmental Management zone and will be consistent with the height of dwellings that adjoin the site to the east and west (including Nos.149, 151 and 153 Seaforth Crescent).

*c) to minimise disruption to the following:*

*(i) views to nearby residential development from public spaces (including the harbour and foreshores),*

*(ii) views from nearby residential development to public spaces (including the harbour and foreshores),*

(iii) *views between public spaces (including the harbour and foreshores),*

Comment:

The impacts on views from the proposed development are considered acceptable, having regard to *Tenacity Consulting v Waringah* [2004] NSWLEC 140.

*d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of their impacts on habitable rooms of the adjoining properties and public open spaces.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The building height non-compliance does not create amenity impacts over land in recreation or environmental protection zones, that might conflict with bush land and surrounding land uses.

## **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

### The underlying objectives of the E3 Environmental Management zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposal has reasonable measures to ensure ecological, scientific, cultural and aesthetic protection, subject to conditions.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal for a new dwelling house is compliant with the numerical requirement for Floor Space Ratio under the Manly, LEP, 2013. As a result, the proposed development is limited to a reasonable extent so as to ensure there is no adverse effect on the above values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

**Comment:**

The proposed dwelling would not have an unreasonable impact on existing tree canopies. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The compliant rear setback between the dwelling house and foreshore, ensures the development does not have a negative impact.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal involves appropriate landscaping and is compliant with the landscaped open space control required by the MLC DCP 2013. Subject to conditions, the proposal will be consistent with this objective.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The slope of the land, proposed vegetation and existing vegetation provides a situation in which the development provides adequate regard to the surroundings.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

(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.*

Comment:

In this situation, the sloping nature of the site and compliance with floor space ratio development standard and open space requirements allows the proposed development to be consistent with the objectives for Height of buildings despite not having strict compliance with the numerical requirement.

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



Comment:

The proposed building height of the garage is a satisfactory outcome as the proposal allows for reasonable area for car storage that is consistent in terms of bulk and scale with the streetscape, while not unreasonably compromising amenity particularly that of views from neighbouring properties and the public open space to the foreshore.

(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.

(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.*

Comment:

The applicant's written request outlines the reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and provides the following environmental planning justification for the contravention of the development standard as follows:

(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*

Comment:

The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

*(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:

For reasons detailed above, the proposal is considered to be consistent/inconsistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

*(b) the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 18-003 dated 21 February 2018, 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 where the variation to a numerical standard is not greater than 10%. Following the release of PS18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the special height provisions standard by more than 10%.

As the development does not vary a development standard by more than 10% the concurrence of the Secretary may be assumed.

## **6.10 Limited development on foreshore area**

A portion of the proposed works are within the foreshore area mapped under Clause 6.10 of Manly LEP. The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

*(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes:*

*(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*

*(b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*

*(c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed works are for a deck (outdoor recreation) within the foreshore area, The proposal is consistent with the clause.

The seawall shown on the landscape architectural plan, is recommended to be removed as part of approval of this application.

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that:

*(a) the development will contribute to achieving the objectives for the zone in which the land is located, and*

The proposed works are consistent with the E3 Environmental Zone objectives.

*(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

*The development maintains setbacks which are compatible with the existing*  
Surrounding development. Similar types of development is seen along the low side of Seaforth Crescent.

*(c) the development will not cause environmental harm such as:*

*(i) pollution or siltation of the waterway, or*

*(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*

*(iii) an adverse effect on drainage patterns, and*

The proposal complies with this clause, subject to the recommended conditions of consent.

*(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

The adjoining harbour beach will not be unreasonably compromised by the proposed works. Full use of the beach area is maintained.

*(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

The adjoining beach to the -north-west of the site is unaffected by the proposed works. Full use of the beach area is maintained.

*(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

Councils Aboriginal Heritage offered no objection to the proposal.

*(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*

The proposal is for construction of a new dwelling house.

*(h) sea level rise or change of flooding patterns as a result of climate change has been considered.*

Future climatic impacts have been considered as part of this assessment.

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

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 1141m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling (per 1150m <sup>2</sup> )	1 dwelling (1141m <sup>2</sup> )	0.8%	No
4.1.2.1 Wall Height	South-west: 8m (based on gradient 1:4 or steeper)	8.9m	11.25%	No
	South-west (garage): 6.5m	2.5m	N/A	Yes
	North-east: 8m (based on gradient 1:4 or steeper)	10.4m	30%	No
	North-east (garage): 6.5m	2.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	4 proposed.	100%	No
4.1.2.3 Roof Height	Height: 2.5m	1m	N/A	Yes
	Pitch: maximum 35 degrees	10 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m, consistent with prevailing setback	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.96m (based on south-west wall height)	2.45m	23%	No
	0.83m (based on south-west garage wall height)	0m	100%	No
	3.46m (based on north-east wall height)	1.2-2.5m	65%	No
	0.83m (based on north-east garage wall height)	0m	100%	No
	Windows: 3m	2.5m (lift and south east elevation windows)	18%	No
4.1.4.4 Rear Setbacks	8m	1.5m from rear deck	81%	No
		24m from swimming pool and outbuilding		
		34m from dwelling house.		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% 684.6m <sup>2</sup> of site area	81% (925m <sup>2</sup> )	N/A	Yes
	Open space above ground 25% 231m <sup>2</sup> of total open space	9.9% (92m <sup>2</sup> )		
4.1.5.2 Landscaped Area	Landscaped area 40% (370m <sup>2</sup> ) of open space	86.4% (800m <sup>2</sup> )	N/A	Yes
	4 native trees	5 trees	N/A	Yes
4.1.5.3 Private Open Space	18m per dwelling	108.5sqm	N/A	Yes

4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.4m	100%	No
	1m curtilage/1.5m water side/rear setback	4m from northern boundary (closest boundary)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

#### Compliance Assessment

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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### 3.4.2 Privacy and Security

#### Merit consideration:

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

*Objective 1) To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

#### Comment:

The proposed development allows for reasonable levels of privacy to be maintained to adjoining properties as well as the subject property.

#### **No. 149 Seaforth Crescent, Seaforth (south-east of subject site)**

The proposed inclinator is adequately separated from adjoining property and adjoining dwelling house to the south to mitigate any privacy impacts (acoustic and visual). The proposed inclinator track runs largely parallel to the track of the adjoining north-east property No. 151 Seaforth Crescent. The intensity of use of an inclinator for a dwelling house, will not result in a situation in which the acoustic impacts of inclinator would be unreasonable in this residential setting. Further a condition will be included in the recommendation requiring the inclinator to not emit noise above 5dba above background noise at the nearest residential receiver.

#### **No. 151 Seaforth Crescent, Seaforth (north-east of subject site)**

The adjoining dwelling house to the north of the subject site (No. 151 Seaforth Crescent) is sited further towards the rear (north-west) than that of the subject site. No. 151 Seaforth Crescent currently elevated terraces for outdoor living on both the front and rear side of the dwelling house (see photo 1). While the proposed development is required to maintain reasonable levels of privacy, the ability to retain the existing level of privacy enjoyed by No. 151 Seaforth Crescent to both balconies is unreasonable.

The proposed terraces/decks on level 2 and 3 are setback 3.5m from the northern boundary, this is adequate physical separation proposed, despite the unfavourable topography, and in conjunction with the proposed partial screening of the terrace (1.95m across each above ground terrace) minimises the loss of privacy by mitigating direct viewing and unreasonable aural impacts between outdoor living areas of residential dwellings. The proposed development has satisfactory mitigated privacy through screening and separation privacy is maintained, and as such satisfies this objective.

#### **No. 145 Seaforth Crescent, Seaforth (south-west of subject site)**

The south-west facing windows and outdoor living spaces proposed as part of this development do not directly overlook the window or private open space of No. 145 Seaforth Crescent. The physical separation between the two properties.

*Note: Comments related to the proposed swimming pool and resulting privacy impacts are included in this report under Clause 4.1.9- Swimming Pool, Spas and Water features of the Manly DCP.*



*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 proposed terraces/decks allow for increased sunlight access to principal private open space without compromising reasonable levels of privacy between neighbouring properties. The terraces minimises openings and outlook onto side boundaries and provides new openings to rear boundaries. This ensures that access to light and air can be maintained and provided to the front and rear whilst also ensuring privacy impacts are minimised to the nearest neighbours to the north-east and south-west.

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

Comment:

The proposed works will unreasonably compromise neighbourhood security.

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.

### **3.4.3 Maintenance of Views**

Note: Due to the addition of photos as part of the assessment of this clause, the report cannot be generated electronically. A addendum to this report is included in this recommendation containing the assessment of Clause 3.4.3 of the Manly DCP.

#### **4.1.1.1 Residential Density and Dwelling Size**

Description of non-compliance

Clause 4.1.1.1 of the Manly DCP requires 1150m<sup>2</sup> of site area per dwelling in residential area D9 which incorporates the subject site. The proposed site is 1141m<sup>2</sup>, a 0.8% variation to the numeric control.

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 promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

The proposed dwelling house adds to the variety of dwelling types and allotment sizes seen throughout the Manly area and particularly Seaforth Crescent. The development will retain reasonable levels of amenity, suitable in this residential setting.

*Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian*

*land and the topography.*

Comment:

The proposed dwelling house responds appropriately to sensitivity of the site, being appropriately setback from the foreshore (24m from swimming pool and 34m from the dwelling house). The proposal also retains and proposes significant levels of tree planting and associated landscaping to retain the landscape character of the area.

*Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The proposed dwelling house meets the numeric control under Clause 4.1.1.1 (d) , therefore it provides and acceptable level of internal amenity for a dwelling house and adds to the existing housing diversity within the Seaforth area.

*Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The size of the lot is appropriate for a single dwelling house when compared to the size of surrounding allotments along the low side of Seaforth Crescent. No. 149 Seaforth crescent has a site area of 936.7m<sup>2</sup>, No. 145 Seaforth crescent to the south has a site area of 771.4m<sup>2</sup> and No. 151 Seaforth crescent has a site area of 972.8m<sup>2</sup>.

*Objective 5) To maximise the use of existing infrastructure.*

Comment:

The increase in density that would result from the proposed additional dwelling would not result in any unreasonable pressure on existing infrastructure in the Seaforth area.

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)**

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires dwelling be setback at least 6m from the front boundary or be

consistent with the prevailing building line within the streetscape.

Clause 4.1.4.2 requires development be setback at least one third of the adjoining wall height.

Clause 4.1.4.2 of the Manly requires windows be setback at least 3m from side boundaries.

The development proposed the following:

**Front setback-** 0m, 100% variation to the numeric control.

**Windows-** 2.5m, 18% variation to the numeric control.

**Side setback (dwelling house)-** 1.2- 2.5m (dwelling house), 100% variation to the numeric control.

**Side setback (garage)-** 0m (garage), 100% variation to the numeric control.

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 garage proposed to the front of the subject site is largely consistent with other parking structures along the low side of Seaforth Crescent. Existing landscape features that adjoin the subject site on Council land including the two native eucalyptus trees will be retained throughout the life of the development.

*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:

Amenity considerations including privacy, solar access and maintenance of views are all maintained to a reasonable extent as part of this proposed development.

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

Comment:

Flexibility is provided in this circumstance as the proposed new dwelling house will not cause any unreasonable amenity impacts.

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

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

Comment:

The proposed development is consistent with the numeric control for landscaped open space. Important landscape features on site and immediately adjoining the subject site are to be retained.

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

Comment:

The subject site is not located in a bush fire zone.

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.

#### **4.1.8 Development on Sloping Sites**

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and excavation of the site.

The dwelling house responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the dwelling house.

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

Description of non-compliance

Clause 4.1.9 of the Manly DCP 2013 requires swimming pools be no higher than 1m above natural ground level.

The proposed swimming pool at its highest is elevated 3.4m above natural ground level, non-compliant with the numerical control.

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 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;*

The proposed swimming pool is appropriately set back from the side and rear boundaries. While the pool does not meet numerical compliance in height, fencing and setbacks allow for sufficient visual and

aural privacy of the subject site and surrounding properties.

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

The height of the proposed swimming pool is deemed to be reasonable given that the proposed swimming pool is not visible from the Seaforth Crescent and the existing sloping topography of the site.

*Objective 3) To integrate landscaping; and*

Landscaping is proposed to the rear and sides of the swimming pool and associated decking. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed landscape may further offset the visual impact of the swimming pool from surrounding properties.

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

The subject site is not located in a bush fire asset protection zone, however the pool may be a viable water resource during bushfire emergencies.

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

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Manly Section 94 Development Contributions Plan**

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of construction of a dwelling house is \$ 20,000.00, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

## **CONCLUSION**

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

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

- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/0832 for Construction of a dwelling house on land at Lot 2 DP 565073, 149 A Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

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

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
020/ Site Analysis Plan	Issue M: 16 May 2018	Environa Studio
030/ Site Plan	Issue M: 16 May 2018	Environa Studio
031/ North West Site Elevation	Issue M: 16 May 2018	Environa Studio
032/ North East Site Elevation	Issue M: 16 May 2018	Environa Studio
033/ South West Site Elevation	Issue M: 16 May 2018	Environa Studio
101/ House: Level 4 Part A	Issue M: 16 May 2018	Environa Studio
102/ House: Level 3 Part A	Issue M: 16 May 2018	Environa Studio
103/ House: Level 2: Part A	Issue M: 16 May 2018	Environa Studio
104/ House: Level 1: Part A	Issue M: 16 May 2018	Environa Studio
105/ House: Level 0: Part A	Issue M: 16 May 2018	Environa Studio



110/ House: Roof Level: Part A	Issue M: 16 May 2018	Environa Studio
121/ Section AA'	Issue M: 16 May 2018	Environa Studio
122/ Section BB'	Issue M: 16 May 2018	Environa Studio
131/ North West Elevation	Issue M: 16 May 2018	Environa Studio
132/ North East Elevation	Issue M: 16 May 2018	Environa Studio
133/ South West Elevation	Issue M: 16 May 2018	Environa Studio
134/ South East Elevation	Issue M: 16 May 2018	Environa Studio
141/ Garage + Inclinator- Part B- Plans + Elevation	Issue M: 16 May 2018	Environa Studio
142/ Garage + Inclinator- Part B- Elevations	Issue M: 16 May 2018	Environa Studio
143/ Pool- Part C plans	Issue M: 16 May 2018	Environa Studio
144/ Part C Pool Sheet 2	Issue M: 16 May 2018	Environa Studio

**Reports / Documentation – All recommendations and requirements contained within:**

Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation and Slope Risk Assessment (Reference No. 4654-R1-Rev1)	18 December 2017	Assetgeo (Mark Green)
BASIX Certificate No. 889944S_02	7 May 2018	Efficient Living

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L_101/ Landscape Architectural Plan	Issue C/ 11 May 2018	Elke Landscape Architect Consulting Arborist
502/ Landscape Architectural Planting Schedule	Issue B/ 11 May 2018	Elke Landscape Architect Consulting Arborist

Waste Management Plan		
Drawing No.	Dated	Prepared By
220/ Waste Management Plan	15 May 2018	Environa Studio

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. (DACPLB01)

## 2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

### 3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

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

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

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

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

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

5. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

A Bond of \$5000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Biodiversity/Vegetation Conservation and Management

Reason: Protection of Council's Infrastructure

6. **Section 94 Contribution - Residential**

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of construction of a dwelling house is \$ 20,000.00, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

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

7. **Stormwater Disposal**

Engineering Plans certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the ocean with Scour and erosion control in accordance with Section 6 of Council's Manly Specification for on site stormwater management 2003.

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

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

8. **Submission of Engineering Plans**

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of garage which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

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

Reason: To ensure compliance with Council's specification for engineering works.

9. **Structural Adequacy and Excavation Work**

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

10. **Construction Management Program**

A Construction Management Program shall be prepared which includes the following:

1. The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
2. The proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible cranes should be located wholly within the site; and
3. The location and operation of any on site crane.

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

**Reason:** To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

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. **Erosion and Sediment Control Plan**

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

## 13. **Swimming Pools**

The backwash of Swimming Pool water must be discharged to Sydney Water's sewer in accordance with Australian/New Zealand Standard AS/NZS 3500. Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

Reason: To ensure compliance with legislation and Australian Standards and to protect public health, amenity and to ensure the protection and preservation of receiving waters.

## 14. **Pollution and Sediment Control for Foreshore Works**

A Pollution and Sediment Control Plan for the foreshore works is to be submitted prior to CC.

The Pollution and Sediment Control Plan is to be implemented and pollution measures such as silt curtains in Middle Harbour and pollution control on the foreshore are to be installed during construction of the foreshore deck - particularly during piling and drilling.

Reason: To prevent pollution and sediment generated by piles and construction from polluting Middle Harbour (DACNECPCC4)

## 15. **Implementation of Biodiversity Management Plan**

All recommendations of the submitted Biodiversity Management Plan (Ecological Consultants Australia, November 2017) are to be implemented prior to, during and post construction.

Details demonstrating pre-construction compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** Biodiversity/Vegetation Conservation and Management.



16. **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 Certifying Authority 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. (DACPLC03)

17. **Garage deck**

The deck proposed on deck south-east of the proposed garage on council land is to be deleted.

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

Reason: No owners consent has been given for development on Council land.(DACPLCPCC1)

18. **Sandstone seawall**

The proposed sandstone seawall is to be removed from the Landscape Architectural plan.

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

Reason: To ensure protection of the natural foreshore area. (DACPLCPCC2)

19. **Dilapidation Report**

A Dilapidation Report is required for this development. A photographic survey of the adjoining Buildings at Nos. 149, 151 and 153 Seaforth Crescent, Seaforth detailing the physical condition of those properties, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. The survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property/ies.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

The documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interests for it to be as full and detailed as possible.

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

20. **Swimming pool mechanical plant**

Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the pool filter does not emit any noise of 5dba above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents.

21. **Inclinor acoustic impact**

The inclinor is to be acoustically treated so that it does not emit any noise of 5dba above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

22. **Public Liability Insurance - Works on Public Land**

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

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

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

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

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

24. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) is to be provided to Council prior to the commencing any site works. The CTMP is to ensure that the impact of the public domain, in particular with respect to the temporary interruption to vehicular and pedestrian traffic on the narrow street frontage is minimised. The CTMP must ensure that public safety is maintained at all times and interruption to the use of public space is minimised.

The CTMP is to include but not be limited to the following:

- Access to site for different stages of construction.
- Deliveries of materials to be undertaken within the site during construction
- All construction activity to be occurred within the site with no provision of Works Zone from Council
- Proposed truck routes and truck access to site

Reason: To ensure public safety and minimisation of the interruption to the use of public space.  
(DACPLDPC1)

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

### 25. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

### 26. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

### 27. **Maintenance of Road Reserve**

The public footways, shared driveway access and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

### 28. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

### 29. **Site Fencing**

The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure public safety.

### 30. **Stockpiling materials**

DA2018/0832

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

31. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

32. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

33. **Arborist Recommendations to be Implemented**

All recommendations of the submitted arborist report (Elke Landscape Architect, Revision C, 11 May 2018) are required to be complied with at the appropriate stage of construction.

**Reason:** To protect trees proposed for retention.

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

34. **Landscape Completion**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the Landscape Architectural Plan L\_101 prepared by EIKE Landscape Consulting and a maintenance program has been established.

Reason: ensure the landscaping is planted in accordance with the drawing and maintained appropriately

35. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Manly Specification for on site stormwater management 2003 by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

36. **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 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, 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 Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

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

### 37. Tree Protection

- a) A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works.
- b) All trees and vegetation on site, located on adjoining properties, and located within the road reserves must be retained and protected, except where approved for removal, or where site trees are exempt trees under the relevant planning instruments or legislation.
- c) The Project Arborist is to oversee all tree protection measures for the existing trees identified on the Landscape Architectural Plan No L-101 prepared by Elke Landscape Consulting.
- d) The Project Arborist is to familiarise themselves with and ensure compliance with any other tree and environmental requirements conditioned under this consent.
- e) All construction works in the vicinity of existing trees shall be conducted under the supervision of the Project Arborist.
- f) All tree protection shall be in accordance with the recommendations provided within the Aborigicultural Impact Assessment dated 10 Nov 2017 or listed as conditions (as applicable) and

AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4.

g) Tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees

h) All tree protection measures, as proposed in the Arboricultural Impact Assessment, or conditioned are to be in place prior to the commencement, including protective fencing and trunk protection.

i) To minimise the impact on trees and vegetation to be retained and protected, 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.

j) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorized by a qualified Arborist on site

k) All structures are to bridge tree roots greater than 50mm diameter unless directed a qualified Arborist on site

l) Should either or both j) and k) occur during site establishment and construction works, documentary details shall be submitted by the Arborist to the Certifying Authority.

Reason: retention and protection of existing significant trees, especially near property boundaries, and protect the existing environmental amenity.

38. **Landscape Maintenance**

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: ensure landscaping will be appropriately maintained.

39. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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


**Reason:** To mitigate potential impacts to native wildlife resulting from construction activity.

40. **Landscape Plan to be Implemented**


Landscaping is to be implemented in accordance with the approved Landscape Plan (Elke Landscape Architect, L\_101, Issue C 11 May 2018) The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.

**Reason:** To ensure the site is landscaped.

**ATTACHMENT A**






























Notification Plan	Title	Date
 2018/306550	Plans - Notification	18/05/2018




**ATTACHMENT B**



Notification Document	Title	Date
 2018/310738	Notification Map	23/05/2018



## ATTACHMENT C

Reference Number	Document	Date
 2018/306551	Plans - Survey	21/11/2017
 2018/306567	Report - Geotechnical	20/12/2017
 2018/306566	Report - Biodiversity Management Plan	20/12/2017
 2018/306563	Report - Arboricultural Assessment	11/05/2018
 2018/306554	Report - Statement of Environmental Effects	14/05/2018
 2018/306558	Report - Aboriginal Heritage Assessment	14/05/2018
 2018/306575	Plans - Stormwater	15/05/2018
 2018/306577	Plans - BASIX Stamped	16/05/2018
 2018/306546	Opinion of Probable Cost	18/05/2018
 2018/306550	Plans - Notification	18/05/2018
 DA2018/0832	149A Seaforth Crescent SEAFORTH NSW 2092 - Development Application - New	21/05/2018
 2018/305997	DA Acknowledgement Letter - Environa Studio	21/05/2018
 2018/306572	Plans - Certification of Shadow Diagrams with Plans	21/05/2018
 2018/306574	Plans - Landscape	21/05/2018
 2018/306571	Report - Waste Management Plan	21/05/2018
 2018/306579	Plans - External	21/05/2018
 2018/306580	Plans - Internal	21/05/2018
 2018/306581	Plans - Master Set	21/05/2018
 2018/306570	Report - NatHERS Assessment	21/05/2018
 2018/306556	Report - BASIX Certificate	21/05/2018
 2018/306553	Cover Pages	21/05/2018
 2018/306541	Development Application Form	21/05/2018
 2018/306544	Applicant Details	21/05/2018
 2018/310693	DA Acknowledgement Letter (not integrated) - Environa Studio	23/05/2018
 2018/310737	ARP Notification Map	23/05/2018
 2018/310738	Notification Map	23/05/2018
 2018/310758	Notification Letter - 16	23/05/2018
 2018/331721	Comments - DA2018/0832 - 149A Seaforth Crescent SEAFORTH - Aboriginal Heritage Office	30/05/2018
 2018/348745	Request for submission time extension - 149A Seaforth Crescent Seaforth	06/06/2018

	2018/351267	RE: DA2018/0832 149A Seaforth Crescent, Seaforth NSW 2092	08/06/2018
	2018/354955	Online Submission - Carollo	08/06/2018
	2018/355987	Submission - Barry	12/06/2018
	2018/356466	Submission - Jarrett	13/06/2018
	2018/363463	Submission - Boston Blyth Fleming on behalf of the owners of 74 Seaforth Crescent	15/06/2018
	2018/364686	Submission Acknowledgement Letter - Boston Blyth Fleming Pty Ltd - SA2018/363463	18/06/2018
	2018/364688	Submission Acknowledgement Letter - John Collis Barry & Leisa Barry - SA2018/355987	18/06/2018
	2018/387469	Traffic Engineer Referral Response	22/06/2018
	2018/399175	Submission - Design Collaborative obo Zerefos	29/06/2018
	2018/400306	Submission re DA 2018/0832 for 149A Seaforth Avenue, Seaforth	29/06/2018
	2018/405324	Submission Acknowledgement Letter - Design Collaborative Pty Ltd - SA2018/399175	04/07/2018
	2018/443922	Natural Environment Referral Response - Biodiversity	11/07/2018
	2018/476127	Landscape Referral Response	30/07/2018
	2018/482943	RE: DA2018/832- 149A Seaforth Crescent, Seaforth	01/08/2018
	2018/481627	Engineering Referral Response	01/08/2018
	2018/485997	Site Inspection	02/08/2018
	2018/522039	Comments - DA2018/0832 149A Seaforth Crescent Seaforth - Foreshores and Waterways Planning and Development Advisory Committee	15/08/2018
	2018/531122	Internal email - 20/08/2018 - to Maxwell Duncan - Telephone Message - from Mr John Barry - 149A Seaforth Crescent, Seaforth	20/08/2018
	2018/534367	Working Plans	22/08/2018
	2018/537386	Report - Amended - Statement of Environmental Effects	23/08/2018
	2018/545026	View Loss Photos- 72 Seaforth Crescent	28/08/2018
	2018/545861	Submission - Dixon	28/08/2018
	2018/545298	View Loss Photos- 74 Seaforth Crescent	28/08/2018
	2018/545466	Addendum to the Assessment Report- Clause 3.4.3 View loss Analysis	28/08/2018
	2018/549084	Submission Acknowledgement Letter - Tony Jarrett & - SA2018/356466	29/08/2018
	2018/561107	Natural Environment Referral Response - Coastal	30/08/2018
	2018/563505	Submission Acknowledgement Letter - Susie Dixon - SA2018/545861	31/08/2018

	2018/571974	DDP Plans	03/09/2018
	2018/572019	Notification Letter DDP to Objector and Applicant	03/09/2018

## PANEL PLANS

No plans titled 'DDP Panel Plans' found in TRIM.