

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0457
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 54 DP 9745, 15 Monash Crescent CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house and a seawall
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Milenka Kolenda
Applicant:	Milenka Kolenda

Application Lodged:	01/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/04/2022 to 25/04/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 63.22%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 330,000.00
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EXECUTIVE SUMMARY

This application is reported to the Northern Beaches Development Determination Panel (DDP) as Development Application DA2022/0457 seeks consent for alterations and additions to a dwelling house and a seawall. The alterations to the dwelling relate to modifications to the existing garage and entryway, including minor changes to the rear terrace area.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (237.72m² of gross floor area). The extent of proposed works provides for a FSR of 0.652:1 (388m²), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Despite the significant variation, the proposed development only provides an additional 6m² of gross floor area on the site when it is added to what was approved under Development Consent No. 2020/187181 (LEC consent), which is a valid consent. The existing garage, which was retained under this LEC consent, has a storage area at the rear with a gross floor area of approximately 6m². It is noted that a Construction Certificate has been issued for this LEC consent but a Notice of Commencement has not been submitted to Council and the works have not physically commenced. The proposed modifications to the existing garage increase the size of this storage area by approximately 6m².

The applicant has demonstrated through a written Clause 4.6 variation request that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 of Manly LEP 2013. The additional gross floor area proposed does not result in any unreasonable building bulk or adverse amenity impacts, specifically in regards to visual outlook, view loss, solar access and privacy.

The application was notified for 14 days and a total of four (4) submissions were received in response. The submissions collectively raised concerns which relates to the bulk and scale of the garage, the width of the vehicle crossing, the lack of landscaping quantum on the site and view loss impacts. The issues have been considered and do not warrant refusal of the application.

The application was amended to reduce the height of the modified garage to ensure the top of the roof parapet does not exceed the ridge line of the gable roof over the existing garage. The amendments to the application have resulted in reasonable view sharing and reduced the height and bulk of the proposed garage.

The modifications to the garage represent a modernised built form and the appearance and height of the seawall is compatible with other seawalls within the visual catchment of the site.

As the proposed FSR stipulated within the applicant's Clause 4.6 request is predicated on the works approved under Development Consent No. 2020/187181 being physically commenced, the Clause 4.6 request would be invalid if such works did not commence as the quantum of gross floor area would be incorrect. To ensure the validity of the applicant's Clause 4.6 request, a deferred commencement condition is recommended with this consent to prevent the consent from operating until the Council is provided with detailed written and photographic evidence that the works pursuant to Development Consent No. 2020/187181 have been physically commenced as prescribed by Clause 96 of the Environmental Planning and Assessment Regulation 2021.

Accordingly, it is recommended that the application be approved with a deferred commencement condition by the DDP, subject to the recommended conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and addition to an existing dwelling house to provide for an integrated double garage with storage. In addition, the application seeks to demolish an existing seawall and construct a new seawall. New beach access stairs and landscaping within the rear yard is also proposed.

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 - 5.21 Flood planning

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

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

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 54 DP 9745 , 15 Monash Crescent CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the south-western side of Monash Crescent, Clontarf. The site is irregular in shape with a frontage of 11.74 metres and respective depths of 40.015 metres and 39.39 metres along the north-western and south-eastern side boundaries. The site has a surveyed area of 594.3m². The site is located within the C3 Environmental Management zone pursuant to Manly LEP 2013 and accommodates a two storey dwelling house with a rooftop

terrace, including a detached garage adjacent to the front boundary.

The site is generally flat and adjoins a reserve at Middle Harbour to the rear and a public pathway (RE1 zone) to the south-west. The site is devoid of any significant vegetation and is flood prone.

Description of Surrounding Development

The surrounding built environment along the foreshore area is characterised by detached low density residential development (i.e. dwelling houses), typically two storeys in height.

Map:



SITE HISTORY

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

- **Development Application No. 4/98** for a shade structure over an existing roof deck refused by Council on 3 March 1998.
- **Development Application DA2019/1265** for alterations and additions to a dwelling house and garage refused by the Northern Beaches Local Planning Panel on 1 April 2020. This refusal was the subject of a Class 1 appeal within the NSW Land and Environment Court (refer to *Kolenda v Northern Beaches Council [2021] NSWLEC 1052*). During the conciliation phase of the appeal, the applicant submitted amended plans to resolve the contentions and an agreement was made pursuant to Section 34 of the L&EC Act 1979. It is noted that a Construction Certificate has been issued for this consent.

APPLICATION HISTORY

A site inspection was carried out at the subject site on 27 April 2022. In addition, two view impact assessments were carried out at 20 and 22 Monash Crescent (properties located on the north-eastern side of the street) on 6 June 2022 in response to the submissions made.

Following the preliminary assessment of the application, which included the aforementioned site inspections, Council wrote to the applicant raising concern with the height of the proposed garage, noting that the top of the parapet was 0.45 metres higher than the ridge line of the existing garage. The increased height would impact upon existing views corridors towards the Sydney Harbour Catchment from 20 and 22 Monash Crescent and the impact was not considered to be reasonable.

The applicant subsequently submitted amended plans to decrease the height of the proposed garage to ensure that the top of the parapet corresponds with the ridge line of the existing garage, which is sited at RL6.41 AHD. This has resolved the view sharing issue and reduced the bulk and scale of the garage to an acceptable level.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan 2013 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 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans to reduce the height of the garage. This information was subsequently received and assessed accordingly. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	<u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

COASTAL MANAGEMENT ACT 2016

Section 27 of the Coastal Management Act 2016 states:

27 Granting of development consent relating to coastal protection works

(1) Development consent must not be granted under the Environmental Planning and Assessment Act 1979 to development for the purpose of coastal protection works, unless the consent authority is satisfied that—

(a) the works will not, over the life of the works—

(i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or

(ii) pose or be likely to pose a threat to public safety, and

(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works—

(i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,

(ii) the maintenance of the works.

(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following—

(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following—

(i) the owner or owners from time to time of the land protected by the works,

(ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,

Note—

Section 80A (6) of the Environmental Planning and Assessment Act 1979 provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the Local Government Act 1993).

(3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.

Comment:

Council's Coast and Catchments Officer has reviewed the application and provided the following comments:

"The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

Further, the applicant has proposed replacement of the existing seawall with a new seawall at the same location. Hence the proposed development has been assessed also against the requirements of the Section 27 of the Coastal Management Act 2016. As required, the impact & risk associated with the construction of the seawall has been assessed in an Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022. Based on the impact and risk identified, Council endorses mitigation works applies maintenance condition as per Section 27(b)(ii) in approving this DA".

Overall, it is considered that the recommended conditions are sufficient to satisfy Section 27 of the Coastal Management Act 2016 and can be viewed in full at the end of this report.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/04/2022 to 25/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mrs Josi Carroll	17 Monash Crescent CLONTARF NSW 2093
Mr Anthony Paul Brooks	13 Monash Crescent CLONTARF NSW 2093
Mr Daniel Edward Brooks	11 A Monash Crescent CLONTARF NSW 2093
Mr Mark Edward Dowling Ms Susan Georgina Dowling	22 Monash Crescent CLONTARF NSW 2093

A total of four (4) submissions were received following the public exhibition period. All 4 submissions object to the proposed development. The following issues were raised in the submissions:

- **View Loss**

The submissions raised concerns that the proposed development will result in unreasonable view loss from nearby private properties.

Comment:

This matter is discussed in detail further in the section of this report relating to Clause 3.4.3 of the Manly DCP 2013. In summary, amended plans were submitted to reduce the height of the garage parapet to ensure the development does not exceed the height of the existing garage roofline. These amendments have resulted in an acceptable view sharing scenario, in accordance with the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

- **FSR non-compliance**

The submissions raised concerns that the proposed FSR is non-compliant with Clause 4.4 of Manly LEP 2013.

Comment:

It is acknowledged that the proposed FSR is 0.652:1 (388m²), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013. It is noted that the proposal only generates an additional 6m² of gross floor area on the site when compared to the existing on site conditions.

The additional gross floor area is located within the storage at the rear of the garage. The applicant has submitted a written request pursuant to Clause 4.6 of Manly LEP 2013 to justify the variation. The applicant's request is considered to be well-founded and has adequately demonstrated that compliance with Clause 4.4 of Manly LEP 2013 is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation. A detailed assessment on this matter has been provided later within this report.

- **Width of Vehicle Crossing**

The submissions raised concerns that the width of the vehicle crossing is excessive.

Comment:

The width of the vehicle crossing is generally consistent with the existing vehicle crossing and Council's Development Engineers do not object to the width of the proposed vehicle crossing.

- **Width of Garage and Entryway**

The submissions raised concerns that the width of the modified garage is excessive.

Comment:

The proposed development retains the side walls of the existing garage and the width of the existing garage is unchanged. The proposed alterations and additions to the garage introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk. It is noted that the top of the parapet correlates with the ridge line of the existing garage roofline. In this regard, the modifications to the garage is considered to be acceptable.

- **Landscaped Area non-compliance**

The submissions raised concerns that the proposed development does not comply with the Manly DCP 2013 landscaped area requirement.

Comment:

It is noted that the proposal does not comply with the landscaped area provision. However, the development increases the existing landscaped area from 95m² to 97m². Therefore, the proposal results in an improved landscaping outcome.

- **Overshadowing**

The submissions raised concerns that the proposed garage will result in overshadowing of adjoining land.

Comment:

The shading created by the modified garage will be confined to the subject site and adjacent public reserve access way. Neighbouring properties will retain the existing levels of solar access.

- **Building Height non-compliance**

The submissions raised concerns that the proposed development does not comply with the 8.5 metre building height development standard.

Comment:

The maximum building height of the proposed development is 4.01 metres, which complies with Clause 4.3 of Manly LEP 2013.

- **Encroachment into Road Reserve**

The submissions raised concerns that the proposed development encroaches into the road reserve.

Comment:

The proposed garage is located wholly within the property boundaries and does not encroach into the road reserve.

Conclusion

The concerns raised within the submissions have been addressed above. It is considered that the concerns do not warrant refusal of the application or further amendments to the proposal.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<i>Supported - no conditions recommended</i> Grout injection will be used to construct (subsurface) piles. We expect that any excavations (via drill auger during grout injection process) will uncover only minor amounts sand and silty sand, no acid sulfate soils and not lower the watertable. The construction of a seawall in this way is therefore low risk and does not require an Acid Sulfate Soils Management Plan in accordance with the <i>Acid Sulfate Soils Manual 1998</i> recommendations for Class 5 soils.
NECC (Bushland and Biodiversity)	<i>Supported - conditions recommended</i> The proposed development has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). As the proposal will not result in impact to native vegetation or wildlife or their habitats, the Biodiversity referrals section raises no objections.
NECC (Coast and Catchments)	<i>Supported - conditions recommended</i> The application has been assessed in consideration of the <i>Coastal Management Act 2016</i> , Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. The application has also been assessed using Northern Beaches SREP assessment template.

Internal Referral Body	Comments
	<i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. Further, the applicant has proposed replacement of the existing seawall with a new seawall at the same location. Hence the proposed development has been assessed also against the requirements of the Section 27 of the <i>Coastal Management Act 2016</i>. As required, the impact & risk associated with the construction of the seawall has been assessed in an Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022. Based on the impact and risk identified, Council endorses mitigation works applies maintenance condition as per Section 27(b) (ii) in approving this DA <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience and Hazards) 2021. Clauses 2.11 (coastal environment area) and 2.12 (coastal use area) do not apply as the site is also located within the Foreshores and Waterways area. Hence, only Clause 2.12 of the SEPP applies for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022, the DA satisfies requirements under Clause 2.12 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience and Hazards) 2021. <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> Harbour Foreshores & Waterways Area

Internal Referral Body	Comments
	The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence, Chapter 10 of this Policy is applicable in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022 , it is determined that the Planning Principles and Matters for Consideration of the Area have been met. Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022, it is determined that the proposed development satisfies the requirements of the DCP. <i>Manly LEP 2013 and Manly DCP</i> Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1

Internal Referral Body	Comments
	Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly LEP 2013 and the Manly DCP 2013. Development on Foreshore Area The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area. The DA proposes works replacement of an existing seawall with a new seawall. The proposed sea retaining wall is consistent with Clause 6.10(2). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022, the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.
NECC (Development Engineering)	<i>Supported - conditions recommended</i> Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	<i>Supported - conditions recommended</i> The flood impact report indicated the site is not affected by flooding in the 1% AEP. The 1% AEP extends up to the site’s front boundary. However, the site is affected by the PMF flood. The development proposed a minor extension to the rear of the garage to house a store with proposed finished floor level above the 1% AEP. The remaining garage work is mainly cosmetic modification to existing garage roof and door. At the rear, the existing sea wall is proposed to be relocated to the rear boundary. This work is not in the 1% AEP nor the PMF flood extent. In view of the above, the proposed works does not result in negative impact to the existing flood conditions and in emergency event

Internal Referral Body	Comments
	evacuation is available to first floor which is located above the PMF. The proposal is therefore considered satisfactory and in accordance with B3.11, subject to the following conditions.
NECC (Water Management)	Supported - no conditions recommended NECC Water Management has no objection to the application.
Parks, reserves, beaches, foreshore	Supported - conditions recommended The development application is for alterations and additions to an existing garage and a new sea wall replacing the existing sea wall. The development site adjoins the Clontarf Middle Harbour foreshore that is located downslope of the property. The property adjoins along the side boundary with an unidentified Public Reserve or Road Reserve, which is noted as occupied by landscape hedges and other vegetation, and Council reserves the future right to seek removal of any encroachment for public safety or for any other public capital works within the reserves. No additional physical encroachments over the site boundaries are permitted under the development application, and the final surface finish of new structures and built elements such as the new sea wall is not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve and Foreshore, and conditions shall be imposed to satisfy this requirement. It is noted that the retaining walling is proposed to be located forward of the existing alignment and is proposed along the site boundary. Visually the existing retaining walling is comprised on sandstone and brick walling with a glass balustrade on top and this presents to the public foreshore. The proposal does not significantly alter the visual appearance with the exception of the removal of the brick component that is replaced by sandstone. Public access is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve and Foreshore, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is within proximity to a heritage item, listed in Schedule 5 of Manly LEP 2013:

Internal Referral Body	Comments		
	Item I1 Harbour Foreshores - Manly municipal area boundary adjacent to the Harbour		
	Details of heritage items affected		
	Details of the item as contained within the Manly inventory is as follows:		
	Item I1 Harbour Foreshores <u>Statement of Significance:</u> Natural landscape type - Aesthetic. <u>Physical Description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A		
Consideration of Application			
The proposal seeks consent for alterations and additions to the existing garage, including the replacement of the existing sea wall at the beach reserve boundary and the reconstruction of the existing beach access stairs and landscaping within the immediate yard areas facing the beach. It is stated in the Coastal Engineering Risk Management Report that the existing seawall will generally be retained, and a new seawall will be constructed slightly further seaward of this existing seawall and new beach access stairs will be located to further north of the existing stairs. The proposed seawall is to be vertical and on the boundary, so with a similar base level to the existing wall, but with a crest level about 0.8m seaward of the existing seawall. The material is proposed to be reinforced concrete blocks with a sandstone cladding with a 1m high glass balustrade above the seawall. Given the separation between the proposed works and the heritage item, afforded by the existing building and the beach reserve, the proposal is considered to not impact upon the heritage item or its significance.			

Internal Referral Body	Comments
	Therefore Heritage raises no objections on heritage grounds and requires no conditions. <u>Consider against the provisions of CL5.10 of Manly LEP2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, 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 (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 - Bushland in Urban Areas

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

a)	<i>the need to retain any bushland on the land,</i>
b)	<i>the effect of the proposed development on bushland zoned or reserved for public open space p soils, the siltation of streams and waterways and the spread of weeds and exotic plants within th</i>
c)	<i>any other matters which, in the opinion of the approving or consent authority, are relevant to the zoned or reserved for public open space purposes.</i>

Comment:

The site adjoins land zoned RE1 Public Recreation to the south-east and south-west. Hence, the provisions of this chapter apply for this assessment.

The proposed development does not result in the removal of vegetation on the RE1 zoned land. Furthermore, suitable conditions have been included with this consent to alleviate impacts upon the adjacent reserve.

Therefore, the proposal is considered to demonstrate consistency with Chapter 6 of this SEPP.

Chapter 10 - Sydney Harbour Catchment

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

An assessment of the proposal against Section 10.1(2) (aims of the Chapter), Section 10.11 (nominated planning principles), Section 10.20 (relating to public access to and use of foreshores and waterways), Section 10.21 (relating to maintenance of a working harbour), Section 10.23 (relating to interrelationship of waterway and foreshore uses), Section 10.23 (relating to foreshore and waterways scenic quality), Section 10.24 (relating to maintenance, protection and enhancement of views) and Section 10.24 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Therefore, the proposal is considered to demonstrate consistency with Chapter 10 of this SEPP.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Environment and Coastal Use Areas pursuant to this SEPP. Therefore, the proposal is considered against Clauses 2.10, 2.11 and 2.12 of the SEPP as follows.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - b) *coastal environmental values and natural coastal processes,*
 - c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - f) *Aboriginal cultural heritage, practices and places,*
 - g) *the use of the surf zone.*
- 2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
 - b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- 3) *This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment:

The site is located within the Foreshores and Waterways Area and therefore, this clause is not applicable.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - ii) *overshadowing, wind funnelling and the loss of views from public places to*

- iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
- b) is satisfied that:
- i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- 2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The site is located within the Foreshores and Waterways Area and therefore, this clause is not applicable.

Division 5 General

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

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

Comment:

Council's Coast and Catchments Officer has reviewed the proposal and is satisfied that the development will not cause increased risk of coastal hazards within the locality, subject to conditions.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5 metres	4.01 metres	-	Yes
Floor Space Ratio	0.4:1 (237.72m ²)	0.652:1 (388m ² GFA)	63.22%	No

Notes:

1. The maximum building height has been taken from the top of the garage parapet at RL6.41 AHD.
2. GFA refers to gross floor area.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (237.72m ²)
Proposed:	0.652:1 (388m ²)
Percentage variation to requirement:	63.22%

The proposed floor space ratio (FSR) of the development equates to 0.652:1 (388m²), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013.

It is important to note that the proposed development only provides an additional 6m² of gross floor area on the site when it is added to what was approved under Development Consent No. 2020/187181 (LEC consent), which is a valid consent. The existing garage, which was retained under this LEC

consent, has a storage area at the rear with a gross floor area of approximately 6m². The modifications to the existing garage increase the size of this storage area by approximately 6m².

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

"There are sufficient environmental planning grounds to justify contravening the development standard.

The requirements of clause 4.4.2 of Manly DCP 2013 "promote the retention and adaptation of existing buildings rather than their demolition and replacement with new structures". The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The development facilitates Council's ecologically sustainable development objectives outlined in Manly DCP 2013 Clause 4.4.2 through the retention and adaptation of the existing garage building, rather than its demolition and replacement with a new structure. The proposed alterations to the garage will retain its essential function as off street car parking together with additional storage space for household goods which be well screen from public view, is in the public interest and maintains the development is positive contribution to the streetscape. The retention and reuse of the existing garage is considered to be ecologically sustainable development (cl1.3(b)).*
- The proposed alterations and additions to the garage introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst minimising the calculable gross floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain.

The proposed works will see a minor increase in storage area at the rear the garage which is a private benefit the owners and public benefit in the storage of household goods and equipment is well screen from any public view on the site retains a positive contribution to the local streetscape.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard".

Comment:

The justification provided by the applicant is supported in that the applicant's justification to contravene the FSR development standard is well founded.

In particular, it is agreed that the additional gross floor area provided is located at the rear of the garage and is not visually prominent within the streetscape. It is also accepted that the proposed alterations and additions to the garage introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk. It is considered that the retention of the existing garage side walls and re-use of the structure promotes ecologically sustainable development.

However, the FSR proposed under this application would only be accurate in the instance that the works approved under the LEC Development Consent No. 2020/187181 have been physically commenced, as it results in a 6m² increase in gross floor area to what is currently approved on the site. The applicant's Clause 4.6 request for the subject application would not be valid if the applicant did not commence the alterations to the dwelling house approved under LEC Development Consent No. 2020/187181 as the quantum of gross floor area proposed would not be accurate. It is noted that a Construction Certificate has been issued for this LEC Consent but a Notice of Commencement has not been provided to Council and the works have not physically commenced.

To ensure the validity of the applicant's Clause 4.6 request, a deferred commencement condition is recommended with this consent to prevent the consent from operating until the Council is provided with detailed written and photographic evidence that the works pursuant to Development Consent No. 2020/187181 have been physically commenced as prescribed by Clause 96 of the Environmental Planning and Assessment Regulation 2021.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The flat roof profile and the bulk and scale of the modified garage and storage area is generally consistent with the double garage on the north-western adjacent site (17 Monash Crescent). Furthermore, the modulation of the front façade, coupled with the retention of the existing side setbacks and recessive external finishes, will ensure the development has an acceptable visual impact when observed from the public domain and surrounding private properties. Overall, the proposal satisfies this objective.

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

Comment:

The additional gross floor area proposed on the site is situated within the rear storage area of the garage and will not be discernible from the street frontage or the wider locale. It is noted that the envelope of the recently approved dwelling is unaltered. Furthermore, the proposal does not result in a reduction in significant vegetation on the site and results in a minor increase of deep soil landscaping on the site. The proposal achieves this objective.

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

Comment:

On the basis that the existing landscaped area is improved, the site is considered to maintain an appropriate balance between the site’s landscaping and the built form.

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

Comment:

For the purpose of this assessment, views, solar access, visual amenity and privacy have been adopted as environmental factors that contribute to the use and enjoyment of adjoining public and private land.

Views

The proposed development has been amended to ensure that the parapet of the garage does not exceed the current ridge level of the existing garage. This will allow for the retention of an existing view corridor along the south-eastern side of the site. The proposal achieves reasonable view sharing in accordance with the planning principles established within the NSW Land and Environment Court Case of *Tenacity Consulting v Warringah* [2004] NSWLEC 140. The proposal also does not adversely impact upon existing views from the public domain.

Solar Access

Given the modest scale of the garage and the fact that the adjoining property to the south-west is a public reserve, the additional shadowing created from the modified garage will be confined to the subject site and public land. Existing levels of solar access will be maintained to surrounding private property.

Visual Amenity

The modulation of the front façade, coupled with the retention of the existing side setbacks and recessive external finishes, will ensure the development has an acceptable visual impact when observed from the public domain and surrounding private properties.

Privacy

The additional gross floor area pertains to storage areas within a garage and does not give rise to unreasonable visual and acoustical privacy impacts.

Overall, it is considered that the FSR breach will not preclude the use or enjoyment of surrounding private and public land.

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

Comment:

The site is not located within a business zone or local centre.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposal will not require the removal of any significant vegetation and will see an increase in deep soil landscaping on the site. Furthermore, the bulk and scale of the garage is generally consistent with the neighbouring garage at 17 Monash Crescent, whilst the seawall structure corresponds with other seawalls within the visual catchment of the site. Overall, the proposal will not have an adverse impact upon ecological, scientific, cultural or aesthetic values of the area.

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

values.

Comment:

The proposed development does not significantly alter the bulk, scale and intensity of the existing building. The low density land use will be maintained subsequent to the development

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

Comment:

The proposal does not necessitate the removal of any foreshore vegetation or tree canopy cover.

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

Comment:

The proposal will not result in the loss of any native vegetation. The general form of the existing development remains unchanged, and will not result in adverse effects for the foreshore.

- *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:

Suitable conditions are recommended with this consent to ensure that stormwater is appropriately managed.

- *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 bulk and scale of the garage is generally consistent with nearby structures, whilst the seawall is also consistent with nearby seawall structures.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone and the objectives of Clause 4.4 - Floor Space Ratio of Manly LEP 2013.

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

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

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

5.21 Flood planning

The site is flood prone and therefore, the provisions of this clause apply to the development. Council's Floodplain Officers have reviewed the application and are satisfied that the proposal will achieve Council's flood risk management requirements, subject to conditions. Hence, the proposal is considered to meet the requirements of Clause 5.21 of Manly LEP 2013.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 3 and 5, as indicated on Council's Acid Sulfate Soils Planning Map. It is noted that the land in which the seawall is located is class 5 land, whilst the land in which the garage is located is class 3 land.

Council's Environmental Health Officers have reviewed the application with respect to acid sulfate soils and provided the following response:

"Grout injection will be used to construct (subsurface) piles. We expect that any excavations (via drill auger during grout injection process) will uncover only minor amounts sand and silty sand, no acid sulfate soils and not lower the watertable. The construction of a seawall in this way is therefore low risk and does not require an Acid Sulfate Soils Management Plan in accordance with the Acid Sulfate Soils Manual 1998 recommendations for Class 5 soils".

Based on the above assessment, it is considered that the proposal satisfies the requirements of Clause 6.1 of Manly LEP 2013.

6.2 Earthworks

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

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

Conditions have been recommended to ensure that if any relics are found, that relevant authorities be contacted and works cease.

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

Comment:

Council's Bushland/Biodiversity and Coast/Catchment Officers have reviewed the application and are satisfied that the proposed development will not have an adverse impact upon the natural environment,

subject to recommended conditions.

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

Comment:

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

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the relevant requirements within Clause 6.2 of Manly LEP 2013.

6.4 Stormwater management

Council's Development Engineers have reviewed the application with respect to stormwater management and are satisfied that stormwater will be adequately managed and disposed of, subject to recommended conditions. Therefore, the proposal is considered to satisfy Clause 6.4 of Manly LEP 2013.

6.5 Terrestrial biodiversity

The site is located on the Manly LEP 2013 Biodiversity Map. Therefore, this clause is applicable to this assessment.

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

- (a) whether the development is likely to have:*
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development does not result in the removal of prescribed vegetation on the site and is unlikely to adversely impact upon local biodiversity. Council's Bushland and Biodiversity Officers have reviewed the application and are satisfied that the proposal will not impact upon local biodiversity, with suitable conditions being recommended to further negate any adverse impacts.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Based on the fact that no prescribed vegetation is being removed and Council's Biodiversity Officers are satisfied that the proposal will not have an adverse impact upon local biodiversity, it is concluded that the development is adequately sited, designed and will be managed to avoid an adverse environmental impact.

Conclusion

As demonstrated above, the proposal satisfies the relevant considerations under Clause 6.5 of Manly LEP 2013.

6.9 Foreshore scenic protection area

The site is located on the Manly LEP 2013 Foreshore Scenic Protection Area. Therefore, the provisions of this clause are applicable to this assessment.

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*

Comment:

As discussed earlier within this report, the proposal does not result in unreasonable view loss towards the foreshore. The proposed seawall is approximately 2.2m in height above the beach level and will not result in significant overshadowing of the foreshore area. The height and external finishes of the seawall are also consistent with nearby seawalls along the foreshore area and hence, the development will not detract from the visual amenity of Middle Harbour. The alterations to the garage will also not have a detrimental impact upon the visual amenity of the area.

- (b) measures to protect and improve scenic qualities of the coastline,*

Comment:

As outlined above, the proposal will not detract from the scenic qualities of the coastline.

- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*

Comment:

The proposal does not alter the existing low density residential land use and works are considered to be suitable for the site.

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposal will not create conflicts between land and water based coastal activities

Conclusion

As demonstrated above, the proposal satisfies the requirements of Clause 6.9 of Manly LEP 2013.

6.10 Limited development on foreshore area

The Foreshore Building Line (FBL) encroaches through the rear of the property. The FBL is setback 28.9 metres from the front boundary on the south-eastern side boundary and 28 metres from front boundary on the north-western side boundary. Figure 1 below depicts the FBL on the site plan.

Figure 1: FBL on subject site

- (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 new works within the foreshore area pertain to waterway access stairs and sea retaining walls, which are permitted within the foreshore area. The proposed works to the existing garage are not located within the foreshore area.

(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*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- (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*
- (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- (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*
- (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*
- (h) sea level rise or change of flooding patterns as a result of climate change has been considered.*

Comment:

The proposal satisfies these relevant considerations for the following reasons:

- The proposal achieves the objectives of the C3 Environmental Management zone.
- The appearance of the seawall is compatible with surrounding seawalls within the visual catchment of the site.

- Council's Natural Environment Officers are satisfied that the proposal will not cause environmental harm with respect to siltation of the harbour, impacts upon marine flora and fauna, and adverse impacts on drainage patterns.
- The seawall and foreshore access stairs will not cause congestion or generate conflict between people using open space areas or the waterway.
- The proposed development does not preclude continuous access to or along the foreshore area.
- The development does not adversely impact upon historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land.
- The proposal does not alter the existing elements of the dwelling that are located within the foreshore area.
- The seawall will assist in alleviating the impacts of sea level rise on the existing dwelling house.

(4) In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following—

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development,*
- (b) public access to link with existing or proposed open space,*
- (c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- (d) public access to be located above mean high water mark,*
- (e) reinforcing the foreshore character and respect for existing environmental conditions.*

Comment:

The proposal satisfies these relevant considerations for the following reasons:

- The proposed development does not preclude continuous access to or along the foreshore area.
- The development does not encroach into the existing access reserve that adjoins the site to the south-east.
- Existing public access to the foreshore area has not been compromised by the proposed development.
- The appearance and height of the proposed seawall is compatible with surrounding seawalls within the visual catchment of the site.

Conclusion

As demonstrated above, the proposed development satisfies the relevant considerations under Clause 6.10 of Manly LEP 2013.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*

- (b) the supply of electricity,
(c) the disposal and management of sewage,
(d) stormwater drainage or on-site conservation,
(e) suitable vehicular access.

Comment:

The aforementioned essential services are available for the proposed development. Therefore, the proposal complies with Clause 6.10 of Manly LEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 594.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NW: 6.5m (based on flat site)	4.01m	-	Yes
	SE: 6.5m (based on flat site)	4.01m	-	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	1.06m	76.67%	No
	Pitch: maximum 35 degrees	< 35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	prevailing building line (nil setback for garages)	0.54m - consistent with prevailing building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW: 1.34m (1/3 of wall height)	0.79m - as per existing	41.04%	No
	SE: N/A - 4.1.4.6 applies below	N/A	N/A	N/A
4.1.4.4 Rear Setbacks	Foreshore Building Line applies	N/A	N/A	N/A
4.1.4.5 Foreshore Building Lines and Foreshore Area	Refer to Clause 6.10 of Manly LEP 2013	sea wall permitted inside foreshore area	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	SE (adjoins RE1 zone): 6m	0.14m - as per existing	97.67%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (356.58m ²) of site area	63% (374.4m ²)	-	Yes
	Open space above ground 25% (93.6m ²) of total open space	40.95% (153.3m ²) - no change from previous consent	63.78%	No
4.1.5.2 Landscaped Area	Landscaped area 40% (149.76m ²) of open space	25.91% (97m ²) - increase to existing	35.23%	No
	3 native trees	no native trees (as existing)	100%	No
4.1.5.3 Private Open Space	18sqm per dwelling	> 18m ²	-	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7.36m	18.71%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Site inspections were carried out at the following properties to consider the development's impact upon

existing views towards Middle Harbour:

- 20 Monash Crescent.
- 22 Monash Crescent.

These properties are located on the north-eastern side of Monash Crescent directly opposite the subject site.

Merit consideration:

The development is considered against the objectives of the control:

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

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

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

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

1. Nature of the views affected

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

Comment:

20 Monash Crescent

The views obtained from 20 Monash Crescent consist of obstructed views towards the south-west that encapsulate Middle Harbour and the land-water interface between Middle Harbour Yacht Club and Chinamans Beach. It is important to note that the view does not encapsulate Middle Harbour Yacht Club or Chinamans Beach, but rather the coastline between these two points. The existing obstructions to this view is existing development on the south-eastern side of Monash Crescent (including the existing dwelling on the subject site). Whilst the views are heavily obstructed, there is an unobstructed corridor through the public reserve access way that adjoins 15 Monash Crescent (subject site) to the south-east. The view is considered to be highly valued as it includes water and land-water interface.

22 Monash Crescent

The views obtained from 20 Monash Crescent consist of obstructed views towards the south-west that encapsulate Middle Harbour and the land-water interface between Middle Harbour Yacht Club and Chinamans Beach. It is important to note that the view does not encapsulate Middle Harbour Yacht Club or Chinamans Beach, but rather the coastline between these two points. The existing obstructions to this view includes existing development on the south-eastern side of Monash Crescent (including the existing dwelling on the subject site) and existing vegetation. Whilst the views are heavily obstructed,

there are unobstructed corridors located to the north-west and south-east of the existing dwelling, including over the top of the existing garage roofline. The view is considered to be highly valued as it includes water and land-water interface.

2. What part of the affected property are the views obtained

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

Comment:

20 Monash Crescent

The existing views are obtained from two south-west facing elevated balconies on the first floor that adjoin bedrooms. The views can be enjoyed from standing and sitting positions, although greater portions of water are obtained when standing. The views can also be obtained from the adjoining bedroom windows when observed from standing positions. The views are obtained over the front boundary. Figure 2 below depicts the views in question.

Figure 2: view from first floor front deck - standing position



22 Monash Crescent

The existing views are obtained from a large south-west (i.e. front) facing elevated deck that adjoins bedrooms on the first floor of the dwelling house. The views can be enjoyed from both standing and sitting positions, although greater portions of water are obtained when standing. The views are obtained

over the front boundary. Figure 3 below depicts the views in question.

Figure 3: view from first floor front deck - standing position



3. Extent of impact

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

Comment:

20 Monash Crescent

The proposal has been amended to ensure that the top of the garage parapet matches the ridge line of the existing gable roofline. In turn, the existing water views from 20 Monash Crescent will remain unaffected. In this regard, the qualitative extent of the view impact is negligible.

22 Monash Crescent

The proposal has been amended to ensure that the top of the garage parapet matches the ridge line of the existing gable roofline. In turn, the existing water views from 20 Monash Crescent will remain unaffected. The only affected view will be of the dwelling house that is currently under construction at 13 Monash Crescent. In this regard, the qualitative extent of the view impact is negligible.

4. Reasonableness of impact

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

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

Comment:

As the view impacts from the adjacent properties is of a negligible scale, with all water views and land-water interface remaining unaffected, it is considered that reasonable view sharing is achieved. A more skilful design is not warranted in this case.

Conclusion

The proposed development demonstrates consistency with the objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

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

Description of non-compliance

The control limits the height of parapet roof features to 0.6 metres. The proposed garage has a parapet with a height of 1.06 metres, which exceeds the numeric requirement.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The height and roof form of the garage is generally consistent with the existing double garage located on the north-western adjacent site (17 Monash Crescent). Moreover, the top of the garage parapet does not exceed the ridge level of the existing gable roof over the garage. In this regard, it is considered that the height and roof form of the garage is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

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

Comment:

The flat roof profile and the bulk and scale of the modified garage and storage area is generally consistent with the double garage on the north-western adjacent site (17 Monash Crescent). Furthermore, the modulation of the front façade, coupled with the retention of the existing side setbacks and recessive external finishes, will ensure the development has an acceptable visual impact when observed from the public domain and surrounding private properties.

(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:

As the top of the parapet does not exceed the ridge line of the existing gable roofline above the garage, the development will not compromise views towards Middle Harbour from surrounding public and private land.

(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:

Given the modest scale of the garage and the fact that the adjoining property to the south-west is a public reserve, the additional shadowing created from the modified garage will be confined to the subject site and public land. Existing levels of solar access will be maintained to surrounding private property. The overshadowing of the adjacent public reserve access way is not excessive and will not have an adverse impact on the public amenity.

(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 garage does not necessitate the removal of significant vegetation.

Conclusion

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

4.1.3 Floor Space Ratio (FSR)

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

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

Description of non-compliance

The control requires development to be setback at least 1/3 of the adjacent maximum wall height from side boundaries (excluding boundaries that adjoin zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation). In applying this principle a minimum side setback of 1.34 metres is required from the north-western side boundary for the garage. The garage is setback 0.79 metres from the north-western side boundary, which does not satisfy the numeric requirement. It is important to note that the existing side setback is unchanged as the modified garage retains the side walls of the existing structure.

Furthermore, the control prescribes a minimum 6 metre setback from side boundaries that adjoin zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation. It is noted that the south-eastern side boundary adjoins an RE1 Public Recreation zone and therefore, this control applies. The garage is setback 0.14 metres from the south-eastern side boundary, which does not satisfy the numeric requirement. It is important to note that the existing side setback is unchanged as the modified garage retains the side walls of the existing structure.

Merit consideration:

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

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

Comment:

The proposed alterations and additions to the garage introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk. The bulk and scale of the garage is also generally consistent with the double garage on the north-western adjacent site (17 Monash Crescent). Furthermore, the proposal results in a minor increase in soft landscaping on the site. Overall, the proposal achieves this objective.

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:

As discussed within the section of this report relating to Clause 4.6 of Manly LEP 2013, the proposed development does not result in unacceptable amenity impacts, specifically in regards to visual bulk, privacy, solar access and view sharing. The garage does not alter the existing front and side setbacks and will not preclude safe traffic conditions.

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

Comment:

Flexibility is afforded with regards to the maintenance of the existing side setbacks as the non-compliance does not create adverse amenity or streetscape impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native*

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

Comment:

The proposal does not necessitate the removal of significant vegetation and will see a minor increase in soft landscaping on the site.

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

Comment:

The site is not bushfire prone.

Conclusion

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

4.1.5 Open Space and Landscaping

The control requires at least 40% of the proposed total open space to be landscaped. In applying this principle, the proposal should provide 149.76m² of landscaping on the site. The application only provides 97m² of landscaping, which is 25.91% of the proposed total open space. It is important to note that the existing landscaping is 95m² and that the proposal provides for a minor increase in landscaped area on the site.

The control stipulates that only 25% (93.6m²) of the proposed total open space should be located more than 1 metres above natural ground level. The existing approved above ground total open space is 40.95% (153.2m²) of the total open space, which exceeds the numeric requirement. The proposal does not alter the existing approved situation.

Furthermore, the control requires at least 3 native trees to be planted on the site. There are currently no native trees on the site and the application does not propose additional native planting. It is noted that there is limited area on the site to provide native planting.

Despite these existing non-compliances, the proposal is considered to achieve the objectives of the control for the following reasons:

- The proposed development does not result in the removal of important landscape features;
- The proposal increases the quantum of deep soil landscaping on the site;
- The development does not result in adverse amenity impacts (i.e. overshadowing, view loss or privacy impacts);
- The increase in soft landscaping will assist in water infiltration;
- The works will not lead to the significant spread of weeds; and
- The works will not impact upon wildlife habitat.

Under this circumstance, the proposal is supported on merit in this regard.

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

The width of the garage is 7.37 metres overall, which exceeds the numeric requirement of 6.2 metres. However, the openings of the garage is 6.4 metres to facilitate access into the car spaces between the pairs. This is acceptable given the limited manoeuvring area provided in the driveway and that the existing side walls are retained and the modified garage does not increase the width of the structure.

Therefore, no further consideration of this control is required for the purpose of the assessment.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal includes excavation within 0.9 metres of the rear boundary to accommodate the seawall, which conflicts with the prescribed requirement under this control.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The earthworks are not considered to be excessive and are necessary to accommodate for the proposed seawall. Earthworks of a similar nature have been provided on adjacent sites to allow for seawall structures. The height and external finishes of the proposed seawall are also consistent with nearby seawalls within the visual catchment of the site and therefore, the proposal will not be out of keeping with the coastal setting. Suitable conditions are recommended to alleviate sedimentation of the waterway.

The application has also been accompanied by a Coastal Engineering Risk Management Report and Geotechnical Report, which concludes that the proposal will achieve an acceptable level of risk. Conditions have been recommended to ensure compliance with the recommendations within these reports.

Conclusion

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$3,300 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$330,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

The proposed development involves alterations and additions to an existing dwelling house including a swimming pool.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (237.72m² of gross floor area). The proposed FSR equates to 0.652:1 (388m²), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013.

Despite the significant variation, the proposed development only provides an additional 6m² of gross floor area on the site when compared to the existing approved scenario. The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 of Manly LEP 2013. The additional gross floor area proposed does not result in any unreasonable building bulk or adverse amenity impacts, specifically in regards to visual outlook, view loss, solar access and privacy.

A total of 4 individual submissions were submitted in response to this application. The submissions have been addressed and do not warrant refusal of the application.

When considered on its merits, the proposed development is found to be acceptable and worthy of support.

A deferred commencement condition is recommended with this consent requiring the works approved under LEC Development Consent No. 2020/187181 to be physically commenced, which will ensure the validity of the applicant's Clause 4.6 request for the proposed FSR breach under this application as the Clause 4.6 request stipulates a total FSR on the site that is inclusive of the works approved under the aforementioned consent.

Accordingly, it is recommended that the application be approved with a deferred commencement condition by the DDP, subject to the recommended conditions attached to this report.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;

and

- b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within the EP&A Regulation 2021 to DA2022/0457 for Alterations and additions to a dwelling house and a seawall on land at Lot 54 DP 9745,15 Monash Crescent, CLONTARF, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. Deferred Commencement

This consent shall not operate until the Council is provided with detailed written and photographic evidence that the works pursuant to Development Consent No. 2020/187181 have been physically commenced as prescribed by Clause 96 of the Environmental Planning and Assessment Regulation 2021.

Reason: To ensure the orderly development of land.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By

DA.01 (Revision B)	20 June 2022	Mathieson Architects
DA.02 (Revision B)	20 June 2022	Mathieson Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation and Stability Assessment Ref. 32694YJrpt2	11 March 2022	JK Geotechnics
Flood Risk Management Report	14 March 2022	Pittwater Data Services Pty Ltd
Coastal Engineering Risk Management Report	19 January 2022	Horton Coastal Engineering Pty. Ltd.

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	1 February 2022	Vaughan Milligan Development Consulting Pty Ltd

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.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

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

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

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

dangerous to persons or property on or in the public place

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

6. **Seawall not to encroach over Property Boundaries**

The approved seawall must be located wholly within the property boundaries and is not permitted to encroach onto adjoining land.

Reason: To prevent the development from encroaching onto adjoining land.

7. **Boundary Walls not to encroach over Property Boundaries**

The extension to the existing side boundary walls are not permitted to encroach onto adjoining land and must be located wholly within the property boundaries.

Reason: Owners consent has not been provided from the adjoining land owners for any encroachments.

FEES / CHARGES / CONTRIBUTIONS

8. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$3,300.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$330,000.00.

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

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

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

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

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

9. **Security Bond**

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

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

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

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

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

10. **Stormwater Disposal**

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

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

11. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 2.41m AHD.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level (2.91 m AHD), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level (2.91 m AHD). All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

13. **Compliance with Coastal Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022, and these recommendations are to be incorporated into construction plans and maintained over the life of the development.

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

Reason: To ensure estuarine process risks are addressed appropriately.

14. **Compliance with Standards**

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

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

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

15. **External Finishes to Roof**

The external finish to the roof shall have a 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Works on Land Owned or Managed By Council**

No works are to be carried out on land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity,

telecommunications etc.) and landscaping works on land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

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

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Wildlife Protection**

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

Reason: To protect native wildlife.

19. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

20. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

21. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on

Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Reason: To protect and/or restore any damaged public asset.

22. **Removing, Handling and Disposing of Asbestos**

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

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

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

23. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 2 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **Survey Certificate**

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

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

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

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

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

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

25. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

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

26. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6 metres wide at kerb and 8 m wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

27. **Waste Management During Development**

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

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

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

28. **Coastal Erosion**

This property is on land located in an area where there is likely to be a risk of coastal erosion and wave impact during severe storms. The risk to the property may increase with time due to long-term beach recession caused by greenhouse induced sea level rise or natural coastal processes. To reduce the potential impact to your property, the Council strongly recommends that effective precautions be taken to ensure adequate volumes of sand are maintained within the eastern (seaward) boundary of your property. The Council requires that only free-draining, clean, yellow sand be used to fill allotments.

Reason: Protection of coastal environment.

29. **Low Level Coastal Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

Reason: To ensure estuarine process risks are addressed appropriately.

30. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private.

31. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

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

32. **Stormwater Disposal**

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

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

33. **Certification of Services (B3)**

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

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

34. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

35. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 2 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

36. **Compliance with Coastal Engineering Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022 and these recommendations are to be maintained over the life (considered 60 years design life) of the development.

Reason: To ensure preservation of the development and the estuarine environment and to comply with the section 27 of the Coastal Management Act.