

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1578
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 7 DP 2610, 21 Moore Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Rod Jonathon Pindar Natalie Chantal Pindar
Applicant:	Rod Jonathon Pindar
Application Lodged:	08/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/11/2023 to 28/11/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 33.26%
Recommendation:	Approval
Estimated Cost of Works:	\$ 810,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2023/1578 for alterations and additions to a dwelling house including a swimming pool.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (196.6m² of gross floor area). The proposed FSR equates to 0.53:1 (262m²), which represents a 33.26% variation to the development standard. 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.

Notwithstanding, Clause 4.1.3.1 - Exceptions to FSR for Undersized Lots of the Manly DCP 2013 stipulates that the 0.4:1 FSR requirement is based off an average site area of 750m². The site is an undersized allotment, being only 491.5m² in area. When applying a gross floor area amount to an average site area of 750m², the proposed FSR would be 0.35:1, which complies with the 0.4:1 requirement set by the DCP. 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 - Floor Space Ratio of Manly LEP 2013, having regard to the DCP provisions.

The application was notified for a period of fourteen (14) days and no submissions were received in response.

The proposed development involves variations to the DCP provisions that pertain to wall height, side setbacks and total open space. However, these variations do not result in any unacceptable streetscape or amenity impacts, subject to recommended conditions.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house including a new swimming pool. Specifically, the works consist of:

"Lower Level

- *Internal alterations utilising existing under-croft space to enlarge the Bathroom and Laundry.*
- *Conversion of existing under-croft space to a new Bedroom (Bed 5) including a new window.*
- *A minor (1.2m) extension to the south (rear) to allow for an enlarged Bed 4.*
- *New glazed doors to the south (rear) elevation.*
- *A new window to the existing Rumpus Room.*

Ground Level

- *Infill of the existing porch to allow for a new Bedroom (Bed 3).*
- *Internal alterations to convert an existing Bedroom into a new entry space and provide more internal area to Bed 2.*
- *Internal alterations along the eastern portion of the house to allow for a new Ensuite and Walk-In-Robe (to Bed 1) and a new Bathroom.*
- *A minor (1.1m) extension to the south (rear) to allow for an enlarged Bed 1.*
- *Reconfiguration of the Kitchen and Dining Area with a minor extension (1.75m) to allow for an enlarged Kitchen and Dining space.*
- *Relocation of windows to Kitchen/Dining and Bed 3 and enlarged windows to Bed 2 and Entry.*

Upper Level

- *A new balcony to replace the existing with new pergola over.*
- *Relocation of window to Living to improve outlook and privacy to and from neighbours (No 23).*

Site

- *A new car port to replace the existing which is outdated and in poor condition.*
- *Alterations to the front courtyard to relocate the entry gate and allow access to a new front door.*
- *New landscaping to the front courtyard.*
- *New landscaping to the rear garden including a new deck and terrace to the rear to replace the existing terrace.*
- *Demolition of the existing swimming pool and construction of a new concrete pool within levelled lawn area at the rear of the site with timber pool deck (consistent with approved DA).*
- *New side retaining walls and timber fences to the east and west (consistent with approved DA).*
- *New stairs to both side passages to suit new rear garden levels and allow improved ventilation and damp proofing to the house.*
- *New rear retaining wall to facilitate leveling of rear yard with dense planting along rear boundary (consistent with approved DA)."*

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 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 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 - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.4.2 Alterations and Additions
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 7 DP 2610 , 21 Moore Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Moore Street, Clontarf. The site is regular in shape with a frontage of 12.215m and a depth of 40.325m. The site has a surveyed area of 491.5m². The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a three storey dwelling house with an attached double carport within the front setback area and an in-ground swimming pool within the rear yard. The site is devoid of any native canopy planting and contains shrubbery within the rear yard southward of the swimming pool. Additionally, screen planting is located along the front boundary adjacent to the paved courtyard. The site experiences a fall of approximately 7.1m that slopes away from the north-eastern front corner towards the south-eastern rear corner. A sandstone rock shelf runs diagonally across the property between the footprint of the dwelling house and swimming pool. The rear terrace sits on top of the rock shelf and is sited approximately 2.5m above the pool area below. Description of Surrounding Development The surrounding built environment is generally characterised by detached low density residential development (i.e. dwelling houses), typically 2-3 storeys in height. Existing development represents both older and modern housing stock.

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. 170/88** for additional upper balcony approved by Council staff under delegated authority on 30 June 1998.
- **Development Application No. DA2022/0005** for alterations and additions to a dwelling house including a swimming pool approved by Council via DDP on 13 July 2022.

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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. No additional information was requested in this case. <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. <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 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.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 14/11/2023 to 28/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings • 4.1.9 Swimming Pools, Spas and Water Features The existing property contains no prescribed trees, rather exempt vegetation that can be managed or removed at the discretion of the applicant without consent. All neighbouring trees and vegetation must be protected during works, subject to the imposed conditions. Any visual impact or privacy issues to adjoining properties resulting from the increased levels in the rear setback and the masonry walls along the boundaries, will be assessed and determined by the Assessing

Internal Referral Body	Comments
	Planning Officer. The landscape planting proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. Under MDCP 4.1.5.2 (c) Minimum Tree Plantings, one native tree shall be required for installation within the property boundaries.
NECC (Development Engineering)	The proposed development does not require OSD and the submitted stormwater management plan is acceptable. The existing driveway crossing is to remain which is also acceptable. Development Engineering support the proposal, subject to conditions as recommended.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with this application (see BASIX Certificate No. A1374132, dated 27 October 2023). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	7.8m	-	Yes
Floor Space Ratio	0.4:1 (196.6m ²)	0.53:1 (262m ²)	33.26%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (196.6m ²)
Proposed:	0.53:1 (262m ²)
Percentage variation to requirement:	33.2% (65.4m ²)

The site is subject to a 0.4:1 FSR development standard. The proposed FSR equates to 0.53:1 (262m²), which does not comply with the development standard.

Notwithstanding, Clause 4.1.3.1 - Exceptions to FSR for Undersized Lots of the Manly DCP 2013 stipulates that the 0.4:1 FSR requirement is based off an average site area of 750m². The site is an undersized allotment, being 491.5m² in area. When applying a gross floor area to an average site area of 750m², the proposed FSR would be 0.35:1, which complies with the 0.4:1 requirement.

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 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:

Comment:

"The proposed development is for alterations and additions to the existing dwelling including a minor extension to the south (rear) and a relocation of the swimming pool. The new works comply with the building height control for the site and the bulk and scale is of a lesser or consistent scale with surrounding properties.

The proposed variation to the LEP control is 65.4m² or 33.2%, however as the subject site is an existing undersized parcel, clause 4.1.3 of the DCP, permits an FSR calculation based on a 750m² lot size, which equates to 300m² for the site. As noted above, the proposed gross floor area is 262m² and therefore complies with the provision of DCP Clause 4.1.3 having a GFA 38m² less than permitted.

Development Approval has already been granted for the site (DA2022/0005) which approved an area of 284m² (0.58:1 FSR). This new Development Application represents a more modest application with reduced area, height, bulk and scale and retaining a significantly greater portion of the original house."

"There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of environmental planning grounds. In particular:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey detached dwelling houses, with a number of dwellings having undergone recent renovations.*
- The new works propose a compliant building height and has been designed to remain consistent with the character of the existing dwelling, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments (with properties nearby the subject site in Clontarf marked in bold text):*

DA2020/1372	19 - 21A Addison Road and 15 Oyama Avenue MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 20% Control: 0.6:1 (219.42m ²) Proposal: 0.72:1 (263.04m ²)
DA2020/1419	23 Crescent Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 21% Control: 0.6:1 (129.5m ²) Proposal: 0.75:1 (162.3m ²)
DA2020/1745	92 Addison Road MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 31.67% Control: 0.6:1 (187.98m ²) Proposal: 0.79:1 (246m ²)
DA2020/0702	9 Steinton Street MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 22.5% Control: 0.75:1 (114.225m ²) Proposal: 0.91:1 (140m ²)
DA2020/0821	32 Beatrice Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 50.6% Control: 0.4:1 (230.28m ²) Proposal: 0.6:1 (347m ²)
DA2019/1463	95 Gurney Crescent SEAFORTH NSW 2092	Residential - Alterations and additions	FSR Variation of 59.4% Control: 0.4:1 (237.8m ²) Proposal: 0.63:1 (379m ²)
DA2020/0612	19 Sandy Bay Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 80% Control: 0.4:1 (111.6m ²) Proposal: 0.72:1 (201m ²)
DA123/2015	2 Moore Street CLONTARF NSW 2093	New dwelling	FSR Variation of 29.2% Control: 0.4:1
DA2019/0506	19 Moore Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 8% Control: 0.4:1 (196.2m ²) Proposal: 0.43:1
DA123/2017	88 Cutler Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 68.7% Control: 0.4:1 (145.2m ²) Proposal: 0.67:1 (245m ²)
DA2018/2004	92 Cutler Road, CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 12.5% Control: 0.4:1 Proposal: 0.45:1

- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d)
- Development Approval has already been granted for the site (DA2022/0005) which approved a larger GFA (and hence FSR) within a larger building envelope than that being sought by this new Development Application.

Future Development

- The proposed development will allow for the modernization of the split-level dwelling, providing a modern, open floor plan, with the principal living areas on the ground floor and the bedrooms on the first floor.
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other dwellings in the locality,
- Given the site context, the proposed variation is considered minor and reasonable, in that it complies with the 300m² GFA permitted by the Manly DCP for undersized lots and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot or surrounding dwellings,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any trees.
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in a dedicated home office. It utilises existing services, satisfying CI1.3(b).

Appropriate Environmental Planning Outcome

The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, compliant with DCP controls and consistent with development in the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation."

Comment:

The justification provided by the applicant is supported in that the applicant's justification to contravene the FSR development standard is well founded, excluding the assertions that Council should vary the FSR development standard as variations to Clause 4.4 - Floor Space Ratio of Manly LEP 2013 have been the subject of recent precedent within the former Manly Local Government Area. Each development application is assessed on its merits and on a site-by-site basis.

It is accepted that the site is an undersized allotment, as defined by the Manly DCP 2013, and that resulting three storey built form is generally consistent with the height, scale and bulk and nearby three storey developments within the visual catchment of the site. It is further accepted that the proposal complies with the exemption FSR provision within Clause 4.1.3.1 - 'Exceptions to FSR for Undersized Lots' of the Manly DCP 2013.

Furthermore, it is also accepted that the FSR breach does not have an adverse impact upon the natural environment, including the amenity of adjacent properties. The proposal is also considered to demonstrate consistency with the objectives of the FSR standard and zone objectives, thereby ensuring the development is in the public interest.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height of the existing dwelling house and scale of nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building.

In addition to the above, Clause 4.1.3.1 - 'Exceptions to FSR for Undersized Lots' of the Manly DCP 2013 stipulates that the site is an undersized allotment and that the 0.4:1 FSR requirement is typically applied to sites with an average site area of 750m². When applying the proposed gross floor area of 262m² to an average site area of 750m² the proposed FSR is 0.35:1, which complies with the 0.4:1 requirement.

For the reasons outlined above, it is considered that the bulk and scale of the development is consistent with the existing and desired character of the area.

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 new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building. Thus, the FSR non-compliance will not obscure any important landscape or townscape features.

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

Comment:

The proposed development does not result in the removal of prescribed vegetation. In addition, the additions are appropriately scaled and setback from side boundaries to minimise impacts upon adjacent residential development. The development also results in a net increase in deep soil landscaping on the site and provides additional native landscape planting, in turn enhancing the landscape character of the area. Overall, the proposal will maintain an appropriate visual relationship with the surrounding built and natural environment.

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 does not adversely compromise views from the public domain. In relation to the development's impacts upon existing water views from various private properties on the northern side of Moore Street, Council's previous assessment (via DA2022/0005) has considered the proposal in accordance with the view sharing principles established within the NSW Land and Environment Court case of *Tenacity Consulting v Warringah [2004] NSWLEC 140*. In summary, the non-compliant FSR results in negligible to minor view loss from private properties on the northern side of Moore Street. In this case, reasonable view sharing has been achieved. This matter is discussed in further detail within the section of this report relating to Clause 3.4.3 - 'Maintenance of Views' of the Manly DCP 2013.

Solar Access

As the subject site and surrounding properties maintain a north-south aspect, the additional overshadowing created from the proposal is not confined to one particular site between 9am - 3pm on June 21. The applicant's shadow diagrams indicate that the development does not eliminate more than 1/3 of existing solar access to adjacent private open space on June 21 (winter solstice), which satisfies the Manly DCP 2013 solar access provision. In addition, adequate solar access has been maintained to windows on adjacent properties that serve habitable rooms.

Visual Amenity

As discussed above, the additional building mass is contained within the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building when viewed from the street and surrounding properties. It is considered that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context.

Privacy

The additional floor space is appropriately separated from habitable rooms and private open space on adjacent properties to ensure that reasonable levels of visual and acoustical privacy are maintained between buildings. The privacy impacts generated by the elevated decking (which is not included in the FSR calculations) is discussed later within this report.

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 R2 Low Density Residential zone are:

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

Comment:

The proposal does not alter the residential land use and thus, the development will provide for the housing needs of the community within a low density residential environment.

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

Comment:

The proposal relates to low density residential development.

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

Comment:

The proposal maintained a residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.4 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.

5.21 Flood planning

The rear south-western corner of the site is identified within a 'low risk flooding precinct'. However, the proposed development, including swimming pool, is located outside of this area and not subject to any flood hazards.

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, it is considered that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

Conclusion

As demonstrated above, the proposed development is consistent with the requirements of Clause 6.4 of Manly LEP 2013.

6.9 Foreshore scenic protection area

The site is located within the Foreshore Scenic Protection Area under Manly LEP 2013. 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:

The proposed development does not compromise significant view lines from public places (i.e. road reserve) to the foreshore area. Furthermore, the site is located approximately 120m to the north of the foreshore area. The sufficient separation will ensure the development does not result in overshadowing of the foreshore area. The dwelling will retain a three storey appearance from the south and the additional building mass is contained within the existing side boundary setbacks, including increased setbacks on the upper floor, which will ensure that the height, bulk and scale of the dwelling does not detrimentally impact the visual amenity of the harbour or coastal foreshore. Overall, the proposal meets this requirement.

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

Comment:

The existing dwelling is not visually prominent when viewed from the foreshore area. The proposal maintains a three storey appearance from the south and the additional building bulk is generally contained within the existing building footprint. As such, 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.

6.12 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: 491.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 950m ² of site area	1 dwelling on 491.5m ² allotment - existing and unchanged	N/A	N/A
	Dwelling Size: minimum 134sqm required (based off 5 bedrooms and 5 bathrooms)	262m ²	-	Yes
4.1.2.1 Wall Height	East: 7.7m (based on gradient 1:5)	6.1m	-	Yes
	West: 7.7m (based on gradient 1:5)	7.8m	1.3%	No*
4.1.2.2 Number of Storeys	2 storeys	3 storeys - existing, however additional floor space provided on third storey	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change to existing	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.77m (1/3 of wall height)	1.35m (new additions lower floors) - 5.9m (new additions upper floor)	up to 51.26%	No
	West: 2.6m (1/3 of wall height)	1.65m (new additions)	36.54%	No
	Windows: no windows within 3m of side boundaries	10x new windows within 3m of side boundaries	up to 55%	No
4.1.4.4 Rear Setbacks (excluding swimming pools)	8m	13m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (294.9m ²) of site area	55% (268m ²)	8.9% (26.2m ²)	No**
	Open space above ground 25% (67.75sqm) of total open space	9.41% (25.5sqm) - area of ground floor elevated deck that has a 3m x 3m trafficable area	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (108.4sqm) of proposed open space	49% (132m ²) of proposed open space	-	Yes
	2 native trees	Nil (One (1) tree has been conditioned)	100%	No***
4.1.5.3 Private Open Space	18sqm	> 18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.6m above existing ground level and 0.6m above finished ground following backfill	60%	No
	Curtilage: 1m setback from side/rear boundaries	pool decking setback 0.4m from eastern side boundary	60%	No
	Water line: 1.5m setback from side/rear boundaries	1.5m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Notes:

(*)The wall height has been measured from the underside of the ceiling on the uppermost floor to the ground level below, in accordance with the Manly DCP 2013 definition. The parapet height is excluded from the wall height measurement.

(**)Open space areas that are less than 3m x 3m in dimension have been included from the total open space calculations, in accordance with the Manly DCP 2013 total open space definition.

(***) A condition has been recommended requiring one locally native canopy tree to be planted on the site.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	No	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The following controls are of relevance when considering the proposal's impact upon the privacy of adjacent properties:

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.
b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

Comment:

There are a number of new windows within 3m of the side boundaries. However, these windows contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings.

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

Lower Level Balcony

The proposed development features an elevated balcony situated at RL46.52, positioned between 0.9m - 2.5 meters above the ground level below. This balcony has a trafficable area of 30m², is directly accessible from bedroom 4 on the lower level. Designed to allow the enjoyment of harbour views towards the south, the balcony is intended for entertainment and relaxation purposes.

The large setback of 7 meters from the western side boundary and the placement of the deck on the lower level will contribute to maintaining reasonable amenity for the private open space on the western adjacent property at 23 Moore Street (refer to Figure 1). Furthermore, the presence of an existing retaining wall and a high fence on the eastern side boundary (see Figure 2) ensures the preservation of reasonable privacy levels for the eastern adjacent property at 19 Moore Street.

Figure 1:

b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.

c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.

Comment:

Adequate separation has been afforded from the opposing areas of private open space to ensure that a reasonable level of acoustical privacy is maintained. In addition, a condition has been recommended limiting all sound producing plant, equipment, machinery or fittings to no more than 5dB (A) above the background level when measured from any property boundary and/or habitable rooms.

Conclusion

Having regard to the above assessment, it is concluded that the proposal will satisfy the requirements of this control.

3.4.3 Maintenance of Views

Following the public exhibition period and up till the preparation of this report no submissions were received from adjoining and/or surrounding properties.

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

Description of non-compliance

The maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- Eastern elevation: 1:5 gradient, which permits a 7.7m wall height.
- Western elevation: 1:5 gradient, which permits a 7.7m wall height.

The maximum wall height of the proposed development is 6.1m on the eastern elevation which is compliant with the numeric requirement and 7.8m on the western elevation, which does not satisfy the numeric requirement.

Note: wall height is measured from the underside of the ceiling on the uppermost floor to the existing ground level. The parapet height is excluded, in accordance with the Manly DCP 2013 wall height definition.

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 proposed development complies with the height of buildings development standard and the roof form descends in height at the rear of the addition to correspond with the slope of the land. The dwelling house also remains three storeys in height, which is commensurate with the height and scale of surrounding dwelling houses on Moore Street.

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

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height and scale of the existing dwelling house and nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building.

(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:

It is considered that a reasonable view-sharing outcome has been achieved, and compliance with Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan (MDCP) is met.

(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:

As the subject site and surrounding properties maintain a north-south aspect, the additional overshadowing created from the proposal is not confined to one particular site between 9am - 3pm on June 21. The applicant's shadow diagrams indicate that the development does not eliminate more than 1/3 of existing solar access to adjacent private open space on June 21 (winter solstice), which satisfies the Manly DCP 2013 solar access provision. In addition, adequate solar access has been maintained to windows on adjacent properties that serve habitable rooms.

(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 site is not located within a recreation or environmental protection zone. Hence, this objective is not relevant to this application.

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.

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment of 750m². The site is an undersized allotment, being 491.5m² in area. When applying a gross floor area to an average site area of 750m², the proposed FSR would be 0.35:1, which complies with the 0.4:1 requirement.

The proposal therefore complies with this DCP exemption provision.

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

Description of non-compliance

Side Setbacks

The control requires development to be setback at least 1/3 of the adjacent wall height from side boundaries. In applying this principle, development must be setback 2.77m from the eastern side boundary and 2.6m from the western side boundary in order to satisfy the numeric requirement.

The proposed development is setback as follows:

- Eastern elevation: 1.35m (lower and middle floors) - 5.9m (new additions on first floor).
- Western elevation: 1.65m (new additions on all floors).

The proposal therefore fails to satisfy the numeric requirement.

Windows

The control stipulates that windows to habitable rooms must be setback at least 3m from side boundaries. The proposal includes (10) new windows within 3m of the eastern and western side boundaries, which does not satisfy the prerequisite.

Merit consideration:

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

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

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height of the existing dwelling house and scale of nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building. The development also incorporates additional native landscape treatment to enhance the landscaped character of the street.

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 earlier within this report, the proposed development does not result in unreasonable overshadowing of adjacent properties and provides a reasonable view sharing outcome. The offending windows within 3m of the side setback areas contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings. It is considered that the deck on the lower floor has minimal impacts given its low height, substantial side setback from the western side boundary and proximity of low usage rooms (bedroom 4) adjacent to the deck. Additionally, the small balcony on the first floor will be screened full height on both elevations to ensure reasonable privacy levels to the adjoining properties.

In addition to the above, whilst the proposal varies the numeric side setback requirements, the new additions maintain the existing side setbacks of the building, including the provision of additional setbacks on the upper level. This will ensure the development does not detract from the existing rhythm or pattern of spaces with regards to side setbacks. The proposal will also not preclude safe traffic conditions along Moore Street.

Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded with regards to the side setback requirements as the non-compliance does not give rise to unreasonable 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 landscape or topographic features. In addition, the proposal complies with the Manly DCP 2013 landscaped area numeric requirement and provisions additional native planting on the site. Adequate areas of outdoor open space are also provided to meet the recreational needs of the occupants within the dwelling.

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

Description of non-compliance

The control requires at least 60% (294.9m²) of the site area to consist of total open space (TOS). To be included as TOS open space areas must be at least 3m x 3m in dimension and must not relate to parking structures or vehicular access. The application proposes 55% (268m²) of the site area as TOS, which does not satisfy the requirements of the control.

The control also requires two native canopy trees to be located on the site. The site does not contain a native canopy tree. However, a condition has been recommended requiring one native canopy tree to be planted on the site.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal does not necessitate the removal of significant vegetation or topographic features on the site.

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

Comment:

The proposal complies with the Manly DCP 2013 landscaped area numeric requirement and provides additional native landscape treatment, thereby ensuring an acceptable landscaping outcome.

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

Comment:

As discussed earlier within this report, the proposal will not result in unacceptable amenity impacts, subject to recommended conditions.

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

Comment:

Suitable conditions have been recommended with this consent to ensure that stormwater is adequately managed.

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

Comment:

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

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

Comment:

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

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.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The swimming pool decking is setback 0.4m from the eastern side boundary, which does not comply with the 1m requirement for swimming pool concourses. Furthermore, the finished floor level of the pool concourse is sited 1.6m above the existing ground level, which does not comply with the 1m restriction. However, as fill is proposed within the rear yard the finished floor level will only be 0.6m above the finished ground level.

Merit consideration

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

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

Comment:

The swimming pool is adequately setback from the rear boundary and screen planting is proposed around the perimeter of the swimming pool to prevent overlooking to downslope properties. This will be further assisted by the 1.8m high pool fencing at the rear. In relation to the side setback issue, the swimming pool is located below a large retaining wall that divides the subject site and 19 Moore Street (eastern adjacent site). This will prevent direct overlooking between the opposing swimming pool areas.

Furthermore, a condition has been recommended which seeks to limit the noise of sound producing plant to no more than 5dB (A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

The pool is located in the rear yard and will not adversely impact upon the streetscape.

Objective 3) To integrate landscaping.

Comment:

The applicant proposes additional native landscape treatment on the site. Furthermore, a condition has been recommended by Council's Landscape Officer that requires a local native canopy tree to be planted on the site.

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

Comment:

The site is not bushfire prone.

Conclusion

Based on 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.

4.4.2 Alterations and Additions

The control stipulates that if alterations and additions involve demolition of more than half of the building then the development will be assessed as new work and the controls of this plan will apply to the whole building. In assessing this particular application, it is noted that the proposed development does not demolish more than half of the existing dwelling house and thus, the proposal satisfies the requirement of this control.

Furthermore, a review of the plans and supporting documentation against the Demolition Planning Principle established in the NSW Land and Environment Court Case of *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187 has concluded that the proposed development has been appropriately categorised as 'alterations and additions'.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal involves filling within the rear yard of the property to a height of approximately 1.8m, which exceeds the 1m requirement.

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 filling within the rear yard is not considered to be excessive given the circumstances of the site. Moreover, the application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated 9 December 2021) plus Comments on Updates to Plans dated 23 October 2023 which states that the proposal will achieve an acceptable level of risk, subject to adherence to the recommendations stipulated within the report. A condition has been recommended which seeks to ensure compliance with the recommendations within the Geotechnical Report and Comments on Updates to Plans.

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 \$8,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$810,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment 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 proposed FSR equates to 0.53:1 (262m²), which represents a 33.26% variation to the development standard. Despite this, the proposed development complies with the Manly DCP 2013 undersized allotment provision for the purposes of calculating FSR and the numeric non-compliance to the FSR development standard does not result in an unacceptable environmental planning outcome.

The application was exhibited for fourteen (14) days and no submissions were received in response.

When considered on its merits, the proposed development is found to be acceptable and worthy of support. Suitable conditions have been recommended with this consent to negate any adverse impacts to neighbouring properties.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/1578 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 2610, 21 Moore Street, CLONTARF, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-04	A	Lower Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-05	A	Ground Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-06	A	Upper Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-07	A	Roof Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-08	A	Site & Roof Level Plan	Natalie Sciberras	15 October 2023
DA-09	A	Lower Level Plan	Natalie Sciberras	15 October 2023
DA-10	A	Ground Level Plan	Natalie Sciberras	15 October 2023
DA-11	A	Level 1 Plan	Natalie Sciberras	15 October 2023
DA-12	A	East Elevation	Natalie Sciberras	15 October 2023
DA-13	A	West Elevation	Natalie Sciberras	15 October 2023
DA-14	A	North & South Elevations	Natalie Sciberras	15 October 2023
DA-15	A	Street Elevations	Natalie Sciberras	15 October 2023
DA-16	A	Section A-A	Natalie Sciberras	15 October 2023
DA-17	A	Section B-B	Natalie Sciberras	15 October 2023
DA-18	A	Landscape Plan	Natalie Sciberras	15 October 2023
DA-24	A	Schedule of Materials, Colours & Finishes	Natalie Sciberras	15 October 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document/Submitted
BASIX Certificate (A1374132)	1	Rod Pindar	27 October 2023
21 Moore Street, Clontarf (Geotech Comments on Updated to Plans)	1	White Geotechnical Group	23 October 2023
Geotechnical Investigation	1	White Geotechnical Group	9 December 2021
Waste Management Plan	1	-	8 November 2023

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

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

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

2. 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	Received
Ausgrid	Ausgrid Referral Response	5 December 2023

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

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

3. Prescribed Conditions

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following:

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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.

5. Retaining Walls not to encroach over Property Boundaries

The retaining walls nominated on the plans must be located wholly within the property boundaries. The retaining walls must not encroach onto adjoining land.

Reason: To ensure works do not encroach onto adjoining land.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,100.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$810,000.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent generally in accordance with the concept plans by Quantum Engineers, drawing number 210336 D1, D2, D3, D4, D5, D6 Issue D dated 27/10/2023 and in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments.

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

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

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

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

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

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

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

12. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will

affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

13. Structural Adequacy and Excavation Work

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

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

Reason: To provide public and private safety.

DURING BUILDING WORK

14. Tree and Vegetation Protection

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

15. Road Reserve

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

Reason: Public safety.

16. Removing, Handling and Disposing of Asbestos

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

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

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

17. Geotechnical Requirements

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

works.

Reason: To ensure geotechnical risk is mitigated appropriately.

18. Demolition Works - Asbestos

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

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

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

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

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

19. 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 Certifier.

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

20. 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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. Landscape Completion

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing DA-18 by Natalie Sciberras dated 15/10/23), and inclusive of the following conditions:

i) landscape works are to be contained within the legal property boundaries,

ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,

iii) one native tree capable of attaining at least 6 metres in height at maturity shall be planted within the property to either the front or rear, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or the Tree Guide, and the following trees are suggested for consideration: Blueberry Ash - *Elaeocarpus reticulatus*; Saw-tooth Banksia - *Banksia serrata*; Magenta Lilly Pilly - *Syzygium paniculatum*; Golden Penda - *Xanthostemon chrysanthus*; Weeping Lillypilly - *Waterhousea floribunda*,

iv) all tree planting shall meet the requirements of Natspec - Specifying Trees, and shall be planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,

v) mass planting to the front, central and rear gardens as shown shall include shrub planting at minimum 1 metre intervals and a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and all other plants at minimum 4 plants per metre square at a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

vii) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

22. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

23. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent. Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

24. Swimming Pool Requirements

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

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

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

25. Landscape Maintenance

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

d) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

26. Swimming Pool/Spa Motor Noise

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

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

27. Lower Ground Floor not to be used for Separate Occupancy

The lower ground floor of the dwelling house is not permitted to be used, or adapted to be used, for separate occupancy.

Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.