

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2021/2337 |
| Responsible Officer: | Clare Costanzo |
| Land to be developed (Address): | Lot 2 DP 534547, 8 A Linkmead Avenue CLONTARF NSW 2093 |
| Proposed Development: | Alterations and additions to a dwelling house including a swimming pool |
| Zoning: | Manly LEP2013 - Land zoned C3 Environmental Management |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Andrew David Little Vanessa Delphine Peltier |
| Applicant: | Andrew David Little |
| Application Lodged: | 07/12/2021 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 13/12/2021 to 18/01/2022 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 12% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 975,000.00 |

EXECUTIVE SUMMARY

The application is for the proposed alterations and additions to an existing dwelling including a swimming pool and carport at 8A Linkmead Avenue, Clontarf.

The application requests a 12% variation to Clause 4.3 Height of Buildings of the MLEP 2013 and as such triggers referral to the Development Determination Panel (DDP) for determination. The applicant has provided a Clause 4.6 written request to vary a development standard to support the application.

No submissions were received with reference to the subject application.

The application is considered to be consistent with the relevant objectives of the MLEP 2013 and MDCP and has therefore been recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of alterations and additions to an existing dwelling including a new carport and swimming pool.

The following works are proposed:

Lower Ground Floor

- Alterations and additions to existing lower ground floor to provide for kids room/guest, laundry and storage, ensuite, internal and external stairs.

Ground Floor

- Alterations and additions to existing ground floor to provide for a new living, study, powder, open plan dining, kitchen with pantry, living area, balcony and external stairs.

First Floor

- Alterations and additions to existing first floor level to provide for extension of master bedroom, robe and bedroom 2.

External works

- Replacement of existing carport, new access to dwelling, new swimming pool and associated paving and landscaping.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 2 DP 534547 , 8 A Linkmead Avenue CLONTARF NSW 2093 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the southern side of Linkmead Avenue. The site is a battle axe allotment.</p> <p>The site is irregular in shape with a frontage of 3.44m along Linkmead Avenue. The site has a minimum depth of 22.405m, excluding the access handle (eastern side boundary), and a maximum depth of 59.105m including the access handle (western side boundary). The angled rear boundary measures a total of 29.375m. The site has a surveyed area of 768m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a three storey rendered residence with a tile roof. A carport and attached timber deck and shed are located within the front yard. Vehicular access to the site is available via a steep concrete driveway from Linkmead Avenue.</p> <p>The site has a steep slope to the south with an average slope of 15%.</p> <p>The site is characterised by a variety of small, medium and larger trees and vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by <describe the built form of the surrounding area>.</p> |

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:

- Pre-lodgement Meeting PLM2020/0115 was held on 18/06/2020 for Alterations and Additions to a dwelling house including a swimming pool.

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 | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Manly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – | None applicable. |

| Section 4.15 Matters for Consideration | Comments |
|--|---|
| Provisions of any planning agreement | |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p> |

| Section 4.15 Matters for Consideration | Comments |
|--|--|
| | 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 development application has been publicly exhibited from 13/12/2021 to 18/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

| Internal Referral Body | Comments |
|------------------------|--|
| Landscape Officer | <p>The development application is for alterations and additions to the existing dwelling, a swimming pool and associated works. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral.</p> <p>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):</p> <ul style="list-style-type: none"> • 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 where applicable • 4.1.9 Swimming Pools, Spas and Water Features <p>The existing site contains two prescribed trees protected by the DCP and both, identified as tree numbers 1 and 2 - Paperbarks, are proposed for retention and recommendations for tree protection measures are provided in the Arboricultural Impact Assessment, and conditions shall be imposed. Six other trees identified as Exempt</p> |

| Internal Referral Body | Comments |
|----------------------------------|---|
| | <p>Species under the DCP are proposed for removal and it is noted that such trees do not require Council consent.</p> <p>Landscape Plans are submitted with the development application, providing an indication of existing trees retained, and landscape surface treatments and planting including a mix of small trees, shrubs and other plants, and the Landscape Plans satisfies the landscape controls of the DCP.</p> |
| NECC (Bushland and Biodiversity) | <p>The application seeks approval for alterations and additions to existing dwelling and construction of a swimming pool. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> Coastal Environment Area <p>Manly Local Environmental Plan (MLEP)</p> <ul style="list-style-type: none"> Clause 6.5 (Terrestrial Biodiversity) <p>Manly Development Control Plan (MDCP)</p> <ul style="list-style-type: none"> Clause 3.3.1. a) iv) Landscaping Design <p>The application does not require the removal of prescribed trees or vegetation, instead the six (6) exempt trees (by species or within 2m of dwelling) are proposed for removal. These trees (T.3, 4, 5, 6, 7 & 8) are exempt within the Northern Beaches and do not require Council approval to remove.</p> <p>It is noted that the proposal requires an Asset Protection Zone (APZ) to be established in perpetuity over the site, it is however noted that vegetation within the site is currently in a managed state, as confirmed by the Bush Fire Assessment Report:</p> <ul style="list-style-type: none"> <i>"The asset protection zone is existing, and no tree removal or vegetation modification is required to establish it. As such there is no impact on the environment of the proposed bushfire protection measures."</i> <p>Subject to conditions, no objection is raised against the proposal.</p> |
| NECC (Coast and Catchments) | <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> |

| Internal Referral Body | Comments |
|------------------------|---|
| | <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p><i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have/have not been met.</p> |

| Internal Referral Body | Comments |
|-------------------------------------|--|
| | <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd dated November 2021, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p> |
| NECC (Development Engineering) | <p>The proposed development does not require OSD and connection to the existing system is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p> |
| Parks, reserves, beaches, foreshore | <p>The development application is for alterations and additions to the existing dwelling, a swimming pool and associated works.</p> <p>The development site adjoins Clontarf that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>Public access to the Reserve is not impacted by the development works and thus no concerns are raised.</p> |

| External Referral Body | Comments |
|----------------------------|--|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable. |
| Aboriginal Heritage Office | <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A432025 dated 24 November 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Coastal Management) 2018

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

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

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

Comment:

On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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 | 9.69m | 12% | No |
| | | | | |

| | | | | |
|-------------------|-----------------------------------|------------------------------------|-----|-----|
| Floor Space Ratio | FSR: 0.4:1 (307.2m ²) | FSR: 0.38:1 (290.2m ²) | N/A | Yes |
|-------------------|-----------------------------------|------------------------------------|-----|-----|

Compliance Assessment

| Clause | Compliance with Requirements |
|---|------------------------------|
| 2.7 Demolition requires development consent | Yes |
| 4.3 Height of buildings | No |
| 4.4 Floor space ratio | Yes |
| 4.6 Exceptions to development standards | Yes |
| 6.1 Acid sulfate soils | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |
| 6.5 Terrestrial biodiversity | Yes |
| 6.8 Landslide risk | Yes |
| 6.9 Foreshore scenic protection area | Yes |
| 6.10 Limited development on foreshore area | Yes |
| 6.12 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 9.69m (RL 28.37) existing maximum RL 28.87 |
| Percentage variation to requirement: | 12% |

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings 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 4.3 – Height of Buildings 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 (attached to this report as an Appendix) 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 applicants written request argues, in part:

- The new works maintain a bulk and scale which is consistent with the surrounding locality
- The proposal will not exceed the existing ridge line (RL 28.82) of the existing dwelling. When measured from the natural ground level to the maximum RL the height of the building is approximately 8 metres.
- The works are not expected to have any impacts on views enjoyed by neighbouring properties or limit solar access enjoyed by the adjoining properties
- The general bulk and scale of the dwelling as viewed from the public areas in Linkmead Avenue and from the surrounding private properties will be largely maintained

The proposed alterations and additions have been designed to be sympathetic to the character of the locality and respond to the site constraints. The development is considered to be consistent with the objectives of the act and displays high quality design and a variety of colours and finishes to mitigate any perceived bulk.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The surrounding area is predominantly characterised by two and three storey dwellings. The proposal seeks alterations and additions to an existing non compliant building and will keep within the existing maximum ridge line (RL).

The proposed external colour and materials palette utilises darker finishes to the building facade and is intended to ensure that the buildings visual height and scale is further minimised.

The dwelling is not visible from the streetscape, however it is nonetheless considered to be consistent with the desired character of the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed alterations and additions to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Furthermore, the modulation of the building elevations where visible from the public domain and

neighbouring properties minimises the visual impact of the development.

c) to minimise disruption to the following:

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

Comment:

As a result of the slope of the site towards the south, the site and adjoining sites enjoy views towards Clontarf Reserve and Middle Harbour waterway.

The proposal is downhill of adjoining properties and proposes a low profile roof that will allow for existing views to be maintained through and over the site.

Views from the surrounding public spaces are not expected to be adversely affected.

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:

Shadow diagrams have been provided as part of the application. These diagrams confirm the alterations and additions will not result in any unreasonable overshadowing.

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 works are within an existing disturbed area of the site and maintain suitable separation from the foreshore. The site is not within a conservation area or in the immediate vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Linkmead Avenue.

A suitable area of soft landscaping is maintained.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant

- geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment:

It is considered the proposal is consistent with the zone objectives and is consistent with the desired character of the surrounding locality. The proposed alterations and additions maintain a similar bulk and scale to the existing development on site and will therefore not be overbearing within the foreshore locality.

The proposal will not require the removal of any significant trees or vegetation, with the works mostly over the existing footprint. The remaining vegetation within the site will be retained and protected and the property boundaries are capable of accommodating further plantings.

The works respect the sloping topography of the site.

Conclusion:

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

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

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

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

6.2 Earthworks

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

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

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

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

locality of the development

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

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

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

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

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

Comment:

The development is not likely to have an adverse impact on any of the above. Subject to conditions, no objection is raised against the proposal.

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

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

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

Comment:

The development has been reviewed by Council's Natural Environment Biodiversity officer who provides support subject to recommended conditions of consent. These recommendations have been included as part of the development consent.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
(b) is restricted on unsuitable land, and
(c) does not endanger life or property.

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,*
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The application has been reviewed by Council's Development Engineer who has supported the works subject to recommended conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or
(c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer who has supported the works subject to recommended conditions of consent.

6.9 Foreshore scenic protection area

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

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

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

Comment:

The proposal comprises of alterations and additions to an existing dwelling and is not likely to result in any adverse impacts when viewed from the foreshore area. The proposal will not result in any overshadowing of the foreshore area or unreasonable view loss from a public place to the foreshore.

The works have been designed to complement the existing character of the locality and are not likely to have any adverse impacts.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 768m ² | Requirement | Proposed | % Variation* | Complies |
|---|--|--|--------------------------|------------------------|
| 4.1.2.1 Wall Height | NE: 8m (based on gradient 1:4+) | 7.9m (maximum) | N/A | Yes |
| | SW: 8m (based on gradient 1:4+) | 8.5m (maximum) | 6% | No |
| 4.1.2.3 Roof Height | Height: 2.5m | 0.6m | N/A | Yes |
| | Parapet Height: 0.6m | 0.1m | N/A | Yes |
| | Pitch: maximum 35 degrees | <35 degrees | N/A | Yes |
| 4.1.4.1 Street Front Setbacks | Prevailing building line / 6m | 2.3m (carport) 13.8m (dwelling) 6m (swimming pool) | 62% N/A N/A | No Yes Yes |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | NE: 2.63m (based on wall height) SW: 2.83m (based on wall height) | 1.6m (all levels) 10.6m (lower ground) 1.1m (ground) 3.1m (first floor) | 39% N/A 61% N/A | No Yes No Yes |
| | Windows: 3m | NE: 1.6m (ground and first) SW: 2.4m (ground) SW: 5.8m (first) | 47% 20% N/A | No No Yes |
| 4.1.4.4 Rear Setbacks | 8m | Nil | 100% | No |
| 4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2 | 8m (rear boundary) | Nil | 100% | No |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4 | Open space 60% of site area | 41% (315m ²) | 32% | No |
| | Open space above | 6% (20.4m ²) | N/A | Yes |

| | | | | |
|---|--|----------------------------|------------|------------------|
| | ground 25% of total open space | | | |
| 4.1.5.2 Landscaped Area | Landscaped area 40% of open space | 60% (188.4m ²) | N/A | Yes |
| | 3 native trees | 3 trees | N/A | Yes |
| 4.1.5.3 Private Open Space | 18sqm | <18sqm | N/A | Yes |
| 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas | Maximum 50% of frontage up to maximum 6.2m | 6m | N/A | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | 1m height above ground | 1m (0.7m natural ground) | N/A | Yes |
| | 1m curtilage/1.5m water side/rear setback | 1.3m (both) | N/A 13% | Yes No |
| Schedule 3 Parking and Access | Dwelling 2 spaces | 2 spaces | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |
| 3.1.1 Streetscape (Residential areas) | Yes | Yes |
| 3.3.1 Landscaping Design | Yes | Yes |
| 3.3.2 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | Yes | Yes |
| 3.4.2 Privacy and Security | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes | Yes |
| 3.5.1 Solar Access | Yes | Yes |
| 3.5.3 Ventilation | Yes | Yes |
| 3.5.5 Landscaping | Yes | Yes |
| 3.5.7 Building Construction and Design | Yes | Yes |
| 3.7 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 |
| 4.1.2 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 |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | Yes | Yes |
| 4.1.7 First Floor and Roof Additions | Yes | Yes |
| 4.1.8 Development on Sloping Sites | Yes | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | No | Yes |
| 4.4.1 Demolition | Yes | Yes |
| 4.4.2 Alterations and Additions | Yes | Yes |
| 4.4.5 Earthworks (Excavation and Filling) | Yes | Yes |
| 5 Special Character Areas and Sites | Yes | Yes |
| 5.4.1 Foreshore Scenic Protection Area | Yes | Yes |

Detailed Assessment

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

Description of non-compliance

The proposal does not comply with the maximum height of buildings control. A Clause 4.6 written request to vary a development standard has been provided. This has been addressed earlier within this report and is supported on merit.

The works propose a maximum wall height of 8.5m along the south western elevation. This is a 6% variation to the required wall height of 8m based on a gradient of 1:4+.

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 proposal does not comply with the wall height along the south western elevation as a result of the existing site constraints being the steep slope and existing development. The works do not exceed the existing ridgeline and are in line with the desired future streetscape character of the locality.

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

Comment:

The proposal has been well articulated through a variety of colours and finishes to mitigate any perceived bulk. In addition the works do not exceed the existing ridge line and follow the sloping topography of the site.

(c) to minimise disruption to the following—

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

Comment:

The variation to the wall height control is not likely to result in any view loss to nearby residential development from public spaces, nearby residential development to public spaces and views between public spaces.

(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:

Shadow diagrams have been provided as part of the application. The shadow diagrams indicate there will be no unreasonable overshadowing impacts as a result of the development.

(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 proposed alterations and additions do not exceed the existing maximum ridge line of the dwelling and are mostly built over the existing footprint. As a result the works have been designed to respect the existing vegetation and topography on site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported / is not supported, in this particular circumstance.

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

Description of non-compliance

The carport is proposed to be setback 2.3m from the front setback and therefore presents a variation of 62% to the required control of 6m.

The dwelling is setback 1.6m (all levels) along the northern elevation and therefore presents a variation of 39% to the required control of 2.63m (based on wall height of 7.9m).

The dwelling is setback 1.1m (ground floor) along the south western elevation and therefore presents a variation of 61% to the required control of 2.83m (based on wall height of 8.5m).

The dwelling has a nil setback to the rear and therefore presents a variation of 100% to the control requiring 8m.

Strict compliance with this control is limited by the siting of the existing dwelling and the irregular configuration of the battle-axe allotment.

The existing dwelling has a nil setback to the rear. The nil setback was supported at the prelodgement meeting (PLM2020/0115) conducted on the 18 June 2020 provided comments that the nil setback to the rear is considered acceptable on merit.

The dwelling also presents a variation to the window setback control requiring 3m by 47% along the north eastern elevation and 20% along the south western elevation. All windows comply with the BCA control of a minimum setback of 900mm.

The proposed setbacks are all consistent with the setbacks of the existing dwelling currently on 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 maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposal is located on a steeply sloping battle axe site and is therefore not visible from the streetscape. Nonetheless the works are well setback from the streetscape and adjoining properties and are consistent with the desired spatial proportions, the street edge and landscape character.

The carport is generally located in a similar position to the existing carport, within the front setback. Given the battle axe configuration of the site the carport location is considered appropriate.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal is not expected to result in any adverse impacts on any of the above. It is considered there is sufficient building separation, in conjunction with existing landscaping to ensure there will be no direct view lines available.

Shadow diagrams have been provided as part of the application. The shadow diagrams confirm there will be no unreasonable overshadowing and maintain equitable access to light, sunshine and air movement.

In addition the works will not exceed the existing ridge line and therefore will not result in any unreasonable view loss.

There are no changes to the traffic conditions.

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

Comment:

The proposal is governed by the site constraints being the steep sloping topography, battle axe configuration and the siting of the existing dwelling. The proposal promotes flexibility by promoting high quality design that effectively responds to the constraints.

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 new works are contained within an existing disturbed area of the site and do not seek to remove any significant trees or vegetation. The remaining vegetation within the site will be retained and protected and the property remains capable of accommodating additional planting, including deep soil zones.

The proposal has been assessed by Council's Landscape and Biodiversity Officer who confirm the application satisfies the provisions of all relevant controls, subject to the recommended conditions of consent.

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

Comment:

The proposal provides sufficient building separation to assist in appropriate bushfire asset protection zones. The application is supported subject to following recommendations provided within the Bushfire Report. These recommendations have been included as conditions.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal comprises of a total open space of 41% or 315m² which is a 32% variation to the control requiring 60%. The non compliance is attributed to the irregular shaped battle axe allotment. It should be noted the driveway and hardstand area is not numerically included in the open space. Therefore limiting strict compliance with the control.

The proposal complies with the minimum required landscaped area.

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 seek to remove any important landscape features and vegetation. The proposal has been assessed and is supported by Council's Biodiversity and Landscape Officers, subject to recommended conditions of consent.

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 comprises of a compliant landscaped area of 188.4m² or 60% and 3 new native trees. In addition, conditions have been recommended to ensure the maintenance and protection of the existing vegetation on site.

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

Comment:

The rear boundary of the site adjoins a public reserve, with overgrown vegetation and a steeply sloping topography, which minimises the visibility of the works within the foreshore locality and from adjoining sites.

The works do not exceed the existing ridge line and are not considered to have any unreasonable impacts on amenity, including sunlight, privacy and views as a result.

The proposed works, including the new swimming pool will enhance the function of the open space area.

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

Comment:

It is considered there is sufficient landscaped area on site to maximise water infiltration.

The application has been assessed by Council's Development Engineer who is supportive of the application, subject to recommended conditions.

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

Comment:

The proposal directly adjoins a public reserve. The works are not considered to lead to the degradation of private and public open space.

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

Comment:

Habitat for wildlife is maintained as there are no changes to the existing general footprint of the dwelling.

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

4.1.9 Swimming Pools, Spas and Water Features

Detailed Description of non-compliance

The waterline of the proposed swimming pool is setback 1.3m which is a variation of 200mm or 13% to the control requiring 1.5m to the side boundary.

Merit consideration:

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

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

Comment:

The proposed swimming pool is not expected to result in any unreasonable privacy impacts given the generous building separation. A site visit was conducted at 8A Linkmead Avenue and it was evident there will be no direct lines of sight available within close proximity to or from the location of the new swimming pool.

A condition has been recommended as part of the development ensuring management of the acoustic impact of filter noise.

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

Comment:

The site is a battle-axe allotment and is not visible from the streetscape as a result of the steep sloping topography. The location of the swimming pool is considered appropriate given the existing development on site.

Objective 3) To integrate landscaping; and

Comment:

The site maintains a compliant landscaped area and will continue to provide opportunities for deep soil landscaping.

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

Comment:

The site is located within a bushfire prone area. The swimming pool has the ability to become an emergency water resource if required.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this specific 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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$9,750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,000.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2021/2337 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 2 DP 534547, 8 A Linkmead Avenue, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|--|------------------|--------------------|
| Drawing No. | Dated | Prepared By |
| DA002 Site Plan + Site Analysis RevA | 24 November 2021 | CM Studio |
| DA101 Existing + Demo LG Plan RevA | 24 November 2021 | CM Studio |
| DA102 Existing + Demo GF Plan RevA | 24 November 2021 | CM Studio |
| DA103 Existing + Demo L1 Plan RevA | 24 November 2021 | CM Studio |
| DA110 Proposed LG Plan RevA | 24 November 2021 | CM Studio |
| DA111 Proposed GF Plan RevA | 24 November 2021 | CM Studio |
| DA112 Proposed L1 Plan RevA | 24 November 2021 | CM Studio |
| DA120 Proposed Pool + Section RevA | 24 November 2021 | CM Studio |
| DA210 Proposed NE Elevation RevA | 24 November 2021 | CM Studio |
| DA211 Proposed SE Elevation RevA | 24 November 2021 | CM Studio |
| DA212 Proposed SW Elevation RevA | 24 November 2021 | CM Studio |
| DA212 Proposed SW Elevation RevA | 24 November 2021 | CM Studio |
| | | |

| | | |
|----------------------------------|------------------|-----------|
| DA213 Proposed NW Elevation RevA | 24 November 2021 | CM Studio |
| DA301 Section 1 RevA | 24 November 2021 | CM Studio |
| DA302 Section 2 RevA | 24 November 2021 | CM Studio |
| DA303 Section 3 RevA | 24 November 2021 | CM Studio |
| DA304 Section 4 RevA | 24 November 2021 | CM Studio |
| DA910 Schedule of materials RevA | 24 November 2021 | CM Studio |

| Engineering Plans | | |
|---|------------------|--------------------------------|
| Drawing No. | Dated | Prepared By |
| CP100 Cover page, Notes & Calculations RevC | 22 November 2021 | RTS Civil Consulting Engineers |
| SW100 Level 1 & Roof Conceptual Stormwater Management Plan RevC | 22 November 2021 | RTS Civil Consulting Engineers |
| Lower & Ground Floor Conceptual Stormwater Management Plan RevC | 22 November 2021 | RTS Civil Consulting Engineers |
| SW200 Stormwater Drainage Details RevC | 22 November 2021 | RTS Civil Consulting Engineers |
| SE100 Site Sediment & Erosion Control Plan RevC | 22 November 2021 | RTS Civil Consulting Engineers |
| SE200 Sediment & Erosion Control Details RevC | 22 November 2021 | RTS Civil Consulting Engineers |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|------------------|---|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BASIX Certificate No. A432025 | 24 November 2021 | CM Studio |
| Arboricultural Impact Assessment Report | 28 October 2021 | rain tree consulting |
| Bushfire Assessment Report | 24 August 2021 | Australian Bushfire Consulting Services |
| Geotechnical Report | 23 November 2021 | White Geotechnical Group |

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

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

| Landscape Plans | | |
|--|-----------------|---------------------------------------|
| Drawing No. | Dated | Prepared By |
| LS01 Landscape Site Plan RevB | 3 November 2021 | Melissa Wilson Landscape Architect |
| LS02 Landscape Ground Floor Plan RevB | 3 November 2021 | Melissa Wilson Landscape Architect |
| LS03 Landscape Indicative Large Shrubs + Low Planting RevB | 3 November 2021 | Melissa Wilson Landscape Architect |

| | | |
|---------------------------|-----------------|---------------------|
| LS05 Landscape Notes RevB | 3 November 2021 | Melissa Wilson Land |
|---------------------------|-----------------|---------------------|

| Waste Management Plan | | |
|------------------------------|------------------|---------------------------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 16 November 2021 | Andrew Little & Vanessa Peltier |

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **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.

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,750.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$975,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the inter-allotment drainage easement burdening the site.

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

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

7. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

8. **Boundary Identification Survey**

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

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

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

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

9. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

10. **Compliance with Standards**

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

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

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

11. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

i) nil prescribed trees

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal, and for reference these include: tree 3 - Bouganvillea; tree 4, 5 and 6 - Bangalow Palm; and tree 7 and 8 - Cocus Palm

Reason: To enable authorised development works.

13. Works on Land Owned or Managed By Council

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

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.) and landscaping works on land owned or managed by Council.

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

14. Installation and Maintenance of Sediment and Erosion Control

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

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an 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 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 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 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 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 to the Certifying Authority,
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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 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 Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, including as listed in the following sections:

- i) section 2.2 Recommended tree management & protection principles
- ii) section 2.3 General tree protection requirements
- iii) Appendix- A: Tree Protection & Fencing Detail

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

16. 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.

17. No Access Through Land Owned or Managed by Council

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

Reason: Public safety, landscape amenity and tree protection.

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

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

Reason: Public safety and environmental protection.

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

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

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

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

20. **Survey Certificate**

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

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

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

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

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

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

22. **Waste Management During Development**

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

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

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

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

23. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have

been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
<https://5milliontrees.nsw.gov.au/>

24. **Condition of Retained Vegetation**

Prior to the issue of any Occupation Certificate a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

25. **Stormwater Disposal**

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

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

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

26. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Melissa Wilson Landscape Architects 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

27. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

28. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 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

29. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

30. Protection of Habitat Features

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

Reason: To protect wildlife habitat.

31. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

32. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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