

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2025/0002
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Responsible Officer:	Michael French
Land to be developed (Address):	Lot B DP 306453, 286 Sydney Road BALGOWLAH NSW 2093
Proposed Development:	Review of Determination of Application DA2024/1201 for Demolition works and construction of a dual occupancy and strata subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Blue Sky Building Designs Pty Ltd

Application Lodged:	26/02/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	06/03/2025 to 20/03/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 6.35%
Recommendation:	Approval

Estimated Cost of Works:	\$ 982,560.00
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EXECUTIVE SUMMARY

This application seeks consent for demolition works and construction of a dual occupancy and strata subdivision.

The application is referred to the Development Determination Panel (DDP) in accordance with Council's referral criteria, as it seeks review of a determination under Division 8.2 Reviews of the *Environmental Planning and Assessment Act 1979*.

DA2024/1201 was refused by Council following advice from Council's Development Engineer, who raised concerns regarding stormwater management. These related to the lack of evidence confirming

the existence and connection of the inter-allotment drainage easement, as well as non-compliance with Council's Water Management for Development Policy. Further details regarding the reasons for refusal are provided elsewhere in this report.

The proposed development under this application (REV2025/0002) is substantially the same as that under DA2024/1201, with the only change being an amendment to the stormwater configuration. Council's Development Engineer has supported the application as proposed.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. No submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

This report concludes with a recommendation that the DDP **approve** the application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

This Application seeks consent for the demolition of existing structures and the construction of a new dual occupancy development and strata subdivision. The proposal involves two new dwellings, each comprising the following layout:

- **Ground Level (Level 0)**
Master bedroom with ensuite opening to the rear yard, and a laundry.
- **First Floor (Level 1):**
Single car garage, open plan kitchen, living and dining area opening onto a rear-facing deck, and a WC.
- **Second Floor (Level 2):**
Two bedrooms and a bathroom, with Bedroom 1 featuring a small rear-facing balcony.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Local Environmental Plan 2013 - Zone R1 General Residential

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

SITE DESCRIPTION

Property Description:	Lot B DP 306453 , 286 Sydney Road BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Sydney Road.</p> <p>The site is irregular in shape with a frontage of 14.948m along Sydney Road and a maximum depth of 14.948m. The site has a surveyed area of 486.9m².</p> <p>The site is located within the R1 General Residential zone and currently accommodates a single storey dwelling.</p> <p>The site slopes from the southern front to the northern rear with an approximate cross-fall of 4m.</p> <p>The site has a mix of vegetation throughout. There are no details of any threatened species on site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of low density residential development.</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:

DA2024/1201 dated 16 December 2024: Demolition works and construction of a dual occupancy and strata subdivision. Refused on Stormwater related reasons.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application or modification application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Sections 8.3 (2) and 8.10 (1) of the Act, an application for review of a determination must be made and determined within 6 months of the date the decision appealed against is notified or registered on the NSW Planning Portal. The notice of determination for DA2024/1201 was notified on the NSW Planning Portal on 16 December 2024. The review application was lodged on 12 February 2025 and is to be determined by the Development Determination Panel on 28 May 2025, which is within the legislated 6-month review period.

Section 8.3 (3) provides that Council may review a determination if, in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report. A comparison of the original plans under DA2024/1201 and the plans submitted under this

review application has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review), and the nature of the intended land use remains the same.

REASONS FOR REFUSAL OF PREVIOUS APPLICATION (DA2024/1201)

- 1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013.**

Particulars:

- Council's Development Engineering team is not supportive of the proposed development due to issues with the proposal to discharge stormwater into an existing inter-allotment easement at the rear of the subject site, with inadequate information submitted to demonstrate that this inter-allotment easement exists in its entirety and connects to a Council system.
- Insufficient information has been provided with the application to demonstrate compliance with the Northern Beaches Council Water Management for Development Policy.
- Council cannot be satisfied that the proposed development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

- 2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.7 Stormwater Management of the Manly Development Control Plan.**

Particulars:

- Council's Development Engineering team is not supportive of the proposed development due to issues with the proposal to discharge stormwater into an existing inter-allotment easement at the rear of the subject site, with inadequate information submitted to demonstrate that this inter-allotment easement exists in its entirety and connects to a Council system.
- Insufficient information has been provided with the application to demonstrate compliance with the Northern Beaches Council Water Management for Development Policy.
- The proposed development does not comply with the requirements or underlying objectives of this Clause in that the proposed development does not demonstrate compliance with the Northern Beaches Council Water Management for Development Policy.

- 3. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.**

Particulars:

- The proposed development is contrary to relevant requirements of the MLEP 2013, MDCP and Northern Beaches Council Water Management for Development Policy. As such, the proposal will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be

contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

Refusal reason #1

Comment:

Council's Development Engineer has reviewed the application in relation to the revised stormwater system. The revised plans and adjoining information have confirmed that the revised system is structurally and functionally acceptable where there is no reasonable ability to secure an easement through downstream stream properties and where TfNSW supports the proposal to drain stormwater to Sydney Road. Council's Development Engineer is satisfied that the proposal complies with the Northern Beaches Council Water Management for Development Policy. As such, Council can be satisfied that the proposed development will adequately minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters. The proposal is now compliant with the requirements of *Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013*. The proposal is now supported in this regard.

Refusal reason #2

Comment:

Council's Development Engineer has reviewed the application in relation to the revised stormwater system. The revised plans and adjoining information have confirmed that the revised system is structurally and functionally acceptable where there is no reasonable ability to secure an easement through downstream stream properties and where TfNSW supports the proposal to drain stormwater to Sydney Road. Council's Development Engineer is satisfied that the proposal complies with the Northern Beaches Council Water Management for Development Policy. The proposal is now compliant with the requirements and objectives of *Clause 3.7 Stormwater Management of the Manly Development Control Plan*. The proposal is now supported in this regard.

Refusal reason #3

Comment:

Council's Development Engineer has reviewed the application in relation to the revised stormwater system and is satisfied that the proposal complies with the Northern Beaches Council Water Management for Development Policy. Therefore, Council can be satisfied that the proposal is considered to be in public interest. The proposal is now supported in this regard.

Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal and the proposal satisfies the requirement of Section 8.3 (3) of the Act.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/03/2025 to 20/03/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is the subject of a Review of Determination. Previous application raised no objections from Landscape Assessment, subject to conditions.</p> <p>The current application indicates an alternate Stormwater Plan, which does not appear to impact on the proposed landscape elements. Comments from the previous DA application are as follows:</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to):</p> <p>3.3.1 Landscape Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 3.3.3 Footpath Tree Planting; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. The application is for strata subdivision and construction of a dual occupancy. An Arboricultural Impact Assessment (AIA) and a Landscape Plan is submitted for assessment by Landscape Referral.</p> <p>Should the application be approved the existing tree planting within the property will require removal as will one existing street tree. The AIA report identifies five prescribed trees within the property that require removal (trees 2, 4, 7, 8 and 10) amongst other non-prescribed and exempt species, whilst the existing Ulmus street tree (tree 1) is impacted by the proposed crossover and driveway across the road reserve verge. The proposed crossover and driveway is wide and regardless any reduction on crossover and driveway width will still impact the existing street tree. Replacement street tree planting will be the subject of imposed conditions to satisfy MDCP 3.3.3 and in accordance with species selected under the Manly Council Street Tree Master Plan for this part of Sydney Road.</p> <p>The submitted Landscape Plan is noted and requires adjustment of the tree species selection as the nominated tree planting is either exempt species (Fraxinus) or short-lived (Acacia) or not in accordance with MDCP 3.3.1 or 4.1.5.2, and conditions shall be imposed. Nominated landscape area shall be mass planted and maintained as either garden planting or lawn, and not replaced with hard surface pavements.</p> <p>The proposal is therefore supported.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Comments 2 may 2025</p> <p>The applicants engineer has provided the required documentation that supports the rear above ground stormwater detention system being located over the Sydney Water Sewer main . No objections to the development subject to conditions.</p> <p>Previous comments</p> <p>The stormwater management plans as prepared by Richard Weber, have been reviewed and are not supported for the following reasons: 1) The location of the rear above ground storm water detention area including sandstone walling is located with the zone of influence of the Sydney water sewer main and needs to be relocated or redesigned to be clear of the zone of influence of the sewer main. Amended engineering plans are to provide evidence that this requirement been complied with .</p> <p>Please note the proposal for a charged storm water line and disposal of roof storm water to Sydney Road is in accordance with the TNSW concurrence letter dated 20th January 2025</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

This Clause details the base component amounts that apply to the calculation of the housing and productivity contribution, as set out in the following table:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	\$12,000	new dwelling lot
	Residential strata subdivision	\$10,000	new strata dwelling lot
	Non-strata multi-dwelling development	\$10,000	new non-strata dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA

Comment:

The proposal includes a residential strata subdivision and is sited within the Greater Sydney region. As such, the contribution is \$10,000 as one (1) new strata dwelling lot is created. This contribution is included as a condition of consent.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1759985M_02).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

This Development Application required referral to Transport for NSW (TfNSW) for comment in accordance with Clause 2.119 of the *State Environment Planning Policy (Transport and Infrastructure) 2021*. Following a review of the current application, TfNSW raised no objections to the application, subject to conditions. Compliance with the referral response from TfNSW (dated 20 January 2025) is included as a condition of consent.

Section 2.120 - Impact of road noise or vibration on non-road development states:

(1) This section applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of TfNSW) and that the consent authority considers is likely to be adversely affected by road noise or vibration—

(a) residential accommodation,

(b) a place of public worship,

(c) a hospital,

(d) an educational establishment or centre-based child care facility.

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,

(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:

The proposed development is located adjacent to Sydney Road, a classified road. However, based on traffic volume maps provided by TfNSW, this section of Sydney Road does not have an average daily traffic volume of more than 20,000 vehicles. Therefore, this section is not applicable.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.04m	6.35%	No
Floor Space Ratio	FSR: 0.6:1 (292.14sqm)	FSR: 0.58:1 (283.4sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

Zone Objectives

- *To provide for the housing needs of the community.*

Comment:

The proposal complies with the above-mentioned objective.

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

Comment:

The proposal complies with the above-mentioned objective.

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

Comment:

The proposal complies with the above-mentioned objective.

4.3 Height of buildings

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5

Proposed: 9.04

Percentage of variation: 6.35%

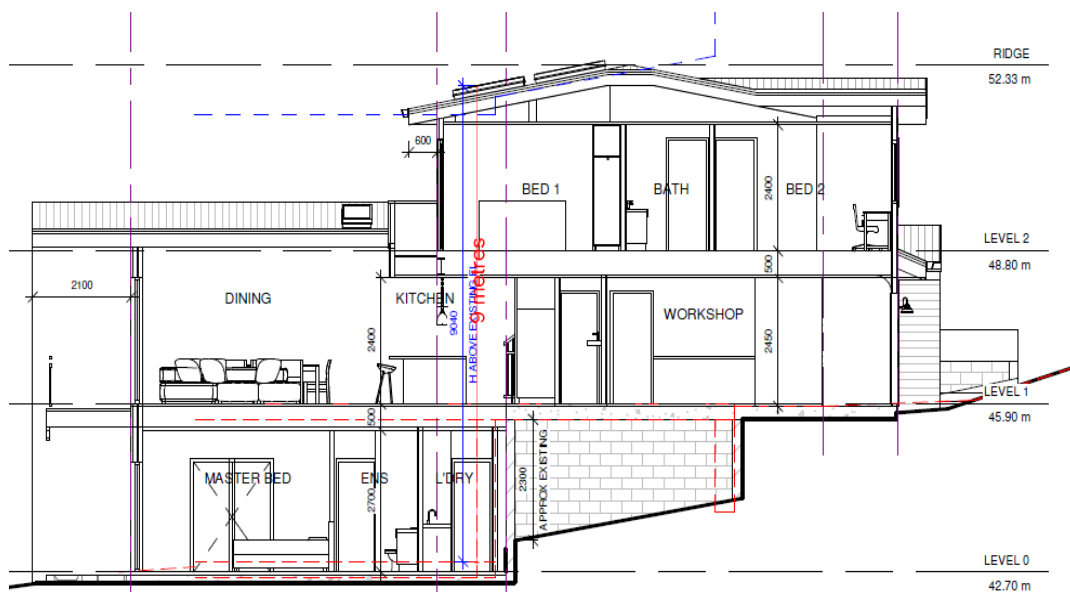


Figure 1 - Section C-C (depicting building height)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The Applicant's written request seeks to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The objectives of the development standard are addressed within the 4.6 request as follows:

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The proposed height variation is consistent with the topographic landscape and the prevailing building heights in the immediate locality, and is consistent with the desired future streetscape character.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

Views to and from the neighboring properties are not unreasonably adversely

effected. The proposed design, despite the height variation, ensures the adequate maintenance of solar access to public and private open spaces.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The proposal is not considered to have an adverse impact on the scenic quality of Warringah's coastal and bush environments.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Comment:

The visual impact of the proposal when viewed from public places such as parks and reserves, roads and community facilities is considered acceptable in this instance.

Considering the above, Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

(b) 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.'

The Clause 4.6 Request argues, in part:

- The non-compliance is primarily due to the sloping topography and existing disturbed ground levels of the site, particularly in relation to the existing dwelling to be demolished. The significant step in the 8.5m height plane, as shown in the section drawings, results in a height breach at the rear pitch of the upper-level roof.
- If a more conventional method of interpolating the height plane from natural surveyed levels were applied, the development would comply with the 8.5m height limit.
- The design responds to the sloping site by stepping down with the terrain; however, a minor breach occurs at the transition between the two-storey front and rear sections, where a small central portion reaches three storeys. This reflects the site's topographical constraints rather than an overdevelopment.
- The height breach does not result in any adverse impacts on neighbouring properties in terms of privacy, overshadowing, or view loss.

The arguments provided by the Applicant are generally concurred with. Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of buildings for the following reasons:

- 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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances as detailed above, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 486.9sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 unit/250sqm of Site Area (1 dwelling)	2 dwellings	100%	No
	Dwelling Size: Each Dwelling: 100sqm (3 bedrooms, 3 bathrooms)	152.7sqm (each dwelling)	N/A	Yes
4.1.2.1 Wall Height	E: 7.7m (based on gradient 1:5)	8.5m	10.4%	No
	W: 7.5m (based on gradient 1:6)	8.2m	9.3%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
	Pitch: maximum 35 degrees	10 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.1m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street	East: Level 0 & 1: 1.9m (based on	Level 0 & 1: 1.7m	10.5%	No

Frontages	wall height 5.8m) Level 2: 2.8m (based on wall height 8.5m)	Level 2: 2.4m	14.3%	No
	West: Level 0 & 1: 2m (based on wall height 6m) Level 2: 2.7m (based on wall height 8.2m)	Level 0 & 1: 1.7m Level 2: 2.4m	15% 11.1%	No No
	Windows: 3m	10 windows within 3m of a side boundary	N/A	No
4.1.4.4 Rear Setbacks	8m	8.4m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	28.9% (140.8m ²)	47.4%	No
	Open space above ground 40% of total open space	Nil	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	100% (140.8m ²)	N/A	Yes
	1 native trees	>1 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm per dwelling	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	2.9m + 2.9m =5.8m	N/A	Yes
Schedule 3 Parking and Access	1 resident parking space per dwelling, plus 0.5 resident space per 3 bedroom dwelling. Separately, 0.25 visitor parking space for each dwelling Therefore, 3 resident spaces, plus 1 visitor space	1 per dwelling (2 total resident spaces) Nil visitor spaces	N/A	No

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

Detailed Assessment

4.1.1.1 Residential Density and Dwelling Size

Description of non-compliance

Clause 4.1.1.1 Residential Density and Dwelling Size requires the following on the subject site:

- 250 sqm of site area required per dwelling

The subject site has a total area of 486.9m², which results in a shortfall of approximately 13.1m² to satisfy the minimum requirement for two dwellings- 500m². Accordingly, the proposal constitutes a minor non-compliance with this control.

Assessment against the objectives of the clause is detailed below.

Merit consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Comment:

The proposed dual occupancy development contributes to the diversity of housing options in the locality. Although the site area marginally falls short of the numerical requirement, the design achieves a built form that is compatible with a single dwelling house and maintains the prevailing residential character.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Comment:

The development does not result in the removal of significant vegetation and the site is not adjacent to any waterways or riparian corridors. The proposal does not involve substantial earthworks or modification of natural topography.

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

Comment:

The development contributes to housing diversity while ensuring a good standard of internal amenity.

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

Comment:

The variation does not result in any adverse visual or character impacts and maintains the established residential character of the area. The proposal presents a built form that is compatible with surrounding development in terms of bulk and scale.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The site is well-located within an established residential area that is already fully serviced by existing roads, utilities, and essential infrastructure.

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

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

Description of non-compliance

Clause 4.1.2.1 Wall Height requires that that walls are not to exceed the stipulated wall height,

determined by the slope of the land.

The required maximum wall height along the eastern elevation is 7.7m.

The required maximum wall height along the western elevation is 7.5m.

The proposed eastern wall height is 8.5m, causing a variation of 10.4%.

The proposed western wall height is 8.2m, causing a variation of 9.3%.

It should be noted that there is a downward slope toward the rear of the site. The proposal is modulated and articulated such that the proposed wall height does not result in the dwelling proposing an excessive bulk and scale. Given the topographical constraints, adhering strictly to this clause's requirements, without compromising the scale or functionality of the addition, is not achievable. Considering these factors, it is reasonable to conclude that strict compliance with the requirements of this clause is not necessary in this case. Further assessment is detailed below:

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the non-compliance with the 8.5m height limit is primarily due to the site's sloping topography and existing disturbed ground levels, particularly at the rear pitch of the upper-level roof. The design steps down with the slope, with the minor height breach limited to a small central portion of the dwelling that results from topographical constraints rather than overdevelopment, with no adverse impacts on privacy, overshadowing, or view loss.

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

Description of non-compliance

Clause 4.1.4.2 Side setbacks and secondary street frontages requires the following:

- Built structures are setback a minimum of one third of the height of the adjacent external wall of the proposed building.*
- All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries.*

Required Setbacks Based on Proposed Wall Heights:

Eastern Side:

Level 0 & 1 (wall height 5.8m): 1.9m required

Level 2 (wall height 8.5m): 2.8m required

Western Side:

Level 0 & 1 (wall height 6m): 2.0m required

Level 2 (wall height 8.2m): 2.7m required

Proposed Setbacks:

Eastern Side:

Level 0 & 1: 1.7m (10.5% variation)

Level 2: 2.4m (14.3% variation)

Western Side:

Level 0 & 1: 1.7m (15% variation)

Level 2: 2.4m (11.1% variation)

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

Merit consideration:

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

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

Comment:

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

Objective 2) To ensure and enhance local amenity by:

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

Comment:

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

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

Comment:

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

Objective 4) To enhance and maintain natural features by:

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

Comment:

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

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

Comment:

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

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 Minimum Residential Total Open Space Requirements requires the following of sites within the OS3 zone:

- A minimum Total Open Space equating to 55% of the site area.

The development proposes a Total Open Space calculation of 28.9% (140.8m²) causing a variation of 47.4%.

It should be noted that the proposal complies with landscaped area requirement, with all open space provided at ground level. Even if the total open space were increased to meet compliance, the landscaped area would still exceed the minimum requirement. Therefore, the shortfall in total open space does not result in an inadequate provision of landscaped area. Nevertheless, as the proposal does not wholly comply with the requirements of the subject clause, assessment against the objectives of the clause has been outlined below.

Merit consideration:

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

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

Comment:

The proposal will adequately retain important landscape features and vegetation.

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

Comment:

The site maintains adequate opportunity for the planting of trees and maintenance of existing vegetation.

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

Comment:

The proposed development is not considered to impact view sharing, not interrupting any significant view corridors. Sunlight access, visual and acoustic privacy will be maintained by the proposal.

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

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

Description of non-compliance

In accordance with the requirements of this control, Schedule 3 of the MDCP requires the following of Dual Occupancies.

In LEP Residential Zones and all other Zones except LEP Business Zones

- *1 resident parking space for each dwelling (irrespective of number of bedrooms), plus*
- *0.2 resident parking spaces for each 2 bedroom dwelling, plus*
- *0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus*
- *0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).*

For two 3-bedroom dwellings, a total of four (4) spaces are required: three (3) resident and one (1) visitor space. The proposal provides two (2) resident spaces, one per dwelling, resulting in a shortfall of two (2) spaces.

Strict compliance would require a larger hardstand area, reducing landscaped space and leading to further built form non-compliances. This would detract from the site's presentation and negatively impact the streetscape. Given the site's close proximity to public transport and local amenities, the reduced parking is considered acceptable and consistent with the objectives of the control. A detailed assessment against those objectives is provided below.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The development provides one dedicated space per dwelling, which is considered sufficient given the site's context. The locality is adequately serviced by public transport and within walking distance to key services, reducing reliance on private vehicle use. The parking provision is therefore appropriate and accessible for future residents.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

Given the site's proximity to public transport and local services, it is reasonable to expect a reduced reliance on private vehicles. The shortfall in parking is unlikely to result in significant on-street parking impacts. In this context, a variation is considered appropriate and aligned with the intent of this objective.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking arrangement is safe and efficiently integrated into the site layout. Minimising the amount of hardstand at the frontage reduces visual dominance of car spaces and maintains a more attractive streetscape presentation.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed parking layout avoids excessive excavation and does not require substantial changes to existing site levels, thereby supporting site stability and maintaining natural water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

Only one driveway and footpath crossing is proposed, which is consistent with standard residential outcomes and minimises impacts on pedestrian infrastructure.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The design limits impervious surfaces by avoiding unnecessary additional parking and preserving landscaped areas. Parking areas are located and screened to reduce visual impact from the street, and landscaping is integrated throughout the site to soften built elements.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The site is within walking distance of frequent public transport services, supporting a reduced dependence on private vehicles.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$9,826 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$982,560.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

The application is referred to the Development Determination Panel (DDP) due to in accordance with Council's referral criteria, as it seeks review of a determination under Division 8.2 Reviews of the Environmental Planning and Assessment Act 1979.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. No submissions were received.

The revised proposal, as submitted in this review application of DA2024/1201, has addressed and amended the reasons for refusal of the original application.

Overall, the development is a high quality design that performs well against the relevant controls and

will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant’s written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to REV2025/0002 for Review of Determination of Application DA2024/1201 for Demolition works and construction of a dual occupancy and strata subdivision on land at Lot B DP 306453, 286 Sydney Road, BALGOWLAH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A101	2	SITE PLAN	Blue Sky Building Designs	2 December 2024
A102	2	LEVEL 0	Blue Sky Building Designs	2 December 2024
A103	2	LEVEL 1	Blue Sky Building Designs	2 December 2024
A104	2	LEVEL 2	Blue Sky Building Designs	2 December 2024

A105	2	ROOF PLAN	Blue Sky Building Designs	2 December 2024
A106	2	SOUTH (FRONT) AND NORTH ELEVATIONS	Blue Sky Building Designs	2 December 2024
A107	2	EAST ELEVATION	Blue Sky Building Designs	2 December 2024
A108	2	WEST ELEVATION	Blue Sky Building Designs	2 December 2024
A109	2	SECTIONS	Blue Sky Building Designs	2 December 2024
A110	2	SECTIONS	Blue Sky Building Designs	2 December 2024
A111	2	SECTIONS & FINISHES	Blue Sky Building Designs	2 December 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1759985M_02	EVERGREEN ENERGY CONSULTANTS PTY LTD	4 February 2025
Geotechnical Report	-	Richard Weber	6 August 2024
ARBORICULTURAL IMPACT ASSESSMENT	-	Phil Witten	31 July 2024
LANDSCAPE PLAN	3	Blue Sky Building Designs	24 July 2024

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	undated
TfNSW	Transport for NSW Referral Response	20 January 2025

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on

Council's website www.northernbeaches.nsw.gov.au)

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

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

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it

applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.

(p) 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

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$9,825.60 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$982,560.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

7. **Housing and productivity contribution - Development consents**

1. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition 2, is required to be made:

Contribution Type	Amount
Housing and Productivity Contribution	\$ 10,000
Strategic Biodiversity Component and/or Transport Project Component	\$ 0
Total:	\$ 10,000

2. The amount payable at the time of payment is the amount shown in condition 1 as the total housing and productivity contribution adjusted by multiplying it by:

highest PPI number

consent PPI number

where—

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made.

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted.

June quarter 2023 and PPI have the meanings given in clause 22 (4) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

3. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:

Development	Time by which HPC must be paid
Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate
High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate
Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate
Manufactured home estate for which no construction certificate is required	Manufactured home estate for which no construction certificate is required

4. The HPC must be paid using the NSW planning portal (<https://pp.planningportal.nsw.gov.au/>).
5. If the Minister administering the Environmental Planning and Assessment Act 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
- the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
 - the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition 2 at the time of payment.

6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Richard Weber, drawing number SW01 F, SW02 E. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1) Non return flap valves are to be installed to both Sydney Road boundary pits to prevent the backflow of street stormwater onto the site.

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

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

9. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 5.5m wide at the kerb and 4.0m at the boundary in accordance with Northern Beaches Council Standard Drawing Normal Low in accordance with Section 138 and 139 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

11. Compliance with Standards

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

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

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

12. Sydney Water "Tap In"

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

13. Tree Removal Within the Property

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment. A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

14. Tree Removal Within the Road Reserve

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

- a) tree 1, subject to street tree replacement,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor, as engaged by the applicant. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

DURING BUILDING WORK

15. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge 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. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

16. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation located on adjoining properties,
 - ii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- 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 AS4373-2007 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.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

17. **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.

18. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **Survey Certificate**

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

20. Maintenance of Sediment and Erosion Controls

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

21. Traffic Control During Road Works

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

Reason: Public Safety.

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 Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

23. Street Tree Planting

Street tree planting shall be installed in accordance with the following: One (1) x *Pistacia chinensis* (Chines Pistacio) to the east of the proposed driveway.

- a) All street trees shall be a minimum pre-ordered planting size of 100 litres, and shall meet the requirements of Natspec - Specifying Trees. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental and streetscape amenity.

24. **Landscape Completion**

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

Landscape works are to be implemented in accordance with the approved Landscape Plan, and

inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all nominated landscape areas shall be planted or turfed,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- d) the nominated tree planting shall be replaced with suitable trees as identified in Manly DCP, Schedule 4 Part B - Native Tree Selection, and shall include two trees within the frontage (one per Lot) and two trees within the rear of the properties (one per lot); installed at a minimum pre-ordered planting size of 75 litres; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- e) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- f) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

25. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all the approved construction certificate stormwater drainage plans and the relevant Australian Standards and Codes by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

26. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

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

27. **Landscape Maintenance**

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

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

28. **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.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

29. **Easement Creation**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B

instrument to ensure all drainage infrastructure and the above ground stormwater detention basin is located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

30. Compliance with Relevant Legislation

Prior to the issue of the Strata Plan of Subdivision (including any Stratum), all relevant matters pertaining to this Plan, are to be satisfied to the satisfaction of the Certifying Authority, and evidence provided that the Plan complies with Clause 17 Strata Schemes Development Regulation 2016 and the relevant parts of Section 58 Strata Schemes Development Act 2015.

Reason: To ensure compliance with the Consent issued, compliance with relevant legislation.

31. Positive Covenant for On-site Stormwater Detention

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site detention system.

32. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

33. Right of Carriageway

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

34. **Restriction as to User (On-site Stormwater Detention)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

35. **Services**

The Applicant shall ensure all utilities/services are installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

36. **Certification of On-site Detention System (New Subdivision)**

A Certificate is to be submitted by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifier that the on-site stormwater detention system has been constructed in accordance with the approved subdivision works certificate and relevant conditions of Development Consent. The Subdivision Certificate will not be released until this certification has been submitted and the Principal Certifier has confirmed that this condition has been satisfied.

Reason: To ensure the On-site Detention System has been built to the appropriate standard.

37. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the

issue of the Subdivision Certificate.

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

38. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

39. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.