

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1427
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Responsible Officer:	Michael French
Land to be developed (Address):	Lot 4 DP 758044, 14 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Has Studio Pty Ltd

Application Lodged:	24/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/11/2024 to 15/11/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 4.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 820,600.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the receipt of five (5) or more submissions.

Concerns raised in the objections predominantly relate to privacy impacts.

The proposal includes variations to the principal development standards under the Manly Local Environmental Plan 2013- to *Clause 4.3 Height of Buildings*, and the built form controls under the Manly Development Control Plan, these being; *Clause 4.1.2.1 Wall Height* and *Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages*. The proposal in regard to these variations do not result in

unacceptable environment and/or amenity impacts, with the development achieving the relevant objectives.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Five (5) submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) 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 development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the following:

Ground Floor

- Demolition works
- Reconfiguration of the floor plate to form an open plan kitchen, living and dining room, a rumpus room, pantry, laundry, powder room, and a guest room with an adjoining ensuite.
- Alterations to the existing door and window schedule.

First Floor

- Demolition works
- Reconfiguration of the floor plate to form a family room, bathroom, two (2) bedrooms, and a master bedroom adjoining a WIR, ensuite and a balcony.
- Alterations to the existing window schedule.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

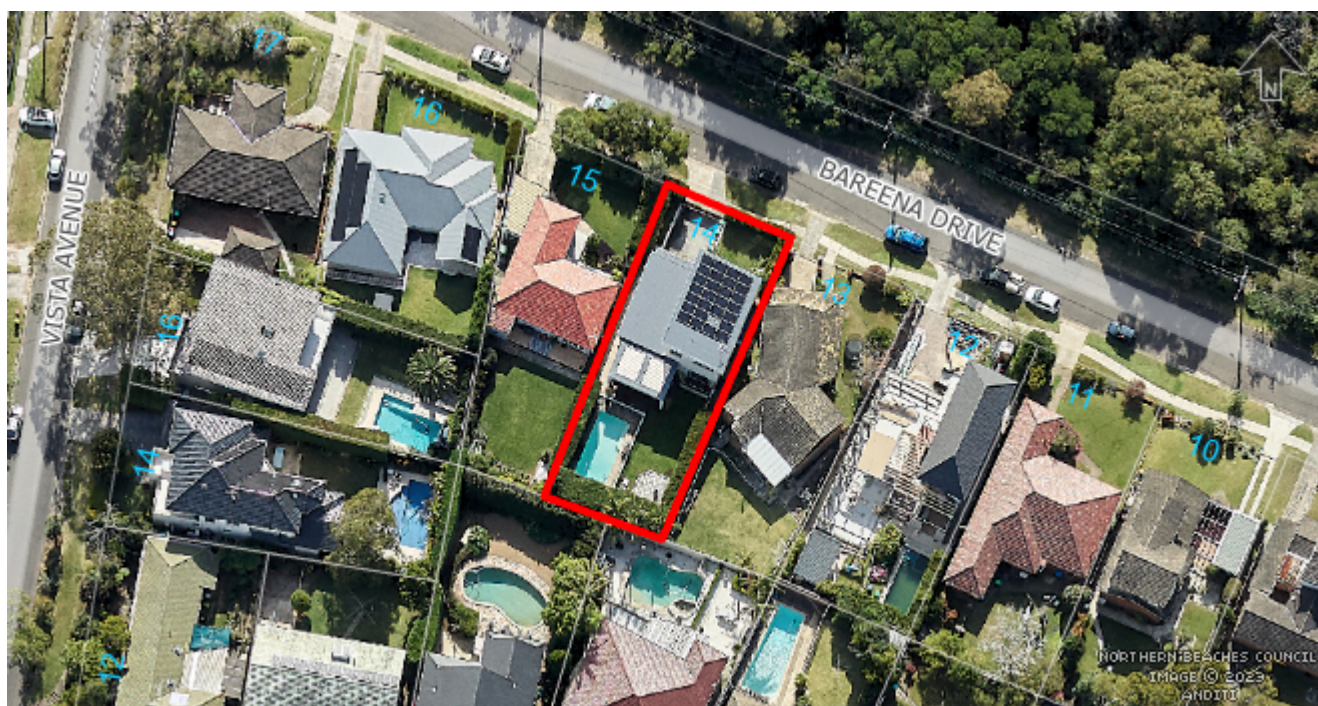
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

SITE DESCRIPTION

Property Description:	Lot 4 DP 758044 , 14 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Bareena Drive. The site is irregular in shape with a frontage of 16.46m along Bareena Drive and a maximum depth of 40.17m. The site has a surveyed area of 618.1m². The site is located within the R2 Low Density Residential zone pursuant to the Manly Local Environmental Plan 2013 and accommodates a two (2) storey dwelling. The site has a mild downward slope toward the northern frontage of the site. The site does not contain any significant vegetative features. There are no details of any threatened species on site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of dwellings within an R2 Low Density Residential zone.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested to address privacy concerns raised via objection. The amended proposal demonstrates a privacy impact that is considered acceptable, and the overall development is deemed supportable in this instance. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 01/11/2024 to 15/11/2024 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 process council is in receipt of 5 submission/s from:

Name:	Address:
Mrs Jane Lesley Robertson	20 Willawa Street BALGOWLAH HEIGHTS NSW 2093
Mr Willem Philip John Clasic	13 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Withheld Withheld	BALGOWLAH HEIGHTS NSW 2093
Toby Longley Ledgerwood	15 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Mr Simon Ramsay Dougall	16 Vista Avenue BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- *Clause 3.4.2 Privacy and Security* (Manly Development Control Plan)
- *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation/ Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)* (Manly Development Control Plan)
- *Clause 4.3 Height of buildings* (Manly Local Environmental Plan 2013)
- Clause 4.6 Variation Request
- Notification Sign

The above issues are addressed as follows:

- **Clause 3.4.2 Privacy and Security**

The submissions raised concerns related to privacy impacts to the following sites:

- 20 Willawa Street, Balgowlah Heights: Concerns were raised about the line of sight from the proposed first-floor family room through the southward facing window W09. The submission requests modifications to reduce privacy impacts.
- 13 Bareena Drive, Balgowlah Heights: Concerns were raised regarding privacy impacts from ground-floor windows W04 (adjoining the pantry), W05 (adjoining the powder room), and W06 (adjoining the ensuite). The submission suggests these windows be made obscured to mitigate privacy concerns. Further concerns were raised regarding first-floor windows W14 (adjoining bedroom 2, eastern elevation) and W13 (adjoining bedroom 3, southern elevation).
- 15 Bareena Drive, Balgowlah Heights: Concerns were raised about the privacy impact from ground-floor windows W01 (adjoining the dining room) and W03 (adjoining the rumpus room). The submission also points out that the window adjacent to the rumpus room (west-facing) lacks proper annotation. First-floor windows W09 (adjoining the family room) and W12 (adjoining bedroom 3) were also identified as privacy concerns.

- 14 Vista Avenue, Balgowlah Heights: The submission raised concerns regarding privacy impacts from the south-facing windows W09 and W13 on the first floor.
- 16 Vista Avenue, Balgowlah Heights: The submission raised concerns regarding privacy impacts from the windows on the first floor.

Comment:

The proposed dwelling has been assessed against the requirements and objectives of *Clause 3.4.2 Privacy and Security* and is considered supportable in this instance as follows:

- 20 Willawa Street, Balgowlah Heights: The proposed first-floor, south-facing windows, W09 and W13, are positioned at a significant distance from the rear yard and windows of this site. The proposed privacy impact is considered acceptable and consistent with privacy expectations within a residential setting.
- 13 Bareena Drive, Balgowlah Heights: The ground-floor windows (W04, W05, and W06) are located in low-traffic areas, including the pantry, powder room, and ensuite. As these are not primary living spaces and are positioned at ground level, they are unlikely to result in unreasonable privacy impacts or overlooking. Similarly, the first-floor windows (W13, W14 and W15) are situated in bedrooms and an ensuite, which are also low-traffic areas. Given their function and placement, they are not expected to cause unreasonable view loss or overlooking. Based on these considerations, the privacy impact is considered acceptable in this instance.
- 15 Bareena Drive, Balgowlah Heights: The southern-facing windows (W01, W03, W09 and W13) are oriented toward the rear yard to minimise visual intrusion into the rear yard of this adjoining site. Additionally, to further reduce overlooking impacts particularly toward the portion of the rear yard closest to the dwelling, the feature wall nibs to the rear of the dwelling along the western elevation have been increased by 600mm. Furthermore, western facing windows W12 and W21, located on the eastern portion of the dwelling, are equipped with a fixed external louvre/blind, providing necessary privacy to this site. In this regard, the proposed privacy impact is considered acceptable in this case. It should also be noted that amended plans were submitted that correctly identify the window of concern raised via submission as W21.
- 14 Vista Avenue, Balgowlah Heights: The first-floor windows W09, W12, and W13 are situated at a significant distance from the rear yard and windows of this site. The proposed privacy impact is considered minimal and is deemed supportable in this instance.
- 16 Vista Avenue, Balgowlah Heights: The first-floor windows W09, W12, and W13 are situated at a significant distance from the rear yard and windows of this site. The proposed privacy impact is considered minimal and is deemed supportable in this instance.

- **Clause 4.1.4 Setbacks (front, side and rear) and Building Separation/ Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

The submissions raised concerns that the proposed development does not comply with side setback or wall height requirements, and that these will directly lead to unacceptable impact on solar access and perceived bulk and scale.

Comment:

Assessment against the objectives of *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation* and *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)* is detailed elsewhere within this report. Furthermore, the proposal has been assessed against the requirements of *Clause 3.4.2 Sunlight Access and Overshadowing*, and the built form controls which regulate bulk and scale. The proposal is considered supportable in

this regard, as detailed elsewhere within this report.

- **Clause 4.3 Height of buildings**

The submissions raised concerns that the proposed building height would result in unreasonable adverse amenity impacts, specifically, overshadowing.

Comment:

Assessment against *Clause 4.3 Height of buildings* is detailed elsewhere within this report. Furthermore, the proposal is compliant with the requirements of *Clause 3.4.2 Sunlight Access and Overshadowing*. The proposal is considered supportable in this regard.

- **Clause 4.6 Variation Request**

The submissions express concerns about the extent of the height breach, highlighting inconsistencies between the maximum height measurements in the 3D Height Plane Diagram and the architectural plans. Additionally, concerns are raised that, in addition to the non-compliance, the proposal does not align with the objectives of the height of buildings standard and will result in adverse environmental impacts.

Comment:

The 3D Height Plane is a visual tool to illustrate the development's impact, while the building height has been accurately assessed using the section plan with specified RLs, measured from the top of the existing ground floor slab. The maximum building height as assessed in this report is based on this measurement.

Assessment against *Clause 4.3 Height of buildings* is detailed elsewhere within this report. The proposal is considered supportable in this regard.

- **Notification Sign**

The submissions raised concerns that the notification sign was not correctly displayed on premises.

Comment:

Council has reviewed images confirming that the Notification Sign was properly displayed throughout the notification period. The provided evidence meets Council's requirements, and no further assessment is necessary. The proposal is considered supportable in this regard.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses.

Internal Referral Body	Comments
	State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BMA Urban dated September 2024, the DA satisfies requirements under clause 2.12 of the SEPP. As such, it is considered that the application is consistent with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. State Environmental Planning Policy (Biodiversity & Conservation) 2021 Harbour Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.6 and 6.7, Division 2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 apply in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by , it is determined that the Planning Principles and Matters for Consideration of the Area have been met. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BMA Urban dated

Internal Referral Body	Comments
	September 2024, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application is consistent with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. No other coastal issues identified.
NECC (Development Engineering)	The proposed development is in Region 3. Vehicle crossing is not proposed. On-site detention is not required. Development engineering raises no objections to the proposed development, subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1768537_02 dated 4 February 2025).

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.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.9m	4.7%	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.4:1 (247m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

Zone objectives

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

Comment:

The proposal is considered to wholly comply 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 is considered to wholly comply with the above-mentioned objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal is considered to wholly comply with the above-mentioned objective.

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.9m
Percentage variation to requirement:	4.7%

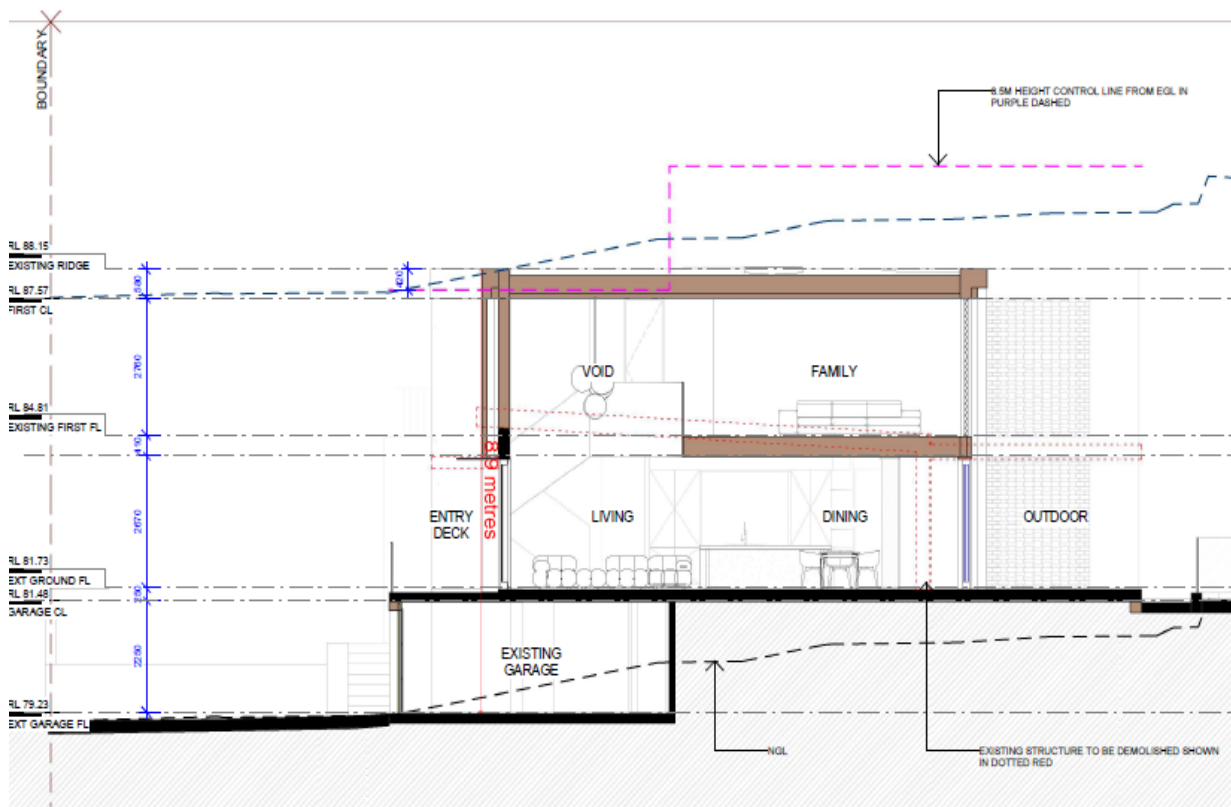


Figure 1: Section Plan depicting the maximum height of buildings

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks*

to justify the contravention of the development standard by demonstrating:

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

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The proposed development adopts an architectural form, height, and massing compatible with the existing and emerging housing typology.*
- *The proposal promotes good design by enhancing the future amenity of the dwelling while aligning with the surrounding built environment.*
- *The development ensures no negative environmental or social impacts, contributing to the economic and ecological sustainability of the area.*
- *The proposal is consistent with the objectives of the development standard and R2 Low-Density Residential Zone.*
- *The height non-compliance arises due to the site's sloping topography and previous excavation, as illustrated in the Section A-A drawing.*
- *Despite the minor breach, the design respects the natural landform and ensures high residential amenity without adverse impacts on neighboring properties (visual bulk, privacy, views, or overshadowing).*
- *The height breach is well-integrated into the streetscape, avoiding any visually jarring elements.*
- *The site's topographical challenges, including prior excavation, justify the height variation under environmental planning grounds.*

It is agreed that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. It is considered that the written request has demonstrated consistency with the objectives of the Height of Buildings development standard and zone objectives. It is considered that the applicant has demonstrated that the proposal adequately responds to the amenity of the built environment. In this regard, the applicants written request has satisfactorily demonstrated that the proposed development satisfies cls 1.3 (c) and (g) of the EPA Act. As such, the applicants written request has adequately demonstrated that there is sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed development adopts a height and roof form that align with the site's topographic landscape and prevailing streetscape character. While the minor height breach is a result of site topography and prior excavation, the design respects the natural landform and integrates adequately into the desired future character of the area.

b) to control the bulk and scale of buildings,

Comment:

The development's bulk and scale remain appropriate and proportional to the site, with the height breach confined to a small section resulting from the sloping site.

c) to minimise disruption to the following:

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

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

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

Comment:

The height breach does not obstruct views to or from public spaces or between public spaces.

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

Comment:

The proposal ensures solar access is maintained to both public and private open spaces, as well as habitable rooms of adjacent dwellings. The minor height breach does not result in any unreasonable adverse overshadowing impacts on neighboring properties.

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

Comment:

The development is not located in a recreation or environmental protection zone; however, the design demonstrates sensitivity to the surrounding environment.

Conclusion:

For the reasons detailed elsewhere within this report, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development is considered appropriate that flexibility in the application of the development standard Clause 4.3 Height of Buildings be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

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

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

6.9 Foreshore scenic protection area

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

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

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

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

Comment:

The subject site is within the foreshore scenic protection area and is not foreshore land. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- is not closely visible from the coastline, so does not impact upon its scenic quality,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 618.1m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.9m (based on gradient 1:15)	7.1m	2.9%	No
	W: 6.6m (based on gradient 1:60)	7.4m	12.1%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	complies	N/A	Yes
	Parapet Height: 0.6m	complies	N/A	Yes
	Pitch: maximum 35 degrees	complies	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.6m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.3m (based on wall height)(east)	1.3m (existing-unchanged)	43.5%	No
	2.2m (based on wall height)(west)	1.4m (existing-unchanged)	36.4%	No
	Windows: 3m	1.4m (existing-unchanged)	53.3%	No
4.1.4.4 Rear Setbacks	8m	15m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	63.9% (395.3m ²)	N/A	Yes
	Open space above ground 25% of total open space	complies	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	47.96% (189.6m ²)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	complies	N/A	Yes

Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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.

In this regard, the required maximum wall height along the eastern elevation is 6.9m. The proposed eastern wall height is 7.1m, causing a variation of 2.9%.

In this regard, the required maximum wall height along the western elevation is 6.6m. The proposed eastern wall height is 7.4m, causing a variation of 12.1%.

The proposed wall height remains consistent with the overall scale of the development and does not result in an appearance of excessive bulk. The design effectively manages visual impact through appropriate design, articulation and setbacks. Considering these factors, it is concluded that strict compliance with the requirements of this clause is not necessary in this case. An assessment against the objectives of this clause is conducted below:

Merit consideration

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

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

Comment:

The proposed development responds to the site's natural topography, with its height and roof form designed to integrate adequately into the streetscape.

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

Comment:

An acceptable bulk and scale has been maintained by the proposal. The proposal is considered to achieve a balance between maximising amenity for the dwelling and minimising the building's physical and visual impacts on surrounding properties.

(c) to minimise disruption to the following—

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

Comment:

It is considered that view sharing is maintained to and from the subject site, adjoining sites and public spaces.

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

Comment:

The proposal is deemed to provide acceptable solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

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

Comment:

The site is not located within a recreation or environmental protection zone. 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.

4.1.4 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.*

The proposal requires a eastern side setback of 2.3m. The development proposes a setback of 1.3m, causing a 43.5% variation.

The proposal requires a western side setback of 2.2m. The development proposes a setback of 1.4m, causing a 36.4% variation.

The development also results in windows setback 1.4m from the side boundary line, causing a 53.3% variation.

The proposed works within the side setback area are considered to have an acceptable impact upon the streetscape character, as well up 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.

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 \$8,206 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$820,600.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the receipt of greater than five (5) submissions.

The concerns raised in the objections have been addressed and resolved through an amended set of Architectural Plans as detailed above.

The critical assessment issues include assessment of *Clause 4.3 Height of Buildings*, *Clause 4.1.2.1 Wall Height* and *Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages*

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 DA2024/1427 for Alterations and additions to a dwelling house on land at Lot 4 DP 758044, 14 Bareena Drive, BALGOWLAH HEIGHTS, 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
A202	B	SITE PLAN	ZH	29 January 2025
A301	B	EXISTING GARAGE FLOOR PLAN	ZH	29 January 2025
A302	B	EIXSTING GROUND FLOOR PLAN	ZH	29 January 2025
A303	B	EXISTING FIRST FLOOR PLAN	ZH	29 January 2025
A304	B	PROPOSED GROUND FLOOR PLAN	ZH	29 January 2025
A305	B	PROPOSED FIRST FLOOR PLAN	ZH	29 January 2025
A306	B	ROOF PLAN	ZH	29 January 2025
A401	B	SECTION AA	ZH	29 January 2025
A402	B	SECTION BB	ZH	29 January 2025
A501	B	NORTH ELEVATION	ZH	29 January 2025
A502	B	SOUTH ELEVATION	ZH	29 January 2025
A503	B	EAST ELEVATION	ZH	29 January 2025
A504	B	WEST ELEVATION	ZH	29 January 2025
A901	B	MATERIALS & WINDOW SCHEDULES	ZH	29 January 2025
A902	B	LANDSCAPE PLAN	ZH	29 January 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A1768537_02	BONNEFIN CONSULTING PTY LTD	4 February 2025
Waste Management Plan	-	HAS Studio	October 2024
Bushfire Assessment Report	-	Building Code & Bushfire Hazard Solutions Pty Limited	9 September 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

(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 \$8,206.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$820,600.00.

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. Construction, Excavation and Associated Works Security Bond(s)

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$7,000.00.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the site to the street. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

9. Installation and Maintenance of Sediment Control

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

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

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

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

waterways.

10. 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. Erosion and Sediment Control Plan

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

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

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

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

12. 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.

13. 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

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

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

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

DURING BUILDING WORK

15. **Road Reserve**

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

Reason: Public safety.

16. **Survey Certificate**

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

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

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

17. **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.

18. **Stockpiling materials**

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

19. **Stormwater Disposal**

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

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

20. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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