

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0095
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 11 DP 2610, 13 Barrabooka Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lisa Ann Dunn
Applicant:	Lisa Ann Dunn

Application Lodged:	22/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/03/2022 to 17/03/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 30.59% 4.4 Floor space ratio: 67.41%
Recommendation:	Approval

Estimated Cost of Works:	\$ 766,000.00
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EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel for consideration of Development Application DA2022/0095 for alterations and additions to an existing dwelling house including a new swimming pool.

The maximum building height of the proposed development is 11.1m, which represents a 30.59% variation to the 8.5m height limit set by Clause 4.3 - Height of Buildings of Manly LEP 2013. However, this element of the building is situated 1.82m below the existing ridge level of the dwelling house.

The proposed Floor Space Ratio (FSR) for the development measures at 0.699:1 (315sqm), which represents a 67.41% variation to the 0.4:1 FSR limit set by Clause 4.4 - Floor Space Ratio of Manly LEP 2013. Despite this, the vast majority of the additional gross floor area proposed is located within the existing building envelope.

The application is referred to the DDP on the basis of the development involving variations to the height and FSR development standards that exceed 10%. Despite the significant variations proposed, the applicant has demonstrated that compliance with both Clauses 4.3 and 4.4 of Manly LEP 2013 is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the respective variations.

The proposed development involves variations to the Manly DCP 2013 wall height, side setback, rear setbacks and total open space provisions. Despite this, the existing side setbacks are maintained and the proposal provides adequate outdoor open space to meet the recreational needs of the occupants of the dwelling. The wall height non-compliance on the northern elevation is prompted by the sloping topography. An improved landscaping outcome is also achieved through the provision of additional native landscaped treatment within the rear yard, as detailed on the Landscape Plan. The variations to the DCP numeric requirements do not prompt any unreasonable impacts to adjoining properties.

When considered on its merits, it is concluded that the proposal will have an acceptable impact upon the surrounding environment and streetscape, noting that the existing building envelope is largely retained. This will ensure that the resulting height, bulk and scale of the development maintains an appropriate visual relationship with surrounding development, whilst also minimising adverse amenity impacts to neighbouring properties in terms of solar access, view sharing, privacy and visual bulk. Suitable conditions are recommended with this consent to prevent overlooking into the northern adjacent property from the swimming pool terrace.

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

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

PROPOSED DEVELOPMENT IN DETAIL

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

External Works

- Demolish existing swimming pool.
- Construct a new swimming pool, terrace and external stairs.
- New passenger lift.

Lower Ground Floor

- Alterations and additions to existing lower ground floor to provide for extension of rumpus room, guest room, bathroom, laundry, cellar and plant room.

Ground Floor

- Alterations and additions to existing ground floor to provide for minor alterations to internal walls, new ensuite to bedroom 2, new access hallway to new passenger lift and new privacy screens to existing balcony.

First Floor

- Alterations and additions to existing first floor level to provide for new sitting room, bedroom with ensuite, cloak room, powder room, open plan living, dining and kitchen with butler's pantry, extension of existing balcony, new privacy screening and planter box, internal stairs, and a new roof.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation

Manly Development Control Plan - 3.4.2 Privacy and Security

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

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

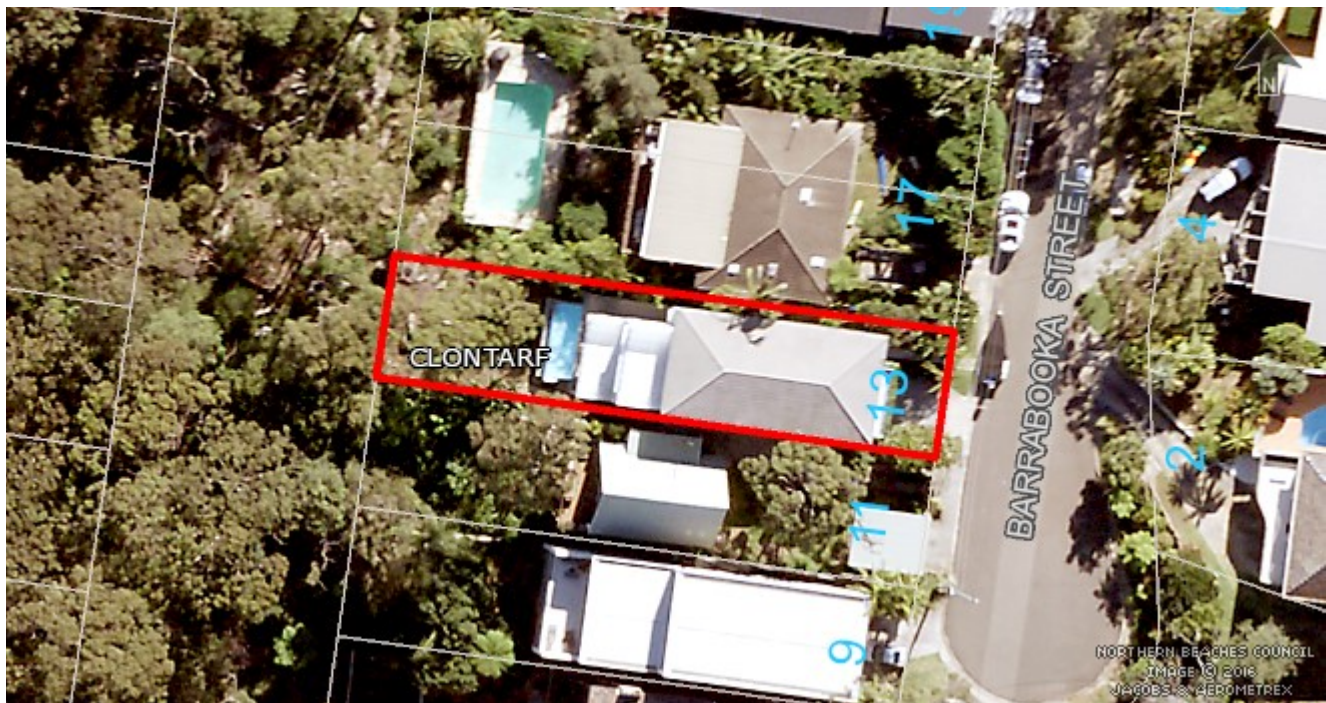
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

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

SITE DESCRIPTION

Property Description:	Lot 11 DP 2610 , 13 Barrabooka Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the western side of Barrabooka Street, Clontarf. The site is regular in shape with a frontage of 10.365 metres and respective depths of 45.375 metres and 45.385 metres along the northern and southern side boundaries. The site has a surveyed area of 470.4m². The site is located within the C3 Environmental Management zone pursuant to Manly LEP 2013 and accommodates a three storey dwelling house including an above-ground swimming pool to the rear of the dwelling. The site contains a small tree within the south-eastern front corner and a Sydney Red Gum within the rear yard approximately 12 metres in height. Numerous exposed rock outcrops are also located within the rear yard. The site backs onto densely vegetated bushland located within the C2 Environmental Conservation zone. The site experiences a fall of approximately 14.2 metres that slopes away from the front boundary (east) towards the rear boundary (west). This represents an approximate slope of 31.2%. The site is environmentally constrained with geotechnical, biodiversity and bushfire hazards. Description of Surrounding Development The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses) within vegetated settings on sloping sites. The scale of surrounding development is typically 2-3 storeys in height.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. There are no recent previous applications on the site.

APPLICATION HISTORY

A site inspection was undertaken on 8 April 2022.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant raising concern with the following aspects of the proposal:

Privacy

Concern was raised of the elevated pool terrace, which is elevated approximately 2 metres above the natural ground level. Whilst the southern elevation is noted for containing a privacy screen, the northern elevation is devoid of screening. As a consequence, direct sight lines would be provided into the swimming pool area on the northern adjacent site (15-17 Barrabooka Street). The applicant was requested to provide privacy screening along the entire northern elevation of the pool terrace.

Arborist Report

The development (including retaining walls and fill) is within close proximity to an existing Sydney Red Gum tree within the rear yard. An arborist report had not been provided to assess the development's impacts upon the Sydney Red Gum Tree.

Landscape Plan

Council's Landscape Officer requested that a detailed landscape plan be submitted with the application in accordance with Council's lodgement requirements.

Subsequently, the applicant submitted an arborist report, amended plans and a detailed landscape plan

to respond to the Landscape Officer's referral comments. Council's Landscape Officer had raised concern of the retaining wall and fill and the potential impact that these aspects would have on the existing gum tree within the rear yard. The submitted arborist report did not address these aspects of the proposal and whether they would compromise the health of the gum tree. Accordingly, a condition is recommended with this consent to delete the retaining wall below the pool and the associated backfill to ensure the retention of the gum tree.

In regards to the privacy screening, the amended plans did not include privacy screening on the elevation plans. However, the applicant provided written email correspondence (dated 30 May 2022) to Council stipulating that they support the imposition of a condition for privacy screening along the northern elevation of the pool terrace. Accordingly, a suitable condition is recommended in this regard and a detailed discussion has been provided later within the section of this report relating to Clause 3.4.2 of the Manly DCP 2013.

In addition, revised Clause 4.6 written requests were submitted by the applicant to ensure the height and floor space ratio calculations correlated with Council's assessment.

The additional information submitted by the applicant did not alter the scope of works proposed and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Division 8A</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an arborist report, landscape plan, amended plans and revised Clause 4.6 requests. This information has been received and assessed accordingly. <u>Clause 98</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

Section 4.15 Matters for Consideration	Comments
	addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/03/2022 to 17/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing dwelling, as described and illustrated in the reports and plans. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral. External works proposed includes demolition of the existing pool, construct a new pool and associated terrace, new stairs to rear yard, and a new passenger lift. Council's Landscape Referral section have considered the application against the zone C3 Environmental Management objectives of Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • DCP section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • DCP section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. The landscape outcome of the zone C3 Environmental Management objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment. <i>updated comments 6 June 2022:</i> An updated Landscape Plan and a Arboricultural Impact Assessment titled Tree Assessment & Management Report is submitted. The Arboricultural Impact Assessment considers the impact of the development proposal upon one Sydney Red Gum within the property identified as tree 1 and one Sydney Red Gum with adjoining property at 11 Barrabooka St identified as tree 2. It is determined that tree 1 is worthy of being retained and is isolated from the proposed works, and that retention without compromise to its Useful Life Expectancy is identified in the report, and conditions shall be imposed for the implementation of arboricultural works as recommended in the Arboricultural Impact Assessment. The existing Sydney Red Gum within adjoining property at 11 Barrabooka St is assessed as isolated from the proposed works adequately and subject to tree protection measures retention is able to be managed. It is noted in the report that the Sydney Red Gum is in a state of decline, and it is determined that the proposed works are unlikely to further impact the tree. The updated Landscape Plan responds to the concerns raised

Internal Referral Body	Comments
	previously with the exception that the proposal continues to include changes to the existing ground level within the tree protection zone of the existing Sydney Red Gum within the property identified as tree 1, including retaining walling within the structural root zone. The Arboricultural Impact Assessment does not include commentary regarding the impact of fill for a lawn area to RL 42.75 and construction of retaining walling to TW42.70 in close proximity to tree 1, all which is likely to impact tree 1. It is noted that the Arboricultural Impact Assessment utilises the Master Set plans which show existing ground levels around existing tree 1 remaining. To ensure the preservation of tree 1, Landscape Referral shall impose conditions that the existing ground levels shall be maintained and the walling and fill shall be deleted, should the application be approved. Other proposed works as represented in the Landscape Plan are supported subject to conditions of consent. <i>previous comments:</i> The Statement of Environmental Effects notes that the proposed works are mainly within the existing footprint and there is no impact to existing trees. However it is noted that the pool is proposed within 5 metres of the existing Gum within the rear of the property as well as the existing Gum within the adjoining property at 11 Barrabooka St, and in accordance with Council's DA Lodgement Requirements a Arboricultural Impact Assessment shall be submitted to assess impact and recommend tree protection measures including advising of setback distances to development where appropriate. The Landscape Plan includes changes to the existing ground level within the tree protection zone of the existing Gum within the rear of the property, including retaining walling within the structural root zone, and such proposed works may impact the retention of the existing Gum, and this is not supported by Council. Due to the proximity to the foreshore area, any new landscape planting shall be locally native species, and the Landscape Plan shall provide such information including a selection of native species to be included in any new landscaping, or an indication of the existing planting retained. As indicated natural landscape features such as rock outcrops shall be retained and incorporated into the landscape scheme. The Landscape Plan shall provide an indication of compliance with DCP clause 4.1.5 Open Space and Landscaping, 4.1.5.2 (c) Minimum Tree Plantings, where two native trees are required within the property. To continue the landscape assessment, the matters raised above shall be addressed, including the submission of a Arboricultural Impact Assessment and an updated Landscape Plan.
NECC (Bushland and Biodiversity)	Updated Biodiversity Referral (7 June 2022) These updated biodiversity referral comments are based upon consideration of the following additional information: • Tree Assessment and Management Report (Aura Tree

Internal Referral Body	Comments
	Services, May 2022) Amended Landscape Plan (The Garden Social, 1 April 2022) The submitted arborist report provides for targeted tree protection measures to enable retention of Trees 1 and 2 (both <i>Angophora costata</i>). As identified by the Landscape Referrals Section, the arborist report appears to be based upon the architectural plans rather than the landscape plans, which include ground level changes and retaining wall construction in the rear section of the yard between the new pool and the boundary. Deletion of these elements by way of consent condition will serve to protect existing trees and achieve compliance with Manly LEP Clause 6.5 Terrestrial Biodiversity. The subject site is identified on the Northern Beaches Bushfire Prone Land Map and as such, must comply with the requirements of Planning for Bushfire Protection 2019. The submitted bushfire report (Ronald Coffey, 26 January 2022) states: "<i>Although the Asset Protection Zone requirements are listed as a recommendation, the site has been landscaped and is maintained to a standard that complies with the requirements of 'Planning for Bushfire Protection 2006' for Inner Protection Area Requirements</i>". It is therefore assumed that no additional vegetation removal is proposed to give effect to APZs required for the proposed development. The submitted landscape plan has satisfactorily addressed relevant objectives around protection of natural values on the site and the adjoining reserve. Original Biodiversity Referral (9 May 2022) There is insufficient information to assess the proposal against relevant biodiversity provisions at this time. As identified by Council's Landscape referrals section, the proposal may result in impacts to protected native trees which have not been assessed in an Arboricultural Impact Assessment ('arborist report'). In order to assess compliance with Manly LEP Clause 6.5 (Terrestrial Biodiversity), potential impacts to native trees must be adequately justified in an arborist report. Upon receipt of this additional information, the Biodiversity assessment will recommence.
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. The application has also been assessed using Northern Beaches SREP assessment template.

Internal Referral Body	Comments
	<i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP). Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Foreshores and Waterways area pursuant to SEPP (Biodiversity and Conservation) 2021. Hence, only Clause 2.12 of the R&H SEPP apply for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated February 2022, the DA satisfies requirements under Clause 2.12 of the R&H SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience and Hazards) 2021. <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> Harbour Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence, Chapter 10 of this Policy is applicable in assessing this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated February 2022, it is

Internal Referral Body	Comments
	determined that the Planning Principles and Matters for Consideration of the Area have been met. <i>Manly LEP 2013 and Manly DCP</i> Foreshores Scenic Protection Area 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. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated February 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly LEP and DCP 2013.
NECC (Development Engineering)	The proposed development does not require OSD and disposal in accordance with Council's policy is acceptable. The existing driveway is to remain which is also acceptable. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The site is near Middle Harbour and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the harbour, or the quantity and quality of surface and ground water flows that it receives. The site is part of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and water quality management should be considered. The stormwater system appears to be a split system with part of the property draining to Barrabooka Street and the remaining dispersed within the rear, Western portion of the site. The flow spreader/infiltration system is subject to conditions.

Internal Referral Body	Comments			
	Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. Subject to conditions, this application is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Middle Harbour.			
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS			
	Discussion of reason for referral			
	This application has been referred as it is within the vicinity of <i>Item I38 - Natural landscape, Dobroyd Headland and Grotto Point, Sydney Harbour National Park</i>. This landscape heritage item extends around the headland, coming within 20 metres of the subject site to its west (unformed House Street) and 20 metres to its east (opposite side of Barrabooka Street).			
	Details of heritage items affected			
	Details of this heritage item in the vicinity, as contained within the heritage inventory, are: <i>Item I38 - Natural landscape, Dobroyd Headland and Grotto Point, Sydney Harbour National Park</i> <u>Statement of Significance</u> Natural Landscape. Aesthetic, scientific. <u>Physical Description</u> Natural landscape; Prominent visual landform of headland, cliffs; upper slopes with indigenous vegetation communities. Provides a natural visual backdrop or foreground to the cultural aspects of the built environment of Manly. Important viewing position within Sydney Harbour area.			
	Other relevant heritage listings			
	<table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
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<table><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr></table>	RAIA Register of 20th Century Buildings of Significance	No		
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<table><tr><td>Other</td><td>No</td><td></td></tr></table>	Other	No		
Other	No			
	Consideration of Application			
	This application is for alterations and additions to an existing dwelling house, including internal alterations, rear extension on lower level, installation of a lift, new balconies as well as demolition			

Internal Referral Body	Comments
	of the existing pool and construction of a new pool and associated landscaping. All works are contained within the site and largely within the existing built footprint. As a result, there will be no impact upon the natural landscape areas which form heritage Item I38. Therefore, no objections on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions: Asset Protection Zones <i>Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.</i> 1. From the start of building works, and in perpetuity to ensure ongoing protection from the impact of bush fires, the entire property must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA the following requirements apply: ● tree canopy cover should be less than 15% at maturity; ● trees at maturity should not touch or overhang the building; ● lower limbs should be removed up to a height of 2m above the ground; ● tree canopies should be separated by 2 to 5m; ● preference should be given to smooth barked and evergreen trees; ● large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings; ● shrubs should not be located under trees; ● shrubs should not form more than 10% ground cover; ● clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation. ● grass should be kept mown (as a guide grass should be kept to no

External Referral Body	Comments
	more than 100mm in height); and • leaves and vegetation debris should be removed. Construction Standards <i>The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:</i> 2. New construction must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant BAL-FZ requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of Planning for Bush Fire Protection 2019. Water and Utility Services <i>Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.</i> 3. The provision of water, electricity and gas must comply the following in accordance with Table 7.4a of Planning for Bush Fire Protection 2019: • reticulated water is to be provided to the development where available; • all above-ground water service pipes external to the building are metal, including and up to any taps; • where practicable, electrical transmission lines are underground; • where overhead, electrical transmission lines are proposed as follows: ○ lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and ○ no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines. • reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used; • all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side; • connections to and from gas cylinders are metal; • polymer sheathed flexible gas supply - lines are not used; and • above-ground gas service pipes are metal, including and up to any outlets. General Advice – Consent Authority to Note • The NSW RFS recognises that the site is constrained and that the proposed development falls within the Flame Zone. Flame Zone development is high risk development; consequently, in situations such as this, the NSW RFS seeks to improve the overall fire safety of the existing development. This requires greater emphasis on

External Referral Body	Comments
	construction standards, landscaping, siting, and vegetation management practices to ensure improved levels of protection are afforded to the development, its occupants and fire fighters. The Service has undertaken a merit based assessment of the proposal and provides the above advice in accordance with Planning for Bush Fire Protection 2019. <u>Comment:</u> These recommended conditions from the NSW RFS have been included in the recommended conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with this application (refer to BASIX Certificate No. A403933_03, dated 24 January 2022). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 metres 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 5.0 metres of an overhead electricity power line.

Comment:

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

SEPP (Biodiversity and Conservation) 2021

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is identified within the Coastal Environment Area and Coastal Use Area pursuant to this SEPP. Accordingly, the proposal is considered against Clauses 2.10, 2.11 and 2.12 of the SEPP.

2.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

(3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

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

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that—

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

(2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

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

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

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

Comment:

The proposal has been designed to respond to the environmental constraints of the site and it is considered that the development is unlikely to cause increased risk of coastal hazards within the locality.

Conclusion

As demonstrated above, the proposal satisfies the relevant provisions within Chapter 2 of this SEPP.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5 metres	11.1 metres	30.59%	No
Floor Space Ratio	0.4:1 (188.16m ²)	0.669:1 (315m ²)	67.41%	No

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 - Height of Buildings

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5 metres
Proposed:	11.1 metres
Percentage variation to requirement:	30.59%

The proposed pergola over the uppermost floor rear balcony has a maximum height of 11.1 metres, which represents a 30.59% variation to Clause 4.3 of Manly LEP 2013. It is important to note that the pergola sits 1.82 metres below the ridge line of the existing dwelling house roofline, which is sited at RL59.79 AHD. Furthermore, a portion of the existing roofline currently protrudes above the 8.5 meters height plane.

The proposal also seeks to replace the existing roof to the same height of RL59.79. As a result, a portion of this roof will protrude above the 8.5 metres height plane. Figure 1 below depicts the extent of the development that exceeds the 8.5 metres height plane.

Figure 1: areas of the building that exceed the 8.5 metres height plane

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

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

The low pitch roof form maintains modulation and architectural relief to the building's facade, and distributes any sense of visual bulk.

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

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Barrabooka Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- The proposed new works which exceed the maximum building height control will not exceed the ridge height of the existing dwelling and are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, by providing solar protection to the existing open terrace from the main living level which is consistent with the Objective 1.3 (g) of the EPA Act.*
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by largely maintaining the existing roof form which will reduce the impact on the views and outlook for the uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the maximum building height and manages the

bulk and scale and maintains views over and past the building from the public and private domain".

Comment:

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

In particular, it is agreed that the new works that exceed the 8.5 metres height plane do not exceed the ridge level of the existing building and will not increase the perceived bulk and scale of the existing three storey dwelling house.

Furthermore, the height non-compliance will not compromise any significant view corridors and the provision of a pergola over the first floor terrace will provide for greater solar protection for the occupants of the dwelling house, whilst not compromising the amenity of neighbouring properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The new works do not exceed the ridge level of the existing dwelling house. The rear additions step down in height with the slope of the land, whilst the dwelling will maintain a three storey form that is compatible with the scale of nearby development. The proposal is considered to achieve this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposed development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the side walls are retained. The vast majority of the additional gross floor area is contained within the existing building footprint, whilst new articulated elements are incorporated on the front and rear facades to reduce the bulk and scale of the building. Overall, the proposal satisfies this objective.

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:

Due to the general slope of the site towards the west, the adjoining properties on the western side of Barrabooka Street enjoy views towards The Spit and Mosman. The proposal will provide for a low profile roof form which will allow for suitable views to be maintained through and over the site. Furthermore, the proposal does not compromise any significant views from the public domain. It is considered that the proposal achieves this objective.

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:

North facing windows at 11 Barrabooka Street (southern adjacent dwelling) are already significantly overshadowed by the existing dwelling house. The proposal results in negligible changes to existing solar access to these windows. Furthermore, the elevated rear balcony (i.e. private open space) on the southern adjacent dwelling maintains direct sunlight at 12pm and 3pm on June 21, which is consistent with the level of solar access currently provided to this area. The proposal is considered to achieve this objective.

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:

As noted above, the proposal does not exacerbate the perceived bulk and scale of the existing dwelling house, noting that the existing ridge level is retained, the side walls are maintained, and the additional building mass is largely contained within the existing footprint. Furthermore, conditions have been recommended to ensure the retention of existing canopy trees on the site.

Notwithstanding this, the additional native landscape treatment proposed in the development will result in an improved landscaping outcome on the site. Overall, the proposal satisfies this objective.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposal provides for alterations and additions to an existing dwelling which are largely contained within the existing building footprint and will not see the removal of any significant vegetation. Furthermore, the additional native landscape treatment incorporated into the development will result in an improved landscaping outcome for the site. Overall, it is considered that this objective is achieved.

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

Comment:

The proposed development does not significantly alter the bulk, scale and intensity of the existing building. The low density land use will be maintained subsequent to the development. Overall, the proposal will not have an adverse impact upon the ecological, scientific, cultural or aesthetic values of the zone.

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

Comment:

The proposal will not require the removal of any significant vegetation. The landscaped character of the site is enhanced through the provision of additional native landscape treatment. The development is also sufficiently separated from the foreshore and the existing building envelope is largely unaltered. This will ensure that the development does not dominate the scenic qualities of the area.

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

Comment:

The proposal retains existing prescribed vegetation on the site, including the rock outcrops within the rear yard. It is considered that the proposal satisfies this objective.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

Suitable conditions are recommended with this consent to reduce stormwater runoff towards downslope properties and the foreshore area.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed new works will not exceed the ridge height of the existing dwelling and maintain consistency with the two and three storey scale of existing surrounding development. Furthermore, the proposal does not necessitate the removal of prescribed vegetation on the site and the rear additions step down in height with the slope of the land to ensure an appropriate response to the topography. Overall, the proposal meets this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone and the objectives of Clause 4.3 - Height of Buildings of Manly LEP 2013.

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

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

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

Clause 4.4 - Floor Space Ratio

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.4:1 (188.16sqm)
Proposed:	0.669:1 (315sqm)
Percentage variation to requirement:	67.41%

The proposed floor space ratio (FSR) of the development equates to 0.669:1 (315sqm), which represents a 67.41% variation to Clause 4.4 of Manly LEP 2013.

It is important to note that the existing dwelling has a non-compliance FSR of 0.585:1 (275m²), which represents a 46.15% variation to the development standard. Furthermore, approximately 39m² of the additional gross floor area proposed (40m² additional gross floor area proposed) will be located within the existing building footprint or excavated below the existing dwelling within the subfloor.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 – Floor Space Ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters

required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

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

The low pitch roof form maintains modulation and architectural relief to the building's facade, and distributes any sense of visual bulk.

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

- *The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- *The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Barrabooka Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.*
- *The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining the existing overall ridge height, with a sympathetic roof form which will reduce the impact on the views and outlook for uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control".

Comment:

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

In particular, the additional gross floor area proposed by the development is contained within the existing building footprint or excavated to sit within the subfloor, thereby ensuring the proposed additions will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern. The additional floor space is not considered to create adverse building bulk.

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

Therefore, the applicant's written request has adequately demonstrated that there are sufficient

environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the side walls are retained. The vast majority of the additional gross floor area is contained within the existing building footprint, whilst new articulated elements are incorporated on the front and rear facades to reduce the bulk and scale of the building. Overall, the proposal satisfies this objective.

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

Comment:

The proposed development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the side walls are retained. The additional bulk is generally concealed by the existing building and therefore, the FSR non-compliance will not obscure any important landscape or townscape features.

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

Comment:

The additional gross floor area is predominantly located within the existing building footprint and will not alter the perceived bulk and scale of the what presents as an existing three storey dwelling house. In this regard, the proposal will continue to maintain an appropriate visual relationship with the surrounding area. Furthermore, the additional native landscape treatment proposed will ensure an improved landscaping outcome for the site. Overall, the proposal achieves this objective.

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

Comment:

The existing building envelope is largely retained and the additional FSR does not contribute to unreasonable amenity impacts, specifically with regards to solar access, views, privacy and visual bulk. As such, the FSR non-compliance will not preclude the use or enjoyment of adjoining land and the public domain.

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

Comment:

This objective is not relevant as the site is within a residential zone.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposal provides for alterations and additions to an existing dwelling which are largely contained within the existing building footprint and will not see the removal of any significant vegetation. Furthermore, the additional native landscape treatment incorporated into the development will result in an improved landscaping outcome for the site. Overall, it is considered that this objective is achieved.

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

Comment:

The proposed development does not significantly alter the bulk, scale and intensity of the existing building. The low density land use will be maintained subsequent to the development. Overall, the proposal will not have an adverse impact upon the ecological, scientific, cultural or aesthetic values of

the zone.

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

Comment:

The proposal will not require the removal of any significant vegetation. The landscaped character of the site is enhanced through the provision of additional native landscape treatment. The development is also sufficiently separated from the foreshore and the existing building envelope is largely unaltered. This will ensure that the development does not dominate the scenic qualities of the area.

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

Comment:

The proposal retains existing prescribed vegetation on the site, including the rock outcrops within the rear yard. It is considered that the proposal satisfies this objective.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

Suitable conditions are recommended with this consent to reduce stormwater runoff towards downslope properties and the foreshore area.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed new works will not exceed the ridge height of the existing dwelling and maintain consistency with the two and three storey scale of existing surrounding development. Furthermore, the proposal does not necessitate the removal of prescribed vegetation on the site and the rear additions step down in height with the slope of the land to ensure an appropriate response to the topography. Overall, the proposal meets this objective.

Conclusion:

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

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

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

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

5.10 Heritage conservation

The site is located in close proximity to Heritage Item I38 - Natural landscape, Dobroyd Headland and Grotto Point, Sydney Harbour National Park, as identified within Schedule 5 of Manly LEP 2013. Therefore, the provisions of this clause must be considered.

Council's Heritage Officer has reviewed the application and is satisfied that the works will not detract from the heritage significance of the nearby heritage item. Therefore, the proposal satisfies the requirements of Clause 5.10 of Manly LEP 2013.

6.2 Earthworks

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

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been recommended to delete the retaining wall and backfill below the swimming pool to ensure the long term retention of the Sydney Red Gum within the rear yard.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been recommended to delete the retaining wall and backfill below the swimming pool to ensure the long term retention of the Sydney Red Gum within the rear yard.

(f) the likelihood of disturbing relics

Comment:

The site is not mapped as being a potential location of Aboriginal or other relics.

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

Comment:

Conditions are recommended which mitigate and reduce sedimentation and stormwater runoff towards the foreshore area.

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

Comment:

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

Conclusion

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

6.5 Terrestrial biodiversity

The site is identified on the Manly LEP 2013 Biodiversity Map. Therefore, the provisions of this clause apply.

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

(a) protecting native fauna and flora, and

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

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

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

Comment:

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

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

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

Comment:

Based on the findings above, it is concluded that the development is appropriately designed, sited and will be managed to avoid any significant environmental impacts.

Conclusion

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

6.9 Foreshore scenic protection area

The site is located within the Foreshore Scenic Protection Area under Manly LEP 2013. Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

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

Comment:

The proposed development does not compromise significant view lines from public places (i.e. road reserve) to the foreshore area. Furthermore, the site is located approximately 70 metres to the east of the foreshore area. The sufficient separation will ensure the development does not result in overshadowing of the foreshore area. The dwelling will retain a three storey appearance from the west and the additional building mass is contained within the existing side boundary setbacks and does not exceed the existing ridge level, which will ensure that the height, bulk and scale of the dwelling does not detrimentally impact upon the visual amenity of the harbour or coastal foreshore. Overall, the proposal meets this requirement.

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

Comment:

The existing dwelling is not visually prominent when viewed from the foreshore area. The proposal maintains a three storey appearance from the west and the additional building bulk is generally contained within the existing building footprint. As such, the proposal will not detract from the scenic qualities of the coastline.

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

Comment:

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

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

Comment:

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

Conclusion

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

6.12 Essential services

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

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

Comment:

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 470.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1150m ² of site area	1 dwelling on a 470.4m ² site - existing and unchanged	N/A	N/A
	Dwelling Size: minimum 129m ² gross floor area required (based off 5 bedrooms and 4 bathrooms)	315m ² gross floor area	-	Yes
4.1.2.1 Wall Height	North: 8 metres (based on 1:4 gradient)	9.6 metres	20%	No
	South: 8 metres (based on 1:4 gradient)	unchanged	N/A	N/A
4.1.2.2 Number of Storeys	2 storeys	3 storeys - existing and unchanged	N/A	N/A
4.1.2.3 Roof Height	Height: 2.5 metres	1.86 metres	-	Yes
	Pitch: maximum 35 degrees	< 35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6 metres	no change to existing	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 3.2 metres (1/3 of wall height)	1.1 metres	65.63%	No
	South: 2.91 metres (1/3 of wall height)	1.07 metres	63.23%	No
	Windows: no windows within 3 metres of side boundaries	8x new windows within 3 metres of side boundaries	65.33%	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8 metres (rear boundary)	7.25 metres (pool) - 14.85 metres (dwelling)	9.38%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (282.24m ²) of site area	41.52% (195.3m ²)	30.8%	No
	Open space above ground 25% (48.83m ²) of total open space	23.91% (46.7m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (78.12m ²) of open space	94.73% (185m ²)	-	Yes
	2 native trees	2 native trees	-	Yes
4.1.5.3 Private Open Space	18m ²	> 18m ²	-	Yes

4.1.9 Swimming Pools, Spas and Water Features	1 metres height above ground	2.07 metres	107%	No
	1 metres curtilage/1.5 metres water side/rear setback	1.3 metres (curtilage) - 1.5 metres (water line)	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	No	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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	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

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

The control stipulates that development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees, understorey vegetation and remnant native ground cover species. The Landscape Plan (prepared by The Garden Social, dated 1 April 2022) indicates a large retaining wall with associated backfill below the footprint of the swimming pool. Council's Landscape Officer is concerned that these elements would affect the long term retention of the existing Sydney Red Gum within the rear yard. The Arborist Report submitted with this application has not addressed whether the retaining wall and backfill will have an adverse impact upon the existing gum tree.

To ensure the long term retention of the Sydney Red Gum, a suitable condition has been recommended by Council's Landscape Officer which requires the deletion of the retaining wall and associated fill within the rear yard. The natural ground level within this area is to be either mass planted or may be grassed over the existing levels.

Subject to this recommended condition, the proposal will ensure the long term retention of the existing Sydney Red Gum.

3.4.2 Privacy and Security

Description of non-compliance

The control aims to minimise a loss of privacy to surrounding development through good design. The proposal includes a number of elevated terrace areas on the rear (west) elevation. Whilst the larger terraces on levels 2 and 3 contain privacy screening on the northern and southern elevations, the large pool terrace is devoid of screening on the northern elevation. As a consequence, direct sight lines would be provided into the swimming pool area on the northern adjacent property (15-17 Barrabooka Street).

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 minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The overlooking is not considered to be reasonable in this case as the pool terrace is approximately

20m² in area (i.e. conducive for high frequency use), is elevated approximately 2 metres above natural ground level and is located approximately 5m to the south of the adjacent swimming pool area.

To mitigate the overlooking into the adjacent private open space, a Condition is recommended with this consent requiring the entire northern elevation of the pool terrace sited at RL46.16 AHD to be affixed with a 1.65 metres high privacy screen. The screen is to be either solid panel construction or louvre construction with maximum openings of 30 millimetres. The provision of this screen will mitigate direct overlooking from standing and sitting positions and will not significantly compromise solar access to the subject pool terrace area.

Subject to this recommended condition, the proposal will achieve this objective.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

As noted above, the privacy screen will not significantly compromise solar access to proposed pool terrace area. Furthermore, as the water views are located to the west of the site the provision of the privacy screen along the northern elevation of the pool terrace will not compromise potential view lines from the subject site.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for passive surveillance of the street.

Conclusion

Based on the above assessment, it is concluded that the applicable objectives of the control are achieved, subject to the recommended Condition.

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

Description of non-compliance

The control limits the external wall height of the dwelling house to 8 metres (based off a 1:4 gradient or greater). The proposal includes a maximum wall height of 9.6 metres on the northern elevation. This measurement has been taken from the top of the lift shaft. It is noted that the proposal does not alter the existing wall height on the southern elevation.

Merit consideration

When considering the proposal on its merits, the control relies upon the objectives specified within Clause 4.3 of Manly LEP 2013. As discussed in detail within the section of this report relating to Clause 4.6 of Manly LEP 2013, the proposed development is found to align with the objectives of the height standard, notwithstanding the numeric non-compliances that pertain to building height and wall height.

Therefore, the proposed development is consistent with the intent of this control and supported on merit.

4.1.3 Floor Space Ratio (FSR)

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

It is noted that the site is an undersized allotment, as defined by this control. However, when utilising the undersized allotment exemption the proposed FSR equates to 0.42:1, which is still a 5% departure from the 0.4:1 FSR development standard.

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

Description of non-compliance

Side Setbacks

The control stipulates that development shall be setback at least 1/3 of the adjacent wall height from the side boundaries. In applying this principle, the following side setbacks are required:

- North: 3.2 metres.
- South: 2.91 metres.

The new additions are setback 1.1 metres and 1.07 metres respectively from the northern and southern side boundaries, which does not meet the prerequisite. Notwithstanding, these setbacks follow the side setbacks of the existing dwelling house.

Rear Setbacks

The control requires development to be setback at least 8 metres from the rear boundary. The dwelling is setback 14.85 metres from the rear boundary and meets this requirement. However, the swimming pool is setback 7.25 metres from the rear boundary, which does not meet the 8 metres requirement.

It is important to note that typically within the former Manly LGA swimming pools only need to be setback 1m from side or rear boundaries (refer to Clause 4.1.9 of Manly DCP 2013). However, as the site backs onto land zoned C2 Environmental Conservation, the 8m rear setback applies.

Windows

The control stipulates that windows must be located within 3 metres of side boundaries. The proposal includes 8 new windows within 3 metres of the side boundaries, which does not meet this requirement.

Merit consideration:

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

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

Comment:

The proposed development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the existing side setbacks are retained. The vast majority of the additional gross floor area is contained within the existing building footprint, whilst new articulated elements are incorporated on the front and rear facades to reduce the bulk and scale of the building. Furthermore, the new native landscape treatment within the rear yard will enhance the landscape character of the street. Overall, the proposal meets this objective.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The new windows are appropriately located and include privacy mitigation treatments (i.e. obscure glazing) where appropriate to minimise direct overlooking into the adjacent dwelling houses to the north and south. The pool terrace also does not prompt unreasonable overlooking to the west (rear) as a consequence of the rear setback non-compliance as the land located to the rear of the site consists of dense bushland. Furthermore, the additional overshadowing created by the proposal is negligible and the development ensures adequate view sharing is maintained.

The proposal also maintains the existing character of the streetscape, noting that the side setbacks and ridge level of the existing dwelling house are maintained. In this case, adequate space between buildings is maintained. The proposal will also not preclude safe and adequate traffic conditions within the locality.

Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded with regards to the side and rear setback non-compliance as the proposed development does not result in unacceptable streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development complies with the Manly DCP 2013 landscaped area provision and the development incorporates additional native planting, thereby ensuring an acceptable landscaping outcome.

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

Comment:

The recommendations of the NSW RFS have been included as recommended conditions of consent.

Conclusion

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 60% (282.24m²) of the site to consist of total open space (TOS). To be included as TOS open space areas must be at least 3m x 3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway is excluded).

The application proposes only 41.52% (195.3m²) of the site area as TOS, which does not achieve the numeric requirement.

Merit consideration:

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

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

Comment:

The proposal does not necessitate the removal of significant vegetation and retains the rock outcrops within the rear yard. Furthermore, native vegetation on the site will be enhanced through the provision of the additional landscaping detailed on the Landscape Plan.

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

The proposal will not lead to a significant spread of weeds. Conditions are recommended to ensure this.

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

Comment:

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

Conclusion

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The finished floor level of the swimming pool is located up to 2.07 metres above the existing ground level, which exceeds the numeric limit of 1 metres.

Merit consideration

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

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

Comment:

As discussed earlier within this report, the issue of overlooking from the pool terrace will be alleviated through the recommended condition requiring a 1.65 metres high privacy screen to be erected along the northern elevation of the pool terrace. Furthermore, a condition has been recommended which seeks to limit the noise of sound producing plant to no more than 5dB (A) above the background level,

which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

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

Objective 3) To integrate landscaping.

Comment:

The applicant proposes additional native landscape treatment within the rear yard.

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

Comment:

The site is bushfire prone. The pool water could potentially be used as an emergency water resource in the event of a bushfire.

Conclusion

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

4.4.5 Earthworks (Excavation and Filling)

The control limits any filling to 1 metres above the natural ground level. The Landscape Plan indicates filling within the rear yard that would exceed 1 metres. However, a condition has been recommended by Council's Landscape Officer to delete the retaining wall and associated fill within the rear yard to ensure the retention of the Sydney Red Gum tree. As such, the proposal complies with this control, subject to the recommended conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$7,660 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$766,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

PLANNING CONCLUSION

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

The proposed development involves 30.59% and 67.41% variations respectively to Clauses 4.3 and 4.4 of Manly LEP 2013. However, the applicant has provided sufficient justification for the departure from the development standard in that compliance with the standard is unreasonable in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with a number of controls (i.e. wall height, side setback, rear setbacks and total open space). Given the constraints on the development by virtue of the steep topography and the retention of the side elevations of the dwelling house, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts upon the adjoining properties and the proposal will maintain an appropriate visual relationship with the surrounding built environment, noting that the existing building envelope generally unaltered.

In summary, the proposal is recommended for approval as the siting and design of the dwelling house is responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and locality character.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Building and Clause 4.4 Floor Space Ratio development standards 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 DA2022/0095 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 2610, 13 Barrabooka Street, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
AR.DA.00 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.03 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.04 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.05 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.06 (Revision G)	August 2021	R Squared Studios Pty

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AR.DA.07 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.08 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.09 (Revision G)	August 2021	R Squared Studios Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A403933_03	24 January 2022	Efficient Living Pty Ltd
Geotechnical Assessment Ref. AG 20182	26 April 2021	Ascent Geotechnical Consulting
Bushfire Risk Assessment Ref. 611-R	26 January 2022	Ronald Coffey
Tree Assessment & Management Report	May 2022	Aura Tree Services

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-01 (Revision A) - Landscape Plan	1 April 2022	The Garden Social

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	1 November 2021	Vaughan Milligan Development Consulting

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated
NSW Rural Fire Service	NSW RFS Referral Response Ref. DA20220408006927-Original-	21 April 2022

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

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

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

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

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that

occurs on Council's property.

- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$7,660.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$766,000.00.

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

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

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

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

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

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 Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

7. Stormwater Disposal

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

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

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

8. 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 that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

9. Water Quality Management

A suitable flow spreader/infiltration system must be in place to capture organic matter and

coarse sediments prior to discharge of stormwater directly to the bushland. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

10. **Amendments to the approved plans**

The following amendments are to be made to the approved architectural and landscape plans:

- The retaining wall below the swimming pool and associated fill within the rear yard near tree 1 - Sydney Red Gum are not consented to and must be deleted in their entirety, and the natural ground area shall either be mass planted that continues the proposed planting theme in the rear yard, or may be grassed over existing levels.
- The entire northern elevation of the rear swimming pool terrace sited at RL46.16 AHD must be affixed with a non-transparent screen to a height of 1.65 metres above the finished floor level. The screen is to be either a solid panel or louvre style construction with maximum openings of 30 millimetres. The screen must be designed in accordance with the pool fencing safety requirements outlined within Australian Standard AS1926 Swimming Pool Safety. To avoid any confusion, the screen is to be confined only to the pool terrace and is not to be located on the northern side of the adjacent external staircase.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land and existing bushland.

11. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

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 Certifying Authority prior to the issue of the Construction Certificate.

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

13. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

14. **Sydney Water "Tap In"**

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

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

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

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

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

15. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the Construction Certificate plans.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Construction Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

17. **Tree and Vegetation Protection**

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

i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,

- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

18. **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.

19. **Wildlife Protection**

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

Reason: To protect native wildlife.

20. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

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

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

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

22. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

24. **Waste Management During Development**

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

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

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

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

25. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan, except as altered by the following conditions, and inclusive of the following conditions:

- i) the retaining wall, and associated fill within the rear yard near tree 1 - Sydney Red Gum are not consented to and must be deleted in their entirety, and the natural ground area shall either be mass planted that continues the proposed planting theme in the rear yard, or may be grassed over existing levels,
- ii) all tree planting shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying 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, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) 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 50mm depth of mulch,
- iv) 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,
- v) landscape works are confined to the legal lot boundaries.

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

Reason: Environmental amenity.

26. **Condition of Retained Vegetation**

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

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

Reason: Tree and vegetation protection.

27. **Stormwater Disposal**

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

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

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

28. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

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

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

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

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

30. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the as-built development.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Occupation Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

31. **Removal of Sediment and Erosion Controls**

Before demobilising from the site and once vegetation cover has been re-established across 70 percent of the site, the applicant is to remove all temporary sediment and erosion controls.

Any area of the site that requires ongoing stabilisation must have jute mesh or matting incorporated into the revegetated area. Mulch may be used on slopes subject to sheet flow with a gradient of no more than 1 metre in height for every 3 horizontal metres. Mulch must be laid to a depth of 50-100mm. If using mulch within two metres of the top of bank of a waterway, coir logs or similar must be placed at the downslope edge of the mulched area to prevent migration of the mulch to the waterway.

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

Reason: Protection of the receiving environment

32. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

33. Landscape Maintenance

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

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent. All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

34. 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.

35. Noise - Lift and Swimming Pool

All plant equipment must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.