

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1337
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 13 DP 20271, 98 West Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	David Thomas Barr
Applicant:	Nigel White

Application Lodged:	20/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/09/2023 to 09/10/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 3.5%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 456,948.00
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PROPOSED DEVELOPMENT IN DETAIL

The application seeks the alterations and additions to an existing split level dwelling house. In detail the proposed works consist of:

- 1st floor addition to the existing dwelling house;
- internal alterations and extension to the existing ground floor; and
- at-grade parking for two (2) vehicles and associated turning area.

The applicant was advised in correspondence dated 30 November 2023, that the application was not supported, based on:

- non-compliance with the Height of Buildings development standard of Manly LEP 2013;
- insufficient information to determine compliance with the Floor Space ratio development standard of Manly LEP 2013;
- exceedance of the Number of Storeys development control of Manly DCP 2013;
- insufficient information to determine safe and efficient vehicle access to the site;
- inadequate detail on the management of stormwater from the proposed works; and
- insufficient provision of off-street car parking.

Concept plans were provided to Council on 3 January 2024, and formally amended plans were provided on 22 January 2024.

In summary, whilst the amended plans has resolved the matters in relation to: stormwater management; and floor space ratio, the amended plans have failed to address the other aforementioned matters in Council's correspondence of 30 November 2023.

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

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

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

SITE DESCRIPTION

Property Description:	Lot 13 DP 20271 , 98 West Street BALGOWLAH NSW 2093
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Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of West Street, Balgowlah. The site is regular in shape with a surveyed area of 601.8m². The site is located within the R1 General Residential zone and accommodates a split-level dwelling house, with existing garage for one (1) vehicle. The site has an easterly aspect with a fall down towards the rear boundary. The site has significant vegetation to the rear. Adjoining and surrounding development is characterised by dwelling houses.
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Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to: height of buildings; number of storeys; floor space ratio; vehicular access; stormwater management; front setback; and minimum parking, in correspondence dated 30 November 2023. Amended plans were provided to Council in response dated 22 January 2024. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development,	(i) Environmental Impact The environmental impacts of the proposed development on the

Section 4.15 Matters for Consideration	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) and policies of Council in relation to: • maximum height of buildings; • number of storeys; • wall heights; and • safe and efficient vehicular access. As such, this will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 25/09/2023 to 09/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	21/09/23: The applicant is proposing Ground Floor Alterations and an Upper Level Addition to an Existing Dwelling. <u>Access</u> There is an existing driveway which leads to an attached garage and carport . The applicant is proposing fill of up to 1.2m to level out the parking area forward of the building line. This will make the carport and garage redundant. Physical controls are to be imposed in accordance with clause 2.4.5 of AS/NZS 2890.1:2004 Off Street Car Parking. The level parking facility would require retaining walls internally. This would need to be designed by a structural engineer and provided prior to CC.. The north elevation indicates the boundary levels to be lowered by approximately 300mm. The boundary levels are to be generally maintained. The footpath in the road reserve is extremely flat and the back of layback is only 90mm above the gutter invert. Sections of the existing wheel strip driveway are only 2.1m wide, tire tracks are forms in the road reserve, causing a potential trip hazard. Sections of the driveway are also in poor condition. As internal driveway works are proposed, a street level application will be required to replace the existing driveway on the road reserve. Given the driveway is located between 2 bends which connect Balgowlah Rd and Kitchener St, and there are large volumes of vehicles on West St, the applicant should consider a parking arrangement which allows for cars to enter and exit in a forward direction. This may be possible with a turning bay. If this option is explored, swept path analysis is required to confirm a B85 can exit the property in no more than 4 manouvres. Requesting the following to address access concerns. 1. Requesting 2 longitudinal sections (on both sides of the driveway) from the gutter invert to the rear of the proposed parking facility, demonstrating ground clearance scrape test compliance with the B85 vehicle. 2. Clause 2.4.6.1 Minimum Gradients of AS/NZS 2890.1:2004 states that for parking floors to drain adequately, the minimum gradient shall be 1 in 100 (1%) for outdoor areas. 3. Dimensions of the proposed parking facility. 4. A minimum footpath grade of 1% fall towards the kerb is required. 5. The driveway should be a minimum 3m wide. 6. The parking facility and driveway should be graded such that in the event of a major storm, no stormwater runoff can enter habitable floor areas of the dwelling.

Internal Referral Body	Comments
	<u>Stormwater</u> The site falls to the rear and is located in region 1, zone 1 as defined in the Water Management for Development Policy. The proposal is for alterations and additions. The post development impervious area is increased by less than 50m² and the post development area is 41% < 60%. In accordance with Appendix 16 of the Water Management for Development Policy, no OSD is required. The site appears to benefit from an easement to drain water through 50 Lodge Street. Water runoff from the proposed parking facility should be disposed of to the existing drainage infrastructure. Follow clause 5.5 Stormwater Drainage from Low Level Properties of the Water Management for Development Policy. As such, development engineering cannot support the application due to insufficient evidence to address C2 and C3 of the DCP. Additional Information Provided on 22/01/2024 <u>Stormwater</u> The site appears to benefit from an interallotment easement to the rear. The Stormwater Management Letter by Michal Korecky, dated 01/11/2023 proposes connection to the easement via the existing site stormwater system which is acceptable subject to conditions. <u>Access</u> The amended plans showing the parking and turning areas are insufficient. The plans show no levels or dimensions for the parking/turning areas and the turning area appears insufficient. The previous comments regarding Access have not been addressed. As previously requested the following information shall be provided to address access concerns. 1. Requesting 2 longitudinal sections (on both sides of the driveway) from the gutter invert to the rear of the proposed parking facility, demonstrating ground clearance scrape test compliance with the B85 vehicle. 2. Turn paths are to be provided to demonstrate vehicles can enter and exist the site in a forward direction. 3. Clause 2.4.6.1 Minimum Gradients of AS/NZS 2890.1:2004 states that for parking floors to drain adequately, the minimum gradient shall be 1 in 100 (1%) for outdoor areas. 4. Dimensions of the proposed parking facility. 5. A minimum footpath grade of 1% fall towards the kerb is required. 6. The driveway should be a minimum 3m wide. 7. The parking facility and driveway should be graded such that in the event of a major storm, no stormwater runoff can enter habitable floor areas of the dwelling.

Internal Referral Body	Comments
	Additional Information Provided 26/2/2024 The turn paths shown in the amended architectural plans are not satisfactory. There does not appear to be sufficient depth in the driveway for vehicles to enter and exit the site in a forward direction in just 4 manoeuvres without encroaching on the parking spaces. The applicant shall provide a Traffic Report including swept path analysis by a suitably qualified traffic engineer demonstrating that a B85 vehicle can enter and exit the site in a forward manner with a car parked in the adjacent space. As such, development engineering cannot support the application due to insufficient evidence to address Section 4.1.6.4. of the Manly DCP.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was provided with the application.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.8m	3.5	No
Floor Space Ratio	FSR: 0.5:1	FSR: 263.8m ² or 0.43:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.8m
Percentage variation to requirement:	3.5%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental

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

The applicants written request argues, in part:

- No serious adverse planning consequences (only minor additional overshadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise as a result of the variation;
- Once constructed, the proposed dwelling will retain a height less than that of the adjoining dwellings to the south;
- It is likely that once constructed, the proposed dwelling will retain a height less than that of the adjoining dwellings to the south;
- The proposed development will sit comfortably in its context in terms of scale, massing and form given the prevalence of significant large 2 storey dwellings either side of the subject property;
- The subject site sits within an R1 General Residential zone that is characterised by a mix and variety of housing types including medium density housing. The proposal will maintain a proportionate scale of built form expected in the zone; and
- No adverse impact on the amenity of adjoining properties is likely.

None of these arguments are considered compelling enough to warrant the variation to the development standard. Of particular concern is the contention that there is a "prevalence" of significantly large two storey dwellings, that in effect, renders the standard irrelevant. For this argument to be valid, there would have to be within the immediate area, a majority of structures that have a demonstrated variation to the development standard, that is consistent with the variation that is proposed in this application. No evidence is presented within the written request to prove that this is the case.

A general examination of the built form along West Street and in the surrounding area, exhibits a range of bulk and scale, certainly not of a type that could be readily described as being of a majority of significant two storey dwellings. A significant amount of smaller, single storey dwellings are also present. Of most relevance, a recent consent (DA2019/1057) adjoining the subject site at Nos. 52 and 54 Lodge Street (formerly No.96 West Street) approved a two lot subdivision and construction of two dwelling houses, which both complied with the Height of Buildings development standard.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is not 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 not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Accordingly, refusal of the application is recommended.

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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

As outlined in the previous discussion on the Objects of the Act, the applicant has failed to demonstrate that the proposal will be consistent with the existing built form in the surrounding area. As such, the proposal is not consistent with the desired future streetscape character in the locality and in turn, this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposal will be of bulk and scale that is inconsistent with both the expectations of Council's policy for future development and the existing bulk and scale in the area. Hence, this objective is not achieved.

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:

No adverse disruption to views enjoyed from adjoining public spaces is likely.

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:

No adverse loss of solar access to adjoining public and private open spaces is considered likely.

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:

Not relevant to the proposed development.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

To provide for the housing needs of the community.

Comment: The application can comply with this objective.

To provide for a variety of housing types and densities.

Comment: The application can comply with this objective.

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

Comment: Not relevant to the proposed development.

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

Exception to Development Standards conclusion

The exception to the development standard is not well founded in the written request and upon full consideration of the relevant objectives of the standard, not supported.

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. Further, Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. However, given the inconsistency of the variation to the objectives of the Height of buildings Development Standard, this cannot be assumed.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 601.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.8m (based on gradient 1:20)	7.5m	9	No
	S: 6.6m (based on gradient 1:40)	6.8m	3	No
	E: 6.9m (based on gradient 1.16)	8.2m	16	No
	W: 7.2m (based on gradient 1:9)	8.2m	12	No
4.1.2.2 Number of Storeys	2	3	33	No
4.1.2.3 Roof Height	Height: 2.5m	1.54m	N/A	Yes
	Parapet Height: 0.6m	N/A	N/A	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.6m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.7m (based on wall height) South: 2.2m (based on wall height)	4.1m 1.9m	N/A 14	Yes No
	Windows: 3m	4.1m (north) 2m	N/A 33	Yes No
4.1.4.4 Rear Setbacks	8m	17.5m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	334.5m ² or 55%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (117m ²)	260.4m ² or 77%	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	259m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.5m or 33%	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Part 4.1.2.2 Number of Storeys specifies that:

- "a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
b) Buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan."

The proposed works are in effect three (3) storeys, on the north-west corner of the building, where the proposed 1st floor directly extends over the existing garage level.

Part 4.1.2.2 (c) does permit variations to this control, as stated:

- "i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*

ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP."

However, as stated elsewhere in this report, the proposed works do not comply with the Height of Buildings development standard of Manly LEP 2013. In addition, the proposal is not consistent with the Wall Height development controls on its east, west, north and south elevations.

As such the variation to the Number of Storeys development control is not supported, and this forms part of the recommended refusal of the application.

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

Description of the Non-compliance

The south side boundary is setback at 1.9m from the boundary, short of the minimum 2.2m required.

In addition, windows on the south elevation are setback 2m from the side boundary, exceeding the minimum 3m control.

Consideration of the Objectives

Despite the non-compliance with the minimum side setbacks, this aspect of the proposal is not considered on its own to have an adverse impact and can readily meet the objectives of this control. Hence, this matter is not included in the recommended reasons to refuse the application.

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

Part 4.1.6.4 Vehicular Access (a) requires that:

"All vehicles should enter and leave the site in a forward direction."

Despite the amendments made to the application, this cannot be properly achieved from the proposed parking area.

The site is located on a highly trafficked local collector road, and its access point is compromised by its location on an "S" bend in the road, which severely restricts sight distances, on both east and west bound traffic.

As outlined in the detailed commentary from Council's Development Engineer in the Referrals section of this report, amended parking arrangements cannot demonstrate that vehicles will be able to enter and leave the site in a forward direction,

Hence, this forms one of the recommended reasons for the refusal of the application.

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 \$4,569 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$456,948.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent 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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1337 for the Alterations and additions to a dwelling house on land at Lot 13 DP 20271,98 West Street, BALGOWLAH, for the reasons outlined as follows:

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

Particulars:

The application exceeds the: maximum relevant development standards for Height of Buildings; the development control for the maximum number of storeys and wall heights; and fails to provide safe and efficient vehicular access from the subject site.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

Particulars:

The application exceeds the maximum 8.5m Height of Buildings development standard.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

Particulars:

Council is not satisfied that:

a) the applicant's written requests under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of the clause 4.3 (Height of Buildings) PLEP 2014 development standard has adequately addressed and demonstrated that:

- i. compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
- ii. there are sufficient environmental planning grounds to justify the contraventions.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan 2013.

Particulars:

The application exceeds the number of storeys and wall height development controls specified under the Manly Development Control Plan 2013.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.6.4 (a) Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan.

Particulars:

The current driveway design and arrangement fails to provide sufficient area for all vehicles to be able to enter and exit the site in a forward direction, consistent with the requirements of Australian Standards 2890.1 for vehicular access.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Nick England, Planner

The application is determined on 06/03/2024, under the delegated authority of:



Adam Richardson, Manager Development Assessments