

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1408
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 2 DP 325220, 16 Addison Road MANLY NSW 2095 Lot LIC 30003605, 16 Addison Road MANLY NSW 2095
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house including a boatshed.
<b>Zoning:</b>	Manly LEP2013 - Land zoned C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Sarah Penelope Joyce Nicholas John Fairfax
<b>Applicant:</b>	Patrick Adrian Joyce

<b>Application Lodged:</b>	17/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	03/09/2021 to 03/10/2021
<b>Advertised:</b>	03/09/2021
<b>Submissions Received:</b>	13
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 2,327,583.24
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### EXECUTIVE SUMMARY

The development application seeks approval to demolition and construction of a three storey dwelling house, double garage and boatshed.

The notification of the application resulted in thirteen (13) submissions objecting to the application.

The applicant was provided an opportunity to address concerns raised by Council by way of amended plans, but these amendments failed to satisfactorily address Councils concerns and the application is therefore recommended for refusal.

The view impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved. Council's Heritage advisor has reviewed the application and does not support the proposal in its current form.

As such, the application is recommended for refusal.

The application is referred to the Northern Beaches Local Planning Panel due to having more than 10 unique objections.

## **PROPOSED DEVELOPMENT IN DETAIL**

The development application seeks consent for demolition works and construction of a three storey dwelling house, double garage and boatshed.

## **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 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area

Manly Development Control Plan - 3.2 Heritage Considerations

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 DP 325220 , 16 Addison Road MANLY NSW 2095 Lot LIC 30003605 , 16 Addison Road MANLY NSW 2095
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**Detailed Site Description:**

The subject site consists of one (1) allotment located on the southern side of Addison Road, Manly

The site is a battle-axe allotment off Addison Road, Manly. The site has a surveyed area of 543.8m<sup>2</sup>.

The site is located within the C4 Environmental Living zone and accommodates a dwelling house and garage.

The site slopes from north-west to south-east corner and includes a approximate crossfall of 12m.

The site is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins in Manly.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by residential accommodation including one and two storey dwelling houses and residential flat buildings.

Map:

**SITE HISTORY**

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

**PLM2020/0185** - Demolition Works and construction of a new dwelling

Council raised the following issues with the proposal during pre-lodgement discussions:

- Foreshore Area/ Building Line
- Excavation
- Wall heights, setback, bulk and scale.

**DA2019/0808** - Construction of a swimming pool and associated works. (Approved 21 January 2020)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to view loss.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter may be addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> <p>Note: The Environmental Planning and Assessment Regulation 2021 (2021 EP&amp;A Regulation) commenced on 1 March 2022 and replaced the 2000 Regulation. However, The application was lodged after 1 March 2022, the savings provisions apply pursuant to Schedule 6 of the 2021 EP&amp;A Regulation.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the setback and wall height requirements under the Manly DCP and 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.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 03/09/2021 to 03/10/2021 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 process council is in receipt of 13 submission/s from:

<b>Name:</b>	<b>Address:</b>
Christopher Sarroff	Address Unknown
Mr Raymond John Mathieson	503 / 54 West Esplanade MANLY NSW 2095
Mr Ross Dario Sterrantino Mrs Vivien Barbara Sterrantino	11 A Waratah Road PALM BEACH NSW 2108
Thomas Jacobs	6 / 22 - 26 Addison Road MANLY NSW 2095
Ms Sally Elizabeth Morton	2 / 22 - 26 Addison Road MANLY NSW 2095
Mr Vivian Reginald Mascarenhas	180 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Evolution Planning Pty Ltd Ms Margaret Gillian Mackenzie	Po Box 309 FRENCHS FOREST NSW 1640
Ms Marina Dimitropoulos	1 / 22 - 26 Addison Road MANLY NSW 2095
Ms Ann Frances James	12 Addison Road MANLY NSW 2095
Ms Victoria Liew-Dwyer	18 Addison Road MANLY NSW 2095
Mr Cosimo Maiolo	20 Addison Road MANLY NSW 2095
Mrs Margaret Gillian Lavers	14 A Addison Road MANLY NSW 2095
Antonella Sterrantino	Address Unknown

The following issues were raised in the submissions:

- **View Loss;**
- **Boatshed permissibility;**
- **Overdevelopment;**
- **Privacy;**
- **Parking/Traffic Management;**
- **Landslide risk (Excavation);**
- **Impact of foreshore;**
- **Pets;**
- **Impact on threatened species;**
- **Built form non-compliance;**
- **Boundary Fence**
- **Location of heater;**

- **Construction impacts; and**
- **Classification of development.**

The above issues are addressed as follows:

- **View Loss**

Comment:

Concern was raised in regard to loss of water views from private open space from adjoining properties. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development results in a unreasonable loss of view loss from neighbouring properties and warrants the refusal of the application.

- **Boatshed permissibility**

Comment:

Concern is raised in regards to the permissibility of the proposed boatshed. The matter of the permissibility of the boatshed is discussed in detail within this report. In summary, the proposed boatshed is deemed permissible and satisfactory pursuant to clause 6.10 (Limited development on foreshore area) of the Manly LEP and Clause 16 of *Sydney Regional Environmental Plan (Sydney Harbour Catchment)* 2005.

This issue does not warrant the refusal of the application

- **Overdevelopment (Building Height)**

Comment:

A number of submissions received raise concern regarding the bulk of the proposed development, noting non-compliance with numerous aspects of MLEP 2013 and MDCP 2013. As discussed in further detail with respect to individual built form standards/controls, the scale of the development attributes to unreasonable impacts upon adjoining properties and the streetscape, and the proposal is not supported in this regard.

- **Privacy**

Comment:

Concern was raised about privacy impacts (acoustic and visual) from the proposed particularly to windows and living areas. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP.

This does not warrant the refusal of the application

- **Parking/ Traffic management**

Comment:

Concern is raised in regards to traffic, safety and loss of on-street parking as a result of the proposed development. The development proposes compliant off-street parking for the dwelling house, being two (2) off-street parking spaces for a dwelling house. Concern is also raised in regards to use of the right of carriageway that also services neighbouring properties. If the application is to be approved, conditions of consent may be imposed to ensure the Construction Traffic Management Plan is updated to ensure suitable traffic/construction mitigation measures are imposed prior to the issue of any construction certificate or commencement of works.

This issue does not warrant the refusal of the application

- **Landslide risk (Excavation)**

Comment:

Concern was raised in regards to potential impacts from excavation works including vibration, soil stability and waste disposal. These matters have been considered under Clause 6.8 of the Manly LEP and Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Dilapidations reports and the recommendations proposed under the Geotechnical report (prepared by Geotechnics dated 4 March 2021) may be imposed as part the conditions of consent if the application is to be approved.

This issue does not warrant the refusal of the application

- **Impact of foreshore**

Comment:

Concern has been raised in regards to the visual impact of the dwelling house when viewed from the foreshore. Given the variety of development along the southern side of Addison Road, the proposed development when viewed from the foreshore is not deemed to be unreasonable or unsightly.

This issue does not warrant the refusal of the application

- **Pets**

Comment:

Concern is raised in regards to the behaviour of pets on the existing property. This matter is not a consideration under the *Environmental Planning and Assessment Act 1979* (NSW).

This issue does not warrant the refusal of the application

- **Impact on threatened species**

Comment:

The subject site is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. As such, the application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.



This issue does not warrant the refusal of the application

- **Built form non-compliance**

Comment:

Concern is raised in regards to the proposed setback non-compliances, wall height and number of storeys non-compliance and the resulting undesirable presentation to the streetscape as well as amenity impacts to adjoining properties. A detailed assessment of the non-compliance under clause 4.1.4 Setbacks (front, side and rear) of the Manly DCP is in this report and clause 4.1.2 Height of buildings (Incorporating Wall Height, Number of Storeys & Roof Height). In summary, the variation to the setback and wall height controls is not supported and warrants the refusal of this application.

- **Boundary Fence**

Comment:

Concern is raised in regards to impact of the proposed boundary fencing along the eastern property boundary as shown on the plans. No owners consent has been provided from the adjoining property who shares this boundary. As such, the element of the proposal may be conditioned to be deleted prior to the issue of the construction certificate if the application is approved.

This issue does not warrant the refusal of the application

- **Location of Heater**

Comment:

Concern is to the suitability of the heater as shown on the ground floor plan. The location of the gas heater heater is deemed reasonable given that it is generally centralised on site.

This issue does not warrant the refusal of the application

- **Construction Impacts**

Comment:

Significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions may be included to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours if the application is to be approved.

This issue does not warrant the refusal of the application

- **Classification of Development**

Comment:

Concern is raised that the proposed development may be utilised as a dual occupancy. The proposed development contains internal access at each level, and as such is not capable of

being used as a dual occupancy. A condition of consent may be imposed if the application is approved to ensure that that dwelling is used as single domicile only.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>No objection, with conditions.</b></p> <p>This application is for the demolition of an existing residential dwelling, and the construction of a new residential dwelling.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environmental Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping</li> <li>• 5.4.1 Foreshore Scenic Protection Area</li> </ul> <p>The Statement of Environmental Effects provided with the application notes that no trees are to be removed as a result of proposed works. This statement is not necessarily supported by the Architectural and Landscape Plans as there is one existing tree located within the rear of the site that is likely to be removed as a result of proposed works.</p> <p>No major concerns are raised regarding the removal of this tree as it appears to be of low landscape value and significance. In addition, it is evident that a number of compensatory tree plantings are proposed on the Landscape Plan which is supported. It should be noted that trees within neighbouring properties are considered to be prescribed irrespective of species, and as a result are required to be protected and retained. Although proposed works are not likely to directly impact these trees in adjoining properties, care must be taken to ensure construction impacts do not negatively impact their short-term and long-term health. The retention of these trees, as well as those to be retained in the driveway, is key to satisfying control 3.3.2, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide".</p> <p>The Landscape Plan provided with the application proposed the in-ground planting of trees, shrubs, accents, grasses as well as groundcovers. Slight concern is raised regarding the use of a couple of tree species, specifically <i>Howea fosteriana</i> and <i>Olea europaea</i>. Both of these trees species are exempt, with <i>Olea europaea</i> being identified as an environmental weed. For this reason, the use of these species is not supported, and it is recommended that these trees be replaced for locally native alternatives. This species change,</p>

Internal Referral Body	Comments
	<p>alongside the completion of other landscape works as proposed on the Landscape Plan, is key to satisfying controls 3.3.1 and 4.1.5, as key objectives of these controls include "to encourage appropriate tree planting and maintenance of existing vegetation", "to maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland", as well as "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area". The completion of these landscape works is also necessary to comply with control 5.4.1, as key objectives of this control seek to "maintain the visual dominance of the natural environment", as well as "minimise the contrast between the built and environment and the natural environment", which is particularly important due to site proximity to the Manly Foreshore.</p> <p>The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plan, inclusive of the requires tree species changes.</p>
NECC (Bushland and Biodiversity)	<p><b>No objection, with conditions.</b></p> <p><b><u>Relevant Provisions</u></b>  The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016 (BC Act)</li> <li>• NSW Biodiversity Conservation Regulation 2017 (BC Regulation)</li> <li>• Manly LEP Clause 6.5 (Terrestrial Biodiversity)</li> <li>• Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands)</li> <li>• Manly DCP Clause 3.3.1.a.v (Landscaping Design – bandicoot habitat)</li> </ul> <p><b><u>Impact Assessment</u></b>  The subject site is identified as being within the NSW Biodiversity Values Map (BV Map) and includes areas of the 'Little Penguin Declared Area of Outstanding Biodiversity Value' as declared under the BC Act. Accordingly, the DA has been accompanied by a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor in accordance with the NSW Biodiversity Assessment Method.</p> <p>The BDAR (GIS Environmental Consultants, July 2021) provides a comprehensive assessment of potential impacts to Little Penguins, Long-nosed Bandicoots and other relevant threatened species arising from the proposal. It is considered that the key potential impacts arising from the proposal are associated with demolition, excavation and construction activities; these have been assessed in the BDAR and include:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Noise and vibration in penguin habitat during demolition, excavation and construction</li> <li>• Waste management activities and increased human use of penguin habitat areas during construction</li> <li>• Sedimentation and run-off into penguin habitat</li> <li>• Impacts to other threatened species i.e. Long-nosed Bandicoot population, three threatened flora species.</li> </ul> <p><b>Noise and vibration during demolition, excavation and construction</b>  Construction-related impacts such as noise and vibration will be primarily managed by timing high-impact works (i.e. demolition and excavation) to occur during the penguin non-breeding season. Whilst the BC Regulation defines the Little Penguin breeding season as “the period from 1 July in any year until 28 February in the following year (both dates inclusive)”, penguins may vacate a nest/moult site prior to the end of February and/or may return to nest sites prior to 1 July. The Geotech Report recommends non-percussive excavation techniques, including those for the lower level. If percussive excavation works occur then a detailed penguin monitoring provision to enable adaptive noise and vibration management in response to variable patterns of penguin site usage will need to be developed by the Project Ecologist.</p> <p>It is considered that, subject to proposed mitigation and monitoring measures (if required), noise/vibration associated with demolition, excavation and construction works are unlikely to impact penguin habitat or behaviour.</p> <p><b>Waste management activities and increased human use of the foreshore during construction</b>  In order to avoid disturbing penguin breeding/moulting behaviour, delivery of materials and removal of waste is to be undertaken from Addison Road and not via the foreshore at any time.</p> <p><b>Sedimentation and run-off into penguin habitat</b>  Inadequately managed sedimentation and construction run-off has the potential to impact penguin nesting/moulting/loafing habitat at the bottom of the cliff. Appropriate provisions to prevent sedimentation and run-off into penguin habitat will be conditioned.</p> <p><b>Impacts to other threatened species</b>  The development footprint is generally confined to the existing built form and is therefore unlikely to result in a permanent loss of wildlife habitat such as foraging resources for Long-nosed Bandicoots (lawn/garden).</p> <p><b>Conclusion</b>  The proposed development has been designed, located and will be managed to respond appropriately to important site constraints and avoid adverse environmental impacts. This conclusion is related to the</p>

Internal Referral Body	Comments			
	<p>impacts to biodiversity, and does not endorse the permissibility, or otherwise, of the development. It is considered that, subject to recommended conditions, the proposal can be undertaken without adverse impact to the endangered populations of Little Penguins and Long-nosed Bandicoots, other threat-listed species, or their habitats.</p>			
<p>NECC (Coast and Catchments)</p>	<p><b>No objection, with conditions.</b></p> <p><b>Updated comment: 1 March 2022</b></p> <p>In reviewing the coastal assessment, it is noted the proposed boatshed is above the mean high water mark and therefore outside W2 - Environmental Protection area.</p> <p>Given that the proposed boatshed is above the mean high water mark, the boatshed is permissible under Clause 16 of the Sydney Harbour REP below. Consideration should be given if the boatshed is permissible under the Manly LEP and DCP.</p> <p>The application is therefore supported.</p>			
<p>NECC (Development Engineering)</p>	<p><b>No objection, with conditions.</b></p> <p>The amended stormwater plan with the provision of OSD is satisfactory. No objections to approval subject to conditions as recommended.</p>			
<p>NECC (Water Management)</p>	<p><b>No objection, with conditions.</b></p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. The relevant water management Policy principles are:</p> <ul style="list-style-type: none"> <li>• Improve the quality of water discharged to our natural areas to protect the ecological and recreational condition of our, beaches, waterways, riparian areas and bushland.</li> <li>• Water sensitive urban design measures will be integrated into the built form to maximise liveability and reduce the impacts of climate change e.g. urban heat island effect and intensified rainfall events.</li> <li>• Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources.</li> </ul> <p>The proposed development is presenting a low environmental risk after the construction period.</p> <p>The development application is acceptable, subject to conditions.</p>			
<p>Strategic and Place Planning (Heritage Officer)</p>	<table border="1"> <tr> <td data-bbox="520 2002 1437 2047"><b>HERITAGE COMMENTS</b></td> </tr> <tr> <td data-bbox="520 2047 1437 2092">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="520 2092 1437 2139"> </td> </tr> </table>	<b>HERITAGE COMMENTS</b>	Discussion of reason for referral	
<b>HERITAGE COMMENTS</b>				
Discussion of reason for referral				

Internal Referral Body	Comments		
	<p>The proposal has been referred to Heritage as the subject site is affected by a heritage item, being <b>Item I1 Harbour foreshores</b>, listed in Schedule 5 of Manly Local Environmental Plan 2013.</p>		
	<p>Details of heritage items affected</p>		
	<p>Details of the heritage item as contained within the Manly Heritage Inventory are:</p> <p><b>Item I1 Harbour foreshores</b>  <u>Statement of Significance</u>            Natural landscape type - Aesthetic.  <u>Physical Description</u>            Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</p>		
	<p>Other relevant heritage listings</p>		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAI A Register of 20th Century Buildings of Significance	No	
	Other	No	
	<p>Consideration of Application</p>		
	<p>The proposal seeks consent for the demolition of the existing single level dwelling and construction of a three storey dwelling house including a boatshed on the subject site. The proposed works include modifications to the existing natural landscaping and the rock outcrops, to form a terrace at the proposed lower ground floor level and a smaller terrace at the boatshed level.</p> <p>A stone retaining wall has also been proposed along the boatshed (across the site) stretching up to the lower ground level terrace. This wall is considered to impact the views from the Harbour as it creates a four storey building appearance when viewed from the Harbour, by replacing the natural setting in the foreshore area that is visible from the Harbour. The subject site is located within the Manly Foreshore Scenic Protection Area and considerations should be given to the following controls under Clause 5.4.1 Foreshore Scenic Protection Area of Manly DCP:</p>		

Internal Referral Body	Comments
	<p><u>5.4.1.1 Additional matters for consideration</u>  <i>LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area.</i></p> <p><i>a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:</i></p> <ul style="list-style-type: none"> <li><i>• i) minimise the contrast between the built environment and the natural environment;</i></li> <li><i>• ii) maintain the visual dominance of the natural environment;</i></li> <li><i>• iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;</i></li> <li><i>• iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;</i></li> <li><i>• v) locate rooflines below the tree canopy;</i></li> <li><i>• vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and</i></li> <li><i>• vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.</i></li> </ul> <p><i>b) Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshores in Manly.</i></p> <p>Therefore, Heritage can not support this proposal in its current form and require amendments.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013</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</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 04 March 2022</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

<b>External Referral Body</b>	<b>Comments</b>
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.
Foreshore and Waterways Planning and Development Advisory Committee	The proposal was referred to Foreshore and Waterways Planning and Development Advisory Committee. No response has been received within the 28 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

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

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

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1183912S\_02 dated 9 August 2021).

The BASIX Certificate indicates that the development will achieve the following:

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	43
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	100

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



## **SEPP (Infrastructure) 2007**

### Ausgrid

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

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

### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 15 (Heritage Considerations), Clause 21 (21. Biodiversity, ecology and environment protection), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken as follows:

### 14. Foreshores and Waterways Area

*The planning principles for land within the Foreshores and Waterways Area are as follows:*

- (a) development should protect, maintain and enhance the natural assets and unique environmental*
- (b) public access to and along the foreshore should be increased, maintained and improved, while*
- (c) access to and from the waterways should be increased, maintained and improved for public*
- (d) development along the foreshore and waterways should maintain, protect and enhance the*
- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand*
- (f) public access along foreshore land should be provided on land used for industrial or commercial*
- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should*
- (h) water-based public transport (such as ferries) should be encouraged to link with land-based public*
- (i) the provision and use of public boating facilities along the waterfront should be encouraged.*

### Comment:

The foreshore area currently has no public access, therefore, the proposal will not alter any public access to or along the harbour foreshore for recreational or commercial use.

## 15. Heritage Considerations

*The planning principles for heritage conservation are as follows—*

- (a) Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance,*
- (b) the heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved,*
- (c) an appreciation of the role of Sydney Harbour in the history of Aboriginal and European settlement should be encouraged,*
- (d) the natural, scenic, environmental and cultural qualities of the Foreshores and Waterways Area should be protected,*
- (e) significant fabric, settings, relics and views associated with the heritage significance of heritage items should be conserved,*
- archaeological sites and places of Aboriginal heritage significance should be conserved.*

### Comment:

The Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. As detailed in the response from Council's Heritage Officer (above), the proposal have been found to result in a development that will have an adverse impact upon the significance of the local heritage item I1 Harbour foreshores. The proposal is inconsistent with this clause.

## 21. Biodiversity, ecology and environment protection

*The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows—*

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,*
- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) development should retain, rehabilitate and restore riparian land,*
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands.*
- (h) the cumulative environmental impact of development,*
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.*

### Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed dwelling and boatshed are proposed above the mean high-water mark. The proposed development was referred to Council Biodiversity and Coast and catchment officer who raised no concern with the proposed development.

## 25. Foreshore and waterways scenic quality

*The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows-*

- (a) the scale, form, design and siting of any building should be based on an analysis of:*

- (i) the land on which it is to be erected, and*
- (ii) the adjoining land, and*
- (iii) the likely future character of the locality,*
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and*
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

Comment:

The proposal is not considered to substantially alter the appearance of the foreshore area in the vicinity of the site. The proposed works to the foreshore area are relatively remaining within the existing dwelling house building footprint. The proposed dwelling house is compatible with the established and future character of the locality.

26. Maintenance, protection and enhancement of views

*The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—*

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*
- (b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*
- (c) the cumulative impact of development on views should be minimised.*

Comment:

The proposed development will result in excessive loss of harbour view from neighbouring properties. The level of view loss has not been suitably minimised.

27. Boat storage facilities

*The matters to be taken into consideration in relation to boating facilities are as follows—*

- (a) development should increase the number of public boat storage facilities and encourage the use of such facilities,*
- (b) development should avoid the proliferation of boat sheds and other related buildings and structures below the mean high water mark,*
- (c) development should provide for the shared use of private boat storage facilities,*
- (d) development should avoid the proliferation of private boat storage facilities in and over the waterways by ensuring that all such facilities satisfy a demonstrated demand,*
- (e) boat storage facilities should be as visually unobtrusive as possible*
- (f) in the case of permanent boat storage, the safety and utility of the development should not be adversely affected by the wave environment, and the development should avoid adverse impacts on safe navigation and single mooring*

Comment:

The proposed boatshed is a private boatshed and proposed above the mean high-water mark. The proposed boatshed will not be visually obtrusive. The proposed boatshed satisfies this clause.

Given the scale of the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was considered necessary. The proposal was referred to Foreshore and Waterways Planning and Development Advisory Committee on 30 August 2021. No response has been received within the 30 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

The proposed development is generally consistent with the requirement of the SREP. However, the impact upon the heritage item that adjoins the site is not supported. As such, it is considered that the application does not comply with the requirements of the State Regional Planning Policy (Sydney Harbour Catchment) 2005.

### **SEPP (Coastal Management) 2018**

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

#### **12 Development on land within the coastal vulnerability area**

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development:*
  - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no

coastal vulnerability area has been identified. Not applicable.

### **13 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.*

#### Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. Currently, there is no public access along the foreshore. In addition, the proposed works are consistent with the existing foreshore swimming pool and nearby comparable developments. Overall, the proposal does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *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 an adverse impact referred to in subclause (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.*

#### Comment:

Council is satisfied the proposed works are designed and can be managed to avoid adverse impacts upon the matters identified in this clause.

### **14 Development on land within the coastal use area**

- (1)
- (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.

Comment:

The proposal does not impact upon public access to and along the foreshore. The subject site and adjacent foreshore area is mapped as having a high likelihood of containing Aboriginal heritage sites. However, the foreshore area has been heavily modified and no sites have been identified within the vicinity of the proposed development. Overall, the proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent may be imposed to stop works if any Aboriginal Engravings or Relics are unearthed.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

**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	8.3m	-	Yes
Floor Space Ratio	FSR:0.6:1 (326.28sqm)	FSR: 0.596:1 (324.3sqm)	-	Yes

## Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

## Detailed Assessment

### **5.10 Heritage conservation**

Council's Heritage advisor has reviewed the proposed development application as the proposed subject adjoins Local Heritage Item *11 Harbour foreshores*. As discussed previously in the assessment report, the presentation of the proposed dwelling house and associated boatshed to the foreshore will result in a negative visual impact upon the heritage item and is not supported. Therefore, it is listed as a reason for refusal.

### **6.8 Landslide risk**

The site is mapped on the landslip Risk Map. The proposal includes earthworks to facilitate the lower ground floor level and boatshed. The proposal is unlikely to increase any landslip risk or significant adverse impact on surrounding land. The application has been reviewed by Council's Development Engineer who has confirmed that stormwater will be suitably managed by way of a on-site detention tank. Further, the geotechnical report submitted with the application (prepared by JK Geotechnics, dated 16 April 2021) which stipulates that the proposal will not have a reasonable impact upon existing ground and surface water flows. Standard conditions may be imposed to ensure that adequate sediment controls are installed prior to the commencement of any works to minimise potential risks. As such, the proposal complies with clause 6.8 of the MLEP.

### **6.10 Limited development on foreshore area**

The proposed boatshed and the rear portion of the proposed dwelling house within the foreshore area mapped under Clause 6.10 of Manly LEP. The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

The demolition of the existing dwelling house and proposed new dwelling house represents a rebuilding of a existing building partly in the foreshore area consistent with subclause (2)(a) under clause 6.10.

The proposed boatshed within the foreshore is permissible pursuant to subclause (2)(c)

As such, the works proposed are deemed to be acceptable under this clause.

**Mainly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 543.8sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.2.1 Wall Height	East 7.5m (based on gradient 1:6)	East 6.4m - 7.9m	5.3%	No
	West: 7.15m (based on gradient 1:9.5)	West 5.8m - 7.4m	3.4%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	N/A, Battle-axe allotment	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	<b>East</b> First floor -2.13m - 2.63m	<b>East</b> Dwelling First floor- 0.904m – 3.0m Dwelling ground floor - 0.904m - 3m	up to 65% -	No
	<b>West</b> First floor - 1.93m - 2.46m	<b>West</b> Dwelling First floor- 1.054m - 1.293 - 3m Dwelling ground floor -1.054m - 1.293 - 3m	up to 48% -	No
	Windows: 3m	1m - 3.0m	66%	No
4.1.4.4 Rear Setbacks	8m	7.2m	10%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (299.09sqm) of site area	37.25% (202.6) sqm	32.3%	No
	Open space above ground 25% of total open space	0sqm	-	Yes



4.1.5.2 Landscaped Area	Landscaped area 35% of open space	36.1% (73.2sqm)	-	Yes
	3 native trees	4 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	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	No street frontage	-	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

### 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	No	No
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	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
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
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
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

### Detailed Assessment

#### **3.2 Heritage Considerations**

As detailed in the response from Council's Heritage Officer (above), the proposal have been found to result in a development that will have an adverse impact upon the significance of the local heritage item *11 Harbour foreshores*, inconsistent with the requirements and objectives of clauses 3.2 of MDCP 2013.

#### **3.4.2 Privacy and Security**

##### Description of non-compliance

Privacy concerns have been raised by neighbouring properties in regards to potential overlooking between the subject site

##### Merit consideration:

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

*Objective 1) To 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:

Concern from No. 14a Addison Road was raised in regard to potential overlooking from the outdoor living areas and the proposed first floor glass wall across the western elevation. Amended plans submitted by the applicant have incorporated a timber privacy screen from floor to ceiling level to mitigate direct overlooking between properties. No further privacy measures are requires to further mitigate privacy between dwellings.

Concern has also been raised from adjoining properties in regard to potential overlooking between the subject site and the neighbouring properties at No. 20 Addison road apartments at No. 22-26 Addison Road. From a view of what is visible from the site it is evident there are some sight lines into the living areas of of the neighbouring eastern property. However, the sightlines are not the dominant views (which is directly to the rear of the subject site) and inevitable given the sloping topography and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Reasonable visual privacy is maintained between the subject site and neighbouring properties.

*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:

Given the above, the proposed development retains adequate privacy for the residential developments to the east and west, while allowing sufficient access to light and air, and balancing of views.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

The proposal will not compromise casual surveillance of the street from the property.

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

### 3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received four (4) submission from the occupants of No. 12, 18, 5/22-26 and 6/22- 26 Addison Road, Manly raising view loss as a concern.

To assist Council in its assessment of the application Height poles were requested on 24 November 2021 to reflect the amended building design.

Amended plans and survey confirmation from a registered surveyor confirming the height poles location and heights were lodged with Council. (Refer to plan prepared by Norton Survey Partners dated 21 December 2021).

The location of the height poles (amended) is shown below:



**Image 1 - Survey Confirmation of height poles**

## Merit consideration:

The development is considered against the Objectives of the Control:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

### Comment:

The proposed development will result in a minor to moderate loss of views from neighbouring properties. The level of view loss is not supported given the side setback, wall height non-compliance and general lack of modulation at first floor level.

- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

## **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

### Comment to Principle 1:

Views affected from adjoining properties are harbour views, land and water interface and views of North Head filtered through existing development as shown below.

## **2. What part of the affected property are the views obtained**

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

Existing views from the above properties are obtained from all areas facing south (rear), including the living rooms and balconies and bedroom and associated balconies from a standing position. Due to the elevation of the property, the views from the upper level primary living spaces are more wide ranging than those enjoyed on the lower level.

## **3. Extent of impact**

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

Comment to Principle 3:

The extent of impact varies between the properties, as follows:

**No. 12 Addison Road, Manly**

The nature of the view affected from this property would harbour (water) views to the south-east. The views from this property are taken from the first floor bedroom balcony. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house (No. 16 Addison Road, Manly). The extent of impact from this property is moderate as it will lose views from the only room with harbour views. There are no existing views from the ground floor rooms.



*Photo 1 - View looking south-east from first floor bedroom balcony.*



*Photo 2 - View looking south-east from master bedroom.*

**No. 18 Addison Road, Manly**

Occupants of No. 18 Addison Road, Manly currently enjoy views towards the harbour, north head and the land water interface in a southern direction from the first floor sunroom/study at the rear of the building. The view is obtained over the rear boundary and over the roof of the existing dwelling. The extent of impact to from this property moderate as it will lose the views from rear of the first floor. There are no existing views from the ground floor rooms.



*Photo 3 - View looking south from first floor sunroom*



*Photo 4 - View looking south from first floor sunroom*

**No. 6/22- 26 Addison Road, Manly**

Apartment 5 is located on the first floor of 22-26 Addison Road. Occupants of Apartment 6 currently enjoy views towards the harbour, North Head and the land water interface in a south and south-westerly direction from the living room and terrace to the rear side of the building. The view is obtained over the side boundary and over the roof of the existing dwelling. The proposed development is likely to result in minor loss of water view, while the land and water interface and North Head are retained in full. Noting the collective existing views from this property, the proposed development on a whole will have a minor impact upon the amenity of this dwelling. The likely impact is not considered to be unreasonable, as a similar impact would otherwise arise with a compliant built form.



*Photo 5 - View looking south from first floor terrace*



*Photo 6 - View looking south from living room*

**No. 5/22-26 Addison Road, Manly**

Apartment 5 is located on the first floor of 22-26 Addison Road. Occupants of Apartment 5 currently enjoy views towards the harbour, north head and the land water interface in a south and south-westerly direction from the living room and terrace to the rear side of the building. The view is obtained over the side common boundary and over the roof of the existing dwelling. The proposed development is likely to result in minor loss of harbour view, while the land and water interface and North Head retained in full. Noting the existing views from this property, the proposed development



on a whole will have a negligible to minor impact upon the amenity of this dwelling. Similarly to unit 6, the likely impact is not considered to be unreasonable, as a similar impact would otherwise arise with a compliant built form.



*Photo 7 - View looking from terrace looking south west*



*Photo 8 - View looking from living room looking south west*

#### **4. Reasonableness of the proposal that is causing the impact**

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

Comment to Principle 4:

The proposed development complies with the Building Height and Floor Space Ratio development standards under the Manly LEP. The subject development does not comply with the controls of the MDCP 2013 and in the circumstances it is found that the view loss for the neighbouring property is unacceptable and warrants the refusal of the application.

The demonstrated non-compliances, being side setbacks and wall height give rise to unreasonable view impacts.

It is acknowledged that the context and siting of the existing dwelling on the subject site, makes views for adjoining properties extremely vulnerable to any form of new development. However, it is concluded that the extent of the breaches of the planning controls is excessive and a more skillful and compliant design would vastly improve the outcome.

The question of a more skillful design has been considered in that a close analysis of the plans identifies the opportunity to retain areas of view lines from all affected properties. The views assessment determined that there is the opportunity to significantly lessen the impact on views. While it acknowledged that that full compliance would be unreasonable given the constraints of the site, a greater level of compliance with both the wall height and side setback control would allow for view corridors to be maintained. In this regard, the development potential would not be significantly compromised.

Therefore, the proposed dwelling house in particular the first floor setback and wall height non-compliance is considered unreasonable in the circumstances of this application in that the application does not demonstrate a reasonable sharing of views

- *To minimise loss of views, including accumulated view loss ‘view creep’ whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment:

As discussed above the proposed development will result in an unreasonable loss of view. In regards to ‘view creep’ the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is not supported in this particular instance.

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

Description of non-compliance

Clause 4.1.2 of Manly DCP permits a maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- East elevation: 1:6 gradient, which permits a maximum wall height of 7.5m.
- West elevation: 1:9.5, which permits a maximum wall height of 7.15m

The maximum wall height of the proposed dwelling house is as follows:

- East wall: 8.4m, which represents a 5% variation from the numeric requirement.
- West wall: 8.9m, which represents a 11.25% variation from the numeric requirement.

Clause 4.1.2 of the MDCP 2013 limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement. The 3 storey component occurs at the front of the structure over the footprint of the garage, with the rear half of the structure being a 2 storey building.

#### Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. This control relies upon the objectives specified within Clause 4.3 of the MLEP 2013. Accordingly, the proposal is considered against the following objectives:

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

#### Comment:

The proposal complies with the Height of buildings development standard and therefore, meets the desired building height envisaged for the site. The semi-detached dwellings follow the slope of the land.

*(1) (b) To control the bulk and scale of buildings.*

#### Comment:

The proposal complies with the Height of buildings and Floor space ratio development standards, which are the key controls that govern the bulk and scale of buildings. However, the proposed dwelling house fails to provide sufficient articulation at first floor level to offset the visual bulk and scale of the building which as a result will lead to unreasonable view loss impacts.

*(1) (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 harbour and foreshores).*

#### Comment:

The proposal has been assessed against the view loss provisions under Section 3.4.3- Maintenance of Views of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development results in unreasonable view loss from neighbouring properties.

The development does not satisfy this objective.

*(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.*

Comment:

The solar impacts of this aspect of the development are acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment:

The wall height non-compliance does not create unreasonable impacts over land in recreation or environmental protection zones, that might conflict with bush land and surrounding land uses.

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

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.13m - 2.63m from the eastern boundary at first floor level and 1.93m - 2.46m from the western boundary at first floor level. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

Clause 4.4.4.4 of the Manly DCP requires development be setback 8m from the rear boundary.

The development proposes the following:

**East side setback-** First floor: 0.904m - 3.0m (up to 65% variation to the numeric control)

**West side setback-** First floor - 1.054m - 1.293m - 3.0m (up to 48% variation to the numeric control)

**Windows-** 1m - 3m ( up to 66% variation to the numeric control)

**Rear setback-** 7.2m (10% Variation to the numeric control)

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 works will not be visible from the street.

*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 proposed side setback non-compliance at first floor level contributes to a loss of water views from adjoining properties to the north. Greater compliance with this control would directly relate to a greater view corridor being retained toward the harbour.

The proposal does not satisfy this objective.

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

Comment:

Flexibility cannot be provided in this circumstance as the proposed side setback non-compliance results in view loss impacts that are a direct result of the side setback non-compliance on both the eastern and western side of the dwelling house.

*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 level of landscaping proposed on site is reasonable given the constraints on site and existing landscaping on site. No important landscape features on site as proposed to be removed.

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

Comment:

The subject site is not located in a bush fire zone.

As such, non-compliance with the side setbacks prescribed by this control is considered to warrant the refusal of the subject application.

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at 35% (84m<sup>2</sup>) of total open space be landscaped open space. The development proposes 21.25% (51m<sup>2</sup>), non-compliant with the numeric control (39.3% variation).

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:

While there is a minor reduction of landscaped open space on site, no particular important landscape features are proposed to be removed.

*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:

Significant landscaping is proposed to the northern end of the property to offset any visual impact of the dwelling house and outdoor living spaces.

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

Comment:

The loss of landscaped open space does not unreasonably compromise amenity for adjoining properties or the subject site.

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

Comment:

The proposal retains reasonable levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff.

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

Comment:

The proposed private open space is compliant with the numerical requirements under the Manly DCP. The proposed works will not lead to an unreasonable spread of weeds across the site, adjoining properties or public open spaces including the foreshore.

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

Comment:

The application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.

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

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

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

A monetary contribution of \$23,276 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,327,583.

### **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, 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
- Inconsistent 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

The proposed upper floor of the dwelling is inconsistent with the wall height, number of storeys side setback controls of MDCP 2013. The non-compliant elements of the proposal attribute to impacts upon views currently enjoyed by residents of Addison Road, which are considered to be unreasonable in light of the extent of proposed non-compliance and opportunity for more skilful design solutions.

The impacts associated with the non-compliant top floor are considered to warrant the refusal of the subject application.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2021/1408 for the Demolition works and construction of a dwelling house including a boatshed. on land at Lot 2 DP 325220,16 Addison Road, MANLY, Lot LIC 30003605,16 Addison Road, MANLY, 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.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.
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 5.10 Heritage conservation of the Manly Local Environmental Plan 2013 and Clause 3.2 (Heritage considerations) of the Manly DCP 2013.
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 3.4.3 Maintenance of Views of the Manly Development Control Plan .
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 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.
6. 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 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.