

**STATEMENT OF ENVIRONMENTAL EFFECTS**

**FOR THE DEMOLITION OF THE EXISTING STRUCTURES AND THE CONSTRUCTION OF A  
NEW TWO AND THREE STOREY DWELLING WITH ATTACHED GARAGE, DRIVEWAY,  
SWIMMING POOL AND ASSOCIATED LANDSCAPING**

**AT**

**1 TUTUS STREET, BALGOWLAH HEIGHTS**

**FOR**

**PAUL & ANGELA WINTER**



**Prepared  
July 2021**

## TABLE OF CONTENTS

1.0	Introduction .....	3
2.0	Property Description .....	3
3.0	Site Description .....	4
4.0	Surrounding Environment .....	10
5.0	Proposed Development .....	11
6.0	Zoning and Development Controls .....	13
6.1	State Environmental Planning Policy No. 55 – Remediation of Land .....	13
6.2	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 .....	13
6.3	Manly Local Environmental Plan 2013 .....	13
6.4	Manly Development Control Plan 2013 – Amendment 14 .....	17
7.0	Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979 .....	29
7.1	The provisions of any environmental planning instrument .....	29
7.2	Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and .....	29
7.3	Any development control plan .....	29
7.4	Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 .....	30
7.5	Any matter prescribed by the regulations that apply to the land to which the development relates. ....	30
7.6	The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality. ....	30
7.7	The suitability of the site for the development .....	31
7.8	Submissions made in accordance with this Act or the regulations .....	31
7.9	The public interest .....	31
8.0	Conclusion .....	31

## 1.0 Introduction

This Statement of Environmental Effects accompanies details prepared on behalf of Paul and Angela Winters by Achilles Apostolellis Architecture, Sheets No's. DA01 – DA21, dated 5 July 2021 to detail the proposed demolition of the existing structures and the construction of a new two storey dwelling with basement garage, driveway, swimming pool, tree removal and associated landscaping at **1 Tutus Street, Balgowlah Heights**.

This Statement reviews the proposed development by assessing the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, (as amended) including:

- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013 Amendment 14*

Pre-lodgement Meeting was held on 25 February 2021 (PLM2021/0033) to discuss the proposed construction of a dwelling house and swimming pool. The subject proposal addresses the concerns raised by Council within the Pre-lodgement Meeting.

## 2.0 Property Description

The subject allotment is described as **1 Tutus Street, Balgowlah Heights**, being Lot 23 within Deposited Plan 9561 and is zoned R2 Low Density Residential under the Manly Local Environmental Plan 2013.

The dwelling is not listed as a heritage item within Schedule 5 of the Manly Local Environmental Plan 2013, nor is it noted as being within a conservation area.

The site is identified as being within the Foreshore Scenic Protection Area. This issue will be discussed in further detail within this report.

The site is identified on Council's DCP Mapping as being subject to Landslip Hazard (Area G2). Accordingly, a Geotechnical Stability Assessment has been prepared by JK Geotechnics, Report Reference No. 33920Zrpt dated 21 May 2021 and accompanies this submission. This matter will be discussed in further detail within this report.

No other hazards have been identified.

### 3.0 Site Description

The site is located on the western, higher side of Tutus Street with a general fall to the front, eastern boundary. The site has a total fall of 9.6m over its length.

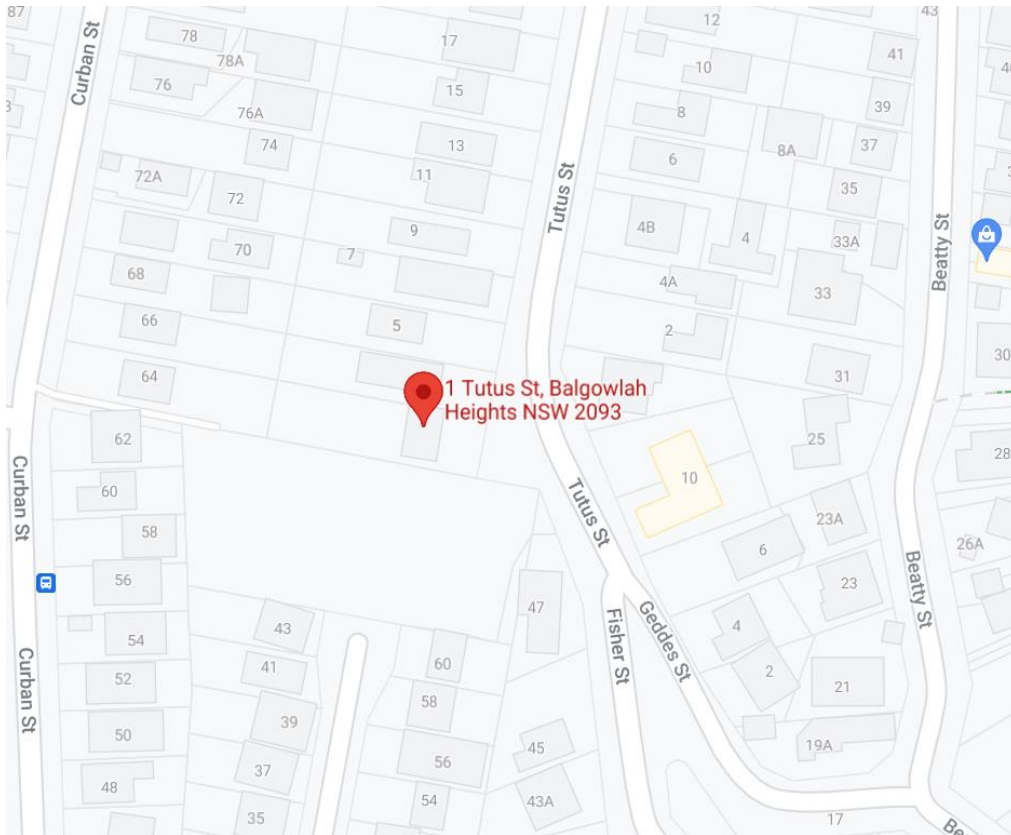
The site has a frontage of 19.2m to Tutus Street, and a depth of 67.055m. The rear boundary measures 19.165m and the total area of the site is 1286m<sup>2</sup>.

The site is currently developed with a brick dwelling with a tile roof. Vehicular access is currently available from Tutus Street via a concrete driveway to an existing garage.

Stormwater from the roofed areas is directed to the street gutter in Tutus Street.

The land adjoins the Heathcliff Crescent Reserve to its southern boundary.

The details of the site are included on the survey plan prepared by C.M.S Surveyors Pty Ltd, Drawing No. 19860detail, Issue 2 dated 3 December 2020 which accompanies the DA submission.



**Fig 1: Location sketch**  
(Source: Google Maps)





**Fig 2: View of subject site, looking west from Tutus Street**



**Fig 3: View of the subject dwelling and existing driveway, looking west from Tutus Street**





**Fig 4: View of the adjoining dwelling to the north at No 3 Tutus Street, looking west from Tutus Street**



**Fig 5: View of the rear elevation of the subject dwelling, looking east from Tutus Street**





**Fig 6: View of the rear yard of the subject site, looking east towards the existing dwelling**



**Fig 7: View of subject site, looking west from Tutus Street**





**Fig 8: View looking west towards the rear boundary of the subject site**



**Fig 9: View of the adjoining dwelling to the north at No 3 Tutus Street, looking north**





**Fig 10: View looking north-east towards Manly from the subject site**

#### 4.0 Surrounding Environment

The area surrounding the site is predominantly represented by a mix of development comprising one, two and three level dwellings. Existing building stock is gradually being replaced with newer housing, with a varied mix of development styles and building scale in the area.

The dwellings in the vicinity have been designed with living areas and associated open space that are oriented to take advantage of the harbour and district views available to the site (See Figure 9).

The southern boundary of the subject site adjoins the Heathcliff Crescent Reserve, with the new works to be located clear of the boundary with the bushland reserve.



**Fig 11: Aerial view of subject site**  
(Source: Google Maps)



## **5.0 Proposed Development**

As detailed within the accompanying plans prepared by Achilles Apostolellis Architecture, the proposal seeks consent for the proposed demolition of the existing structures and the construction of a new two and three storey dwelling over a basement garage with plant area, driveway, swimming pool and associated landscaping.

The proposed dwelling comprises a contemporary flat roof form with parapets, together with excavation for the lower floor levels. The dwelling will present a stepped two storey form above ground level which assists in minimising the visual bulk of the dwelling.

The new works comprise:

### **Basement**

- New basement level with garage, cellar, services room, rainwater tank area, dwelling entry, internal access stairs to upper level, internal vertical passenger lift shaft and electrical room

### **Lower Ground Floor Plan**

- New lower ground floor level to provide for lift shaft, lobby, rumpus room, study, bedroom, bathroom, internal access stairs and terrace

### **Ground Floor Plan**

- New ground floor level to provide for entry, living/dining with fireplace, covered front balcony, powder room, lift shaft, internal access stairs, kitchen, pantry, W.C, family room and covered rear terrace

### **First Floor Plan**

- New first floor level to provide for master bedroom with walk-in robes, ensuite and balcony, two bedrooms with rear balcony and two bathrooms, lift shaft and laundry

### **External Works**

- New driveway
- New inground swimming pool with paved and timber surround

The external form of the dwelling is stepped to follow the sloping topography of the site, which assists with minimising the visual bulk of the development.

The colours and finishes of the development have been selected to complement the bushland reserve setting, with the proposed external finishes and colours being detail within sheet DA16.

The proposal will not require the removal of any significant vegetation. An Arboricultural Impact Assessment Report has been prepared by Hugh the Arborist dated 27 May 2021 which addresses the impact of the works on 17 trees within the subject site and the adjoining properties.

The Impact Assessment Report identifies that 3 trees (Trees # 1, 12 & 17) will be removed as a result of the proposed works, with of the remaining 14 trees to be retained.

Of the trees to be removed, Tree #1 has been identified as being a Category A tree (trees suitable for retention for more than 10 years and worthy of being a material constraint ) with the remaining trees to be removed (Trees # 12 & 17) noted as Category Z (unimportant trees not worthy of being a material constraint).

Whilst one Category A tree is to be removed, the site will retain 11 other trees of Category A value in the retention of the significant majority of the more important trees is considered to be reasonable in this instance.

The proposal includes a Landscape Plan prepared by Site Design Studios which will include the provision of an additional three trees with a mature height of up to 7m.

Given that the proposal includes a comprehensive Landscape Plan which will provide for the managed replanting of the site, the redevelopment of the land with the proposed new dwelling and the supporting landscaping is considered to be appropriate in this instance

The development indices for the site are:

Site Area	1286m <sup>2</sup>
FSR permissible	0.4:1 or 514.4m <sup>2</sup>
FSR proposed	0.375:1 or 482.55m <sup>2</sup>
Required Open Space (Area OS4) – 60%/site	771.6m <sup>2</sup>
Proposed Open Space	772.88m <sup>2</sup> or 60%
Required Landscape – 40% of open space	513.4m <sup>2</sup>
Proposed Landscape	579.96m <sup>2</sup> or 75%



## **6.0 Zoning and Development Controls**

### **6.1 State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

### **6.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The proposal meets water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

### **6.3 Manly Local Environmental Plan 2013**

The land is zoned R2 Low Density Residential under the provisions of the MLEP 2013.



**Fig 12: Extract of Manly Local Environmental Plan 2013 Zoning Map**

The development of and use of the land for residential purposes is consistent with the R2 Low Density Residential objectives, which are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

It is considered that the proposed new dwelling will achieve the zone objectives and are consistent with the established character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other dwellings in the vicinity and therefore complements the locality.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any significant impact on long distance views for the neighbouring properties.
- The site is utilised as housing and will continue to maintain the residential use.
- The works will provide for construction of a new dwelling which will maintain the residential scale and character of the locality.
- The development will maintain an appropriate level of amenity to the adjoining properties.
- The proposal does not unreasonably obstruct any significant views from private property or the public domain.
- As detailed in this report, the proposal maintains appropriate solar access to the surrounding properties.

#### **Clause 4.3 – Height of buildings**

The dictionary supplement to the LEP notes building height to be:

***building height (or height of building)*** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The building height limit for development in this portion of Balgowlah Heights is 8.5m. The proposed new works will provide for a maximum overall height of 8.25m, which complies with the maximum height control.

#### **Clause 4.4 – Floor space ratio**

A maximum floor space ratio control of 0.4:1 for development in this locality is required. The proposed new dwelling inclusive the lower ground floor and basement garage floor areas will provide a gross floor area of 482.55m<sup>2</sup> or 0.375:1 which complies with the control.



## **Clause 6.2 – Earthworks**

The proposal will require excavation of the site to accommodate the proposed lower floor levels including the basement garage and plant areas and lower ground floor level, together with the swimming pool.

A Geotechnical Stability Assessment has been prepared by JK Geotechnics A which addresses the site's stability and extent of the proposed works.

All works will be carried out under the supervision and direction of a Structural Engineer and will be managed to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected. The works will also be carried out in accordance with the recommendations of the consulting Geotechnical Engineer.

## **Clause 6.4 – Stormwater management**

The proposal meets the objectives of the clause as stated below in that it:

- *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

A Civil Works design has been prepared by Ross Engineers, Drawings No 21-9092-DR, Sheets 1-9 dated 8 July 2021 to address the proposed driveway and stormwater management for the development. The proposed stormwater provisions will include on-site detention, which will provide for the overflow to be directed to the street gutter in Tutus Street.

## **Clause 6.8 – Landslide risk**

The site is identified on Council's DCP Mapping as being subject to Landslip Hazard (Area G4). Accordingly, a Geotechnical Stability Assessment has been prepared by JK Geotechnics dated 21 May 2021, which concludes at Clause 6.1:

*We consider that our risk analysis has shown that the site and the proposed development can achieve 'acceptable risk levels, provided that the recommendations presented below are adopted. These recommendations are form an integral part of the Landslide Risk Management Process".*

The development will be carried out in accordance with the recommendations and requirements within the submission prepared by JK Geotechnics and the proposal is therefore considered to satisfy the provisions of this clause.

### **Clause 6.9 – Foreshore scenic protection area**

The subject site is identified as being within the Foreshore Scenic Protection Area. The objective of this clause is as follows:

- *The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.*

The proposal seeks to provide for the construction of a new two and three storey development which has been designed to largely follow the sloping topography of the site, and will comply with Council's statutory height limit. The proposal will maintain suitable views and amenity for neighbouring properties and the adjoining public domain.

The proposal will retain the significant majority of the existing trees and will see the removal of three trees to accommodate the development.

Additional plantings are to be provided throughout the site to soften and screen the built form of the development, as detailed in the Landscape Plan prepared by Site Studios, Drawing No 1358, Sheets L-01 – L05 dated 1 July 2021.

The proposal is therefore in keeping with the provisions of this clause.

### **Clause 6.12 – Essential services**

The services available for the existing dwelling on site will be made available for the proposed new dwelling.

There are no other clauses of the MLEP 2013 that are considered to be relevant to the proposed development.

It is considered that the proposal achieves the requirements of the MLEP.

## 6.4 Manly Development Control Plan 2013 – Amendment 14

Council's DCP Development Control Plan 2013 – Amendment 14 provides the primary control for development within the area.

The DA submission will address the Council's submission requirements outlined in Part 2 – Process.

The primary areas which are applicable to the proposed works are detailed within Part 3 – General Principles of Development & Part 4 – Development Controls and Development Types.

### Clause 3.1.1 Streetscape (Residential Areas)

The intended outcomes are noted as:

- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
- v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
- vi) *visually improve existing streetscapes through innovative design solutions; and*
- vii) *Incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design*

The proposal provides for the construction of a new dwelling which is complementary to the existing locality, presenting a complementary scale to Tutus Street.

The proposed development is suitably set back from the street frontage, and the external form of the dwelling is stepped to follow the sloping topography of the site, thereby minimising the built form of the development.

The proposed bulk and scale of the development is generally consistent with that of the neighbouring dwellings along Tutus Street.

The colours and finishes of the development comprise earthy tones which have been detailed



within Sheet DA16 and will effectively integrate with the Tutus Street streetscape. The proposal is therefore considered to be in keeping with the character of the Tutus Street streetscape, and is worthy of Council's support.

### **Clause 3.3 Landscaping**

The proposed new works will continue to retain a generous areas of soft landscaping on the site. The proposed total landscaped area of the site is 579.96m<sup>2</sup> or 75% of the required total open space, which is consistent with Council's requirement.

The new works will present an appropriate form and footprint, which is appropriately set back from the street, side and rear boundaries. The area surrounding the dwelling is to be provided with supplementary screen planting as detailed in the Landscape Plan prepared by Site Studios, Drawing No 1358, Sheets L-01 – L05 dated 1 July 2021.

The potential to overlook the neighbouring properties and the street area will be suitably minimised through the limited pool coping area.

### **Clause 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise)**

The objectives of the clause are noted as:

- |                     |   |
|---------------------|---|
| <i>Objective 1)</i> | <i>To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties.</i> |
| <i>Objective 2)</i> | <i>To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.</i>  |

It is suggested that the works will achieve these objectives as:

- Maintaining an acceptable level of privacy to the adjoining allotments has been addressed by limiting the window openings to the side elevations and providing plantings throughout the site.
- The proposed new dwelling will not see any unreasonable diminution of the solar access enjoyed by the neighbouring properties. The east-west aspect enjoyed by the properties in this immediate area ensures that appropriate access to sun from late morning to late in the afternoon is available to the sites.

### **Clause 3.5 Sustainability**

A BASIX Certificate has been prepared to support the development and confirm that the dwelling will achieve the appropriate thermal performance criteria.

The proposal is accompanied by shadow diagrams which demonstrate the proposed overshadowing. The subject site will maintain suitable solar access throughout the day. At the

site adjoins the Heathcliff Crescent Reserve to itself and therefore shadows cast the by the development not adversely affect surrounding residential properties.

The proposal is therefore considered to be in keeping with the provisions of this clause.

### Clause 3.7 Stormwater Management

OSD has been provided as detailed in the submitted plans prepared by Ross Engineers dated 8 July 2021. The new roof areas will be directed to Tutus Street via an OSD tank within the basement garage level. The development will therefore comply with the provisions of this clause.

## Part 4 – Residential Development Controls

### Site Area 1286m<sup>2</sup> - Density Sub Zone D7 (750m<sup>2</sup> per lot)

#### Compliance Table

Control	Required	Proposed	Compliance
<b>Clause 4.1.1</b> Residential Density & Subdivision	Density Area D7 – 1 dwelling per 750m <sup>2</sup>	Site area is 1286m <sup>2</sup>	Yes - existing site and dimensions are unchanged
<b>Clause 4.1.2</b> Height of Buildings	Maximum height – 8.5m	Maximum height – 8.25m	Yes
	Wall height – 8m	Max proposed wall height approx. 7.5m	Yes
	Max two storeys	Max three storeys proposed.	Yes – on merit
		The variation to the number of storeys controls occurs as a result of the site's sloping topography.  The proposal will maintain suitable amenity and solar access for neighbouring properties, and will not be overbearing	

		<p>when viewed from the Tutus Street streetscape.</p> <p>Notwithstanding the variation to the wall height and number of storeys controls, the proposal is in keeping with desired outcomes of these provisions and is worthy of support on merit.</p> <p>Flat roof proposed</p>	Yes
<p><b>Clause 4.1.13</b> Floor Space Ratio (FSR)</p>	0.4:1	0.375:1 or 482.55m <sup>2</sup>	Yes
<p><b>Clause 4.1.4</b> Setbacks (front, side and rear)</p>	<p><u>Front</u></p> <p>a) Relate to neighbouring sites and the prevailing building lines or 6m</p> <p>c) Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.</p>	<p>The proposed dwelling provides a minimum setback of 10m from the front boundary.</p>	Yes



Side Boundary setback – 1/3 of wall height	<u>Side</u> 1/3 x 7.5m = 2.5m	<p>The proposal will stand a minimum of 2.3m and 1.5m from the northern and southern side boundaries and therefore presents a minor variation to this control.</p> <p>The side elevations provide varied setbacks to the northern and southern side boundaries which provides visual relief, and minimises overlooking to neighbouring properties.</p> <p>The majority of the development complies with the side setback control.</p> <p>The portion of the development that does not meet the side setback control will not result in any unreasonable adverse impacts for neighbouring properties in terms of privacy, solar access, views or general amenity. The side setback is therefore considered worthy of support on merit.</p>	Yes – on merit
Rear setback	<u>Rear</u> Min 8m	Min proposed rear setback approx. 20m	Yes

<p><b>Clause 4.1.5</b> Open space and Landscaping</p>	<p>Area OS 4 Open space: Min 60% site area</p> <p>Landscaping: 40% of open space</p>	<p>Proposed open space 772.88m<sup>2</sup> or 60.1%.</p> <p>Proposed soft landscaping 579.96m<sup>2</sup> or 75% of total open space.</p> <p>The Objectives of this control are as follows:</p> <p><i>Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.</i> <i>Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.</i></p> <p>The proposal is in keeping with the Objectives of this control, as adequate landscaped areas are provided, and the natural landscape of the site is maintained.</p>	<p>Yes</p> <p>Yes</p>
<p><b>Clause 4.1.6</b> Parking</p>	<p>Min 2 spaces</p>	<p>Parking for two vehicles provided within proposed garage</p>	<p>Yes</p>

<p><b>Clause 4.1.6.4</b> Vehicular Access</p>	<p>a) All vehicles should enter and leave the site in a forward direction.</p> <p>b) Vehicular access and parking for buildings with more than 1 dwelling is to be consolidated within one location, unless an alternative layout/design would better reflect the streetscape or the building form.</p> <p>c) Vision of vehicles entering and leaving the site must not be impaired by structures or landscaping.</p> <p>d) Particular attention should be given to separating pedestrian entries and vehicular crossings for safety.</p>	<p>The proposal seeks to provide a new double garage under the dwelling. Forward entry and exit will be available within the proposed driveway.</p>	<p>Yes</p>
<p><b>Clause 4.1.6.6</b> Tandem, Stacked and Mechanical Parking Areas</p>	<p>The design location and management of parking facilities involving tandem, stacked and mechanical parking (including car stackers, turntables, car lifts or other automated parking systems) must consider the equitable access and</p>	<p>Tandem parking is provided, however as it serves the proposed single dwelling, no issues are anticipated.</p>	<p>N/A</p>



	<p>distribution of parking spaces to all occupants and visitors to the building. In this regard:</p> <p>a) all parking spaces in any tandem or stacked arrangement are to be allocated to the same dwelling/strata unit and must not be used as visitors parking; and</p> <p>b) where the proposed development involves a tandem, stacked and mechanical parking arrangement which necessitates more than one parking space being attributed to a single dwelling unit under paragraph i) above; Council must be satisfied that sufficient parking spaces are reasonably allocated to all other dwelling units within the development.</p>		
<p><b>Clause 4.1.7</b> First Floor and Roof Additions</p>	<p>a) First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding</p>		N/A

	<p>setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.</p> <p>b) The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of Manly. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.</p>		
<p><b>Clause 4.1.8</b> Development on sloping sites</p>	<p>a) Site Stability Report may be required in Geotechnical Areas G2, G3 and G4 i) The applicant should complete Council's Checklist for Preliminary Assessment of Site Conditions (Landslip) at Schedule 11 of this plan to determine</p>	<p>The site is identified in Landslip Hazard – Area G4. Accordingly, a Geotechnical Stability Assessment has been prepared by JK Geotechnics, dated 21 May 2021, and accompanies this submission. Subject to compliance with the recommendations</p>	<p>Yes</p>

	<p>whether a Site Stability Report is required. All development involving load bearing building works must complete the checklist for Preliminary Assessment of Site Conditions (Landslip) to ensure developments follows good engineering practice.</p> <p>b) Area G2 - Potential Hazards i) Potential Geotechnical hazards in this area include:</p> <ul style="list-style-type: none"> <li>• Rock falls and slumping of soil and fill materials from unsupported cuts and natural cliffs onto public and private pathways and roadways.</li> <li>• Possible creep of talus materials on steeper soil covered slopes.</li> <li>• Possible movement of detached blocks of sandstone. Limited to moderate damage of some or part of structures (for example dwelling or roadway), with part of site requiring some stabilisation works. Large scale stabilisation works unlikely to be required.</li> </ul>	<p>contained within this report, the proposal will satisfy the provisions of this clause.</p>	
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<p><b>Clause 4.1.9</b> Swimming pools, spas and Water features</p>	<p>Height above ground not more than 1m</p> <p>a) Swimming pools and spas must not be located within the front setback i.e. between the front boundary of the lot and the building line. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:</p> <p>i) does not detract from the amenity or character of the neighbourhood; and</p> <p>ii) is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.</p> <p>b) Setback of outer edge of pool concourse from side and rear boundaries must be at least 1m with water line being at least 1.5m from the boundary</p>	<p>Proposed pool is largely sited at or below existing ground level</p> <p>Proposed pool is located in the rear yard</p> <p>Proposed pool coping will stand 1.3m and 13.3m from northern and southern side boundaries respectively and 4.4m from the rear boundary and</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p>
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		therefore complies with this provision.	
<b>Clause 4.1.10</b> Fencing	Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.	N/A – no new front fences or wall proposed	N/A

### Part 5 – Special Character Area and Sites

The subject site is identified as being within the Foreshore Scenic Protection Area. The proposal seeks to provide for the construction of a new two and three storey development which has been designed to largely follow the sloping topography of the site, and will comply with Council's statutory height limit. The proposal largely complies with Council's setback controls, and the development will maintain suitable views and amenity for neighbouring properties and the adjoining public domain.

The proposal will require the removal of a number of trees to accommodate the development, and accordingly an Arboricultural Impact Assessment Report has been prepared by Hugh The Arborist, dated 27 May 2021. The proposal seeks to remove 1 x Category A tree and 2 x Category Z trees.

Additional plantings are to be provided throughout the site to soften and screen the built form of the development, as detailed in the Landscape Plan prepared by Site Design Studios dated 1 July 2021.

Subject to compliance with the recommendations contained in the Arborist's report, the proposal considered to be in keeping with the provisions of this clause.

## **7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979**

### **7.1 The provisions of any environmental planning instrument**

The proposal is subject to the provisions of the Manly Local Environmental Plan 2013 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

### **7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and**

It is not considered that there are any draft environmental planning instruments applying to the site.

### **7.3 Any development control plan**

The development has been designed to comply with the requirements of Manly's Development Control Plan 2013 – Amendment 14.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the number of storeys and side setback controls is a reasonable alternative solution to compliance given the proposal will present a complementary form and scale to the surrounding dwellings and effectively reduces the visual bulk and scale through locating the garage and services/storage areas below ground level and the articulation of the side elevations.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

The development respects the streetscape character objectives of the DCP and will provide a cohesive and sympathetic addition to the site which will make a positive contribution to the area.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing character of the area and is compatible with the existing uses in the vicinity.

**7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

No matters of relevance are raised in regard to the proposed development.

**7.5 Any matter prescribed by the regulations that apply to the land to which the development relates.**

No matters of relevance are raised in regard to the proposed development.

**7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.**

It is considered that the proposal, which seeks approval for proposed demolition of existing structures and construction of a new two and three storey dwelling with attached garage, driveway, swimming pool and associated landscaping, is reasonable.

It is considered that the proposal, which seeks consent for the proposed demolition of existing structures and construction of a new two and three storey dwelling with attached garage, driveway, swimming pool and associated landscaping, which will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's MLEP 2013 and Council's Codes and Policies, in particular the MDCP.



### **7.7 The suitability of the site for the development**

The subject land is currently zoned R2 Low Density Residential under the Manly Local Environmental Plan 2013 and is considered suitable for the proposed development.

The subject site does not exhibit any significant constraint to the construction of the proposed development.

### **7.8 Any submissions made in accordance with this Act or the regulations**

This is a matter for Council in the consideration of this proposal.

### **7.9 The public interest**

The proposal will not unreasonably impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

### **8.0 Conclusion**

The principal objective of this development is to support the proposed demolition of the existing structures and the construction of a new two and three storey dwelling with attached garage, driveway, swimming pool and associated landscaping, which satisfy the stated objectives of Council's Development Controls.

By maintaining our neighbour's amenity and by complementing the scale and form of other development in the immediate locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

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