

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2485
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 53 DP 9745, 13 Monash Crescent CLONTARF NSW 2093
Proposed Development:	Replacement of a seawall and construction of a spa pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Anthony Paul Brooks Caron Louise Brooks
Applicant:	James Anthony Buda

Application Lodged:	04/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/03/2022 to 23/03/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 98,489.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Construction of a spa pool and associated decking; and
- Replacement of sea wall.

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 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

Property Description:	Lot 53 DP 9745 , 13 Monash Crescent CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Monash Crescent.</p> <p>The site is regular in shape with a frontage of 12.19m along Monash Crescent and a maximum depth of 39.37m. The site has a surveyed area of 479.6m².</p> <p>The site is located within the C3 Environmental Management zone from MLEP 2013 and accommodates a new dwelling house currently under construction.</p> <p>The site is generally level, with a seawall extending along the full width of the southern boundary.</p> <p>The site currently does not contain any vegetation characteristics due to the construction of the dwelling house approved under DA105/2017. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwellings of varying age, character, and scale.</p>

The subject site directly abuts Clontarf Reserve to the south and a public reserve runs along the western boundary that provides public access to the foreshore.

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:

DA105/2017

Development Application for Demolition and Construction of a new dwelling.
Approved on 29 September 2017.

Mod2021/0532

Modification of Development Consent DA105/2017 granted for demolition and Construction of a new dwelling.
Approved on 24 August 2021.

CC2021/1133

Construction Certificate for Demolition and Construction of a new dwelling.
Approved on 16 September 2021 by External Private Certifying Authority.

NOC2021/1170

Notice of Commencement of Building Work & Appointment of Principal Certifier for for Demolition and Construction of a new dwelling.
Dated 16 September 2021.

Application History

Following the preliminary assessment of the application, Council's Coast and Catchment Officer requested on 28 January 2022 that the applicant submit an amended Statement of Environmental Effects, Geotechnical Report for the proposed spa, and a Coastal Assessment Report. The applicant provided the requested information. However, Council's Coast and Catchment Officer was not satisfied

with the provided documentation as the Coastal Engineering Risk Management Report focused on the construction of a seawall. The Development Application was for the construction of a spa pool and the applicant was in the process of lodging a separate Development Application for the replacement of the seawall.

After discussion with the applicant, the Development Application was amended to include the construction of a spa pool and replacement of the seawall, as the construction of a spa pool was reliant on the replacement of the seawall. The application was re-notified in accordance with the Northern Beaches Community Participation Plan (CPP). Council's internal referral bodies were notified of the amendment to the application and provided updated comments as required.

Notwithstanding, further information was requested on 22 March 2022 by Council's Coast and Catchment Officer and Council's Environmental Health (Acid Sulphate) Officer. The further information was provided by the applicant and the additional documentation satisfied the requirements of Coast and Catchment and Environmental Health (Acid Sulphate). In this instance, the additional information provided did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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&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&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&A Regulation 2000 allow Council to</p>

Section 4.15 Matters for Consideration	Comments
	<p>request additional information. Additional information was requested in relation to the replacement of a seawall and construction of a spa pool.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&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&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>
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>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/03/2022 to 23/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>Applicant has amended the application to include a new seawall along with the previously proposed spa.</p> <p>The premises is located in a Class 4 & 5 area for acid sulfate soils. Acid sulfate soils in a class 4 area are likely to be found beyond 2 metres below the natural ground surface. Any works in Class 4 that extend beyond 2 metres below the natural ground surface, or works that are likely to lower water table beyond 2 metres below the natural ground surface, trigger the requirement for an acid sulphate assessment and may require management.</p> <p>Applicant has provided a Preliminary Acid Sulfate Soil Assessment for the Sea Wall by JK Environments dated 14 April 2022 (reference: E33691PHlet2-ASS). The report concludes that there is a low potential for Acid sulfate soil materials to be disturbed during the proposed development and that acid sulphate soils management is not necessary for the proposed development.</p> <p>Recommendation</p> <p>Supported - Subject to conditions</p>
NECC (Coast and Catchments)	<p>The applicant has provided an Amended Coastal Engineering and Risk Management Report to address Council concerns about the safety and suitability of the proposed spa location and design. It also provides clarity around features of the proposed seawall that were brought into question in the addendum to the geotechnical report.</p> <p>Sufficient clarity has been provided that the proposed spa is of sound design and will not be at risk of coastal hazards, and that it has been</p>

Internal Referral Body	Comments
	<p>suitably designed and located in the absence of the proposed seawall. Sufficient clarity has also been provided around the design of the proposed seawall.</p> <p>Subsequently, Council is satisfied that sufficient information has been provided to support the requirement of Clause 2.12 of the SEPP (Resilience & Hazards) 2021 that the proposal will not increase the risk of coastal hazards.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed DA generally complies with the flood controls in the LEP and DCP. A new spa is proposed in the rear yard approximately 250mm above ground level. The existing seawall is proposed to be replaced. The proposed works are outside the 1% AEP flood extent.</p>
Parks, reserves, beaches, foreshore	<p>The development application is for alterations and additions to the existing dwelling, construction of a spa, and the demolition of the existing seawall and construction of a new seawall along the rear boundary in the same alignment and at the same finished height.</p> <p>The property adjoins the Clontarf foreshore and harbour located downslope of the site.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries, including below and above ground surfaces.</p> <p>The proposed reconstruction of the seawall is finished with sandstone facing, as nominated in the Statement of Environmental Effects and given that the height of the reconstructed wall is no higher than the existing, no concerns are raised by Parks, Reserves and Foreshores Referral.</p> <p>Access for construction works within the public foreshore, should it be sought, must be approved in the first instance by Council prior to commencement of such works, and a Working on and Access to Reserves permit is required to be applied for, and is subject to either approval or otherwise. Any such approval shall be conditional on continued public access across the foreshore reserve.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as it is within proximity to a heritage item</p>
	I1 - Harbour Foreshores
	Details of heritage items affected
	<p>Details of the item as contained within the Manly inventory is as follows:</p> <p><u>Statement of significance:</u> Natural landscape type - Aesthetic.</p> <p><u>Physical description:</u></p>

Internal Referral Body	Comments		
	Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for spa in the rear yard facing Middle Harbour. The heritage item is located to the south of the subject site. Given the separation, the proposal is considered to not impact upon the heritage item or its significance.		
	Therefore Heritage raises no objections and requires no conditions.		
	Amended Plans - March 2022		
	Amended plans have been received which now include the replacement of the existing brick seawall with a concrete and sandstone faced seawall. This new addition is not considered to impact upon the heritage item and Heritage raises no objections or conditions to this new work.		
	Consider against the provisions of CL5.10 of MLEP.		
	Is a Conservation Management Plan (CMP) Required? no Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
Further Comments			
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 5 January 2022 - Amended 11 March 2022			

External Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response on 1 February 2022 stating that the proposal is acceptable as there is no impact to Ausgrid assets with the proposal.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at No.13 Monash Crescent and Aboriginal heritage.</p> <p>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.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

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 (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 who provided a response on 1 February 2022 stating that the proposal is acceptable as there is no impact to Ausgrid assets with the proposal.

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 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), 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. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

The site is classified as land within the coastal environment area and land within the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

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 development has been reviewed by Council's Coast and Catchment Officer and concluded that the proposed development is unlikely to cause an adverse impact on to items listed under Clause 13(1)(a-g) inclusive.

- (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:

The proposed development has been reviewed by Council's Coast and Catchment Officer and concluded that the proposed development is designed, site and managed to minimise unreasonable impact.

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 proposed development has been reviewed by Council's Coast and Catchment Officer and concluded that the proposed development is unlikely to cause an adverse impact on to items listed under Clause 14(1)(a)(i-v) inclusive. The proposed development has been designed, sited and managed to avoid unreasonable impact and has considered the surrounding coastal and built

environment.

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:

The proposed development has been reviewed by Council's Coast and Catchment Officer and concluded that the proposed development is unlikely to cause increased risk of coastal hazards.

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

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	0.7m (Deck)	-	Yes
Floor Space Ratio	FSR: 0.4:1 (190.64m ²)	unaltered	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 479.6m ²	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	unaltered	-	Yes
4.1.4.4 Rear Setbacks	8m	0m (Seawall) 2m (Spa)	100% (8m) 75% (6m)	No No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m (common boundary)	8m (Spa)	-	Yes
	8m (rear boundary)	2m (Spa)	75% (6m)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (287.76m ²)	60.26% (289m ²)	-	Yes
	Open space above ground 25% of total open space (72.25m ²)	17.02% (49.2m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (115.6m ²)	30.8% (89.1m ²)	22.92% (26.5m ²)	No
	2 native trees	>2 trees	-	Yes
4.1.5.3 Private Open Space	18m ²	18m ²	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.6m	-	Yes
	Rear 1m curtilage/1.5m water line	Rear 2m curtilage/2.1m water line	-	Yes
	Side 1m curtilage/1.5m water line	Side 1m curtilage/1.5m water line	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.7 Stormwater Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
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

Detailed Assessment

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

Description of non-compliance

The proposed spa pool is located 2 metres from the rear boundary line and the replacement of the seawall proposes a nil setback to the rear boundary line.

Clause 4.1.4.4 of Manly Development Control Plan 2013 (MDCP 2013) states the distance between any part of a building and the rear boundary must not be less than 8 metres.

Clause 4.1.4.6 of MDCP requires swimming pools with a common boundary to land zoned RE1 Public Recreation to be set back at least 6m from this common boundary and in the case of rear setbacks, the minimum 8m setback prevails. The proposed spa pool is compliant with the 6m common boundary requirement as the spa pool is located 8 metres from the eastern side boundary. However, as outlined above the spa pool is located 2 metre from the rear setback.

Therefore, in this instance a variation to the required rear setback and setback for development adjacent to LEP zones RE1 is sought. The objectives of the control have been assessed below and in this circumstance the variation is supportable as the objectives have been met.

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 spa pool is located at the rear of the subject site and therefore there are no changes to the existing streetscape.

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 proposal will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character, or traffic conditions.

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

Comment:

The siting of the spa pool is considered appropriate considering the location of the dwelling house currently under construction.

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 size of the spa pool is considered to be minimal and allows for planting and vegetation within the rear setback. The spa pool will not detract from the subject site and the proposal is consistent with sites in the vicinity that contain pools within the rear setback area.

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

Comment:

The subject site is not located on bush fire prone land. Therefore this objective is not applicable.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area 4. As such, at least 60% (287.76m²) of

the site is to be open space and at least 40% (115.6m²) of the open space to be landscaped area. The proposal achieves compliance with the total open space area with a total of 60.26% (289m²) provided.

The proposed development results in a numerically non-compliant landscaped area of 30.8% (89.1m²), presenting a variation to this control by 22.92% (26.5m²). Notably, the addition of the spa pool and associated decking is approximately 10.6m², demonstrating an existing landscaped area non-compliance on the subject site.

In this instance, the variation to the landscaped area control is considered to be supportable as the objectives of the control have been met as outlined below.

Merit consideration:

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

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

Comment:

The proposal does not result in the removal of any significant vegetation or important landscape features including native flora and fauna.

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

Comment:

The proposal provides sufficient soft landscaped areas and open space at ground level, that includes retention of lawn areas, garden beds, and plantings.

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

Comment:

The proposal does not result in any unreasonable impacts to amenity including sunlight, privacy, and views. The proposal is not visible from the streetscape and therefore there will be no unreasonable impacts to the existing streetscape and surrounding area.

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

Comment:

Despite the minor numerical non-compliance, the proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

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

Comment:

The proposed development is not likely to lead to the significant spread of weeds, or degradation of private open space.

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

Comment:

The proposed development will not unreasonably affect any existing wildlife habitat and potential for wildlife corridors.

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

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2485 for Replacement of a seawall and construction of a spa pool on land at Lot 53 DP 9745, 13 Monash Crescent, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan - A-01, Rev A	18 January 2022	Jim Buda Architects
Ground Floor Plan - A-02, Rev B	11 November 2021	Jim Buda Architects
North & South Elevations - A-13, Rev B	11 November 2021	Jim Buda Architects
Spa Plan, Spa Section & Plan Rear Garden	No Date	Jim Buda Architects
Seawall - G-03, Rev A	18 January 2022	Jim Buda Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
Seawall, Structural Layout and Detail - SK05, Rev A	10 December 2021	Partridge Structural Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acid Sulphate Report	15 January 2021	JK Environments Pty Ltd
Acid Sulphate Report - Addendum	14 April 2022	JK Environments Pty Ltd
Coastal Engineering Risk Management Report	9 February 2022	Horton Coastal Engineering
Coastal Engineering Risk Management Report - Addendum	13 April 2022	Horton Coastal Engineering
Geotechnical Report (Ref: 33691YJrpt)	2 February 2021	JK Geotechnics Pty Ltd
Geotechnical Report - Addendum (Ref: 33691YJrpt Site Report 1)	11 November 2021	JK Geotechnics Pty Ltd

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan - Spa	7 December 2021	Jim Buda Architects
Waste Management Plan - Seawall	16 January 2022	Jim Buda Architects

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

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

2. **Prescribed Conditions**

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

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

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

\$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for

swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

5. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

6. **Compliance and Certification of Piling Design**

Certification that the piling works have been designed in accordance with the approved Coastal Risk Management Report shall be provided to the Principal Certifying Authority (Form No. 2 of the Coastline Risk Management Policy for Development in Pittwater – Appendix 6 of P21 DCP) and shall be prepared and signed by a structural engineer who is a registered professional engineer with chartered professional status (CP Eng) and who has an appropriate level of professional indemnity insurance.

Reason: To ensure deep foundation piling is designed in accordance with the Coastal Risk Management Report and by an appropriately qualified professional

7. **Compliance with Coastal Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Risk Management Reports prepared by Horton Coastal Engineering, dated 13 April 2022 and 09 February 2022, and these recommendations are to be incorporated into construction plans and maintained over the life of the development.

As part of complying with the Coastal Risk Management Report prepared by Horton Coastal Engineering, dated 13 April 2022, the following steps must be followed to ensure the structure can withstand coastal processes:

- allow for a scour level of -0.8m AHD (as part of detailed design, the structural engineer should consider the required depth and nature of piles to accommodate this scour); and
- allow for wave and sand slumping forces on the piles, and wave forces on the seaward face of the spa, as provided by a coastal engineer.

Reason: To ensure coastal risk is appropriately mitigated

8. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

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

9. **Sydney Water "Tap In"**

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

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

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

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

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

10. **Location of Seawall**

The proposed seawall must not encroachment over the site boundaries, and structures and built

elements are not permitted beyond the site boundaries, including below and above ground surfaces.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure works are located wholly within the site boundaries.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Working and Access on Reserves Permit**

Works (undertaken by principal contractors working without Council supervision) on Land owned or managed by Council require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit.

Reason: public safety and the protection of Council infrastructure.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

14. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

15. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: To protect and/or restore any damaged public asset.

16. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: Protection of the environment.

17. **Stockpiling materials**

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

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

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

18. **Waste Management Confirmation**

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

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

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

19. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

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

Signed



Stephanie Gelder, Planner

The application is determined on 29/04/2022, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager