

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1678
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<b>Responsible Officer:</b>	Simon Ferguson Tuor
<b>Land to be developed (Address):</b>	Lot 12 DP 758044, 1 Cutler Road CLONTARF NSW 2093
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned C3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Robert William Joyce Christina Grace Allen
<b>Applicant:</b>	Megan Janet McGlinchey

<b>Application Lodged:</b>	28/11/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	05/12/2023 to 19/12/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 5%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,578,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling as follows:

#### Ground Floor

- Internal reconfigurations
- Expansion of garage

#### First Floor

- Demolish existing roof and upper walls
- Construct new first floor with kitchen, living, dining, study, 4 bedrooms, ensuite, WIR and balcony.

### **Mezzanine**

- Construction of new mezzanine level, below the new first floor level, with additional rumpus area, bedroom and bathroom

### **External works**

- Construction of swimming pool in rear yard
- Entry pathway
- Landscaping

### **AMENDED PLANS**

Following the preliminary assessment of the application, Council requested additional information in relation to unapproved works, building height and privacy. Amended plans were subsequently submitted which addressed Council's concerns. The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 12 DP 758044 , 1 Cutler Road CLONTARF NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Cutler Road.</p> <p>The site is irregular in shape with an arced frontage of 15.27m along Cutler Road and a depths of 48.7m (northern boundary) and 61.34m (southern boundary). The site has a surveyed area of 1114m<sup>2</sup>.</p> <p>The site is located within the C3 Environmental Management zone and accommodates an existing two story dwelling house.</p> <p>The site slopes down approximately 3m from the east (front) to the west (rear).</p> <p>The site contains grassed areas, shrubs, hedges and some trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two storey dwellings of varying architectural styles. The site adjoins National Park land to the south.</p>

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:

**Unapproved works** - unapproved retaining walls and fill was constructed in 2015 according to aerial mapping imagery.

This application seeks to rectify some of the unapproved works. A Building Information Certificate will be lodged for the remaining unapproved works.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to privacy, stormwater and drainage.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 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 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> 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 Matters for Consideration	Comments
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Bushfire Consulting Services dated 19 July 2022). The report stated that the bushfire attack level of the site is “Flame Zone”.

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

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 05/12/2023 to 19/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Paul Frederick Ivshenko	3 Cutler Road CLONTARF NSW 2093
Mr Rob Wilson	2 Barrabooka Street CLONTARF NSW 2093

The following issues were raised in the submissions:

- Privacy
- Unapproved works
- Screening Vegetation
- Elevated Pool Deck
- Insufficient Pool Details

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns that the proposed first floor balcony would have privacy and overlooking impacts for adjoining properties, in particular 3 Cutler Road (to the north) and 2 Barrabooka Street (to the west).

Comment:

A request for further information (RFI) was sent to the applicant on 20 February 2024 requested amendments in relation to privacy. Amended plans were received that reduced the width of the balcony along the northern elevation and increased the side setbacks. The amended design includes a planter box and a privacy screen along the northern elevation of the proposed first floor balcony. These privacy mitigation measures, in conjunction with the spatial separation of more than 6m between the balcony and the northern side boundary are considered to have resolved the privacy concerns raised by the northern neighbours. The proposed balcony is considered to have sufficient spatial separation to the dwelling and private open space area of 2 Barrabooka Street to the west. The balcony is more than 9m to the private open space area and 18m to the dwelling house at 2 Barrabooka Street. In addition, existing and conditioned screening vegetation will aid in mitigating overlooking impacts between the site and neighbours to the rear. Privacy concerns in relation to the elevated pool deck are discussed below.

- **Unapproved works**

The submissions raised concerns that the proposal was relying on levels and fill that had been undertaken without development consent in 2015.

Comment:

Amended plans were submitted which clarified the extent of unapproved works and demonstrated how the proposed works were not reliant on the unapproved levels. A Building Information Certificate will be lodged for the remaining unapproved works.

- **Screening Vegetation**

The submissions raised concerns that the proposed swimming pool would impact on the existing screening vegetation. The submission raised concern that the excavation and works would likely take out the trees or impact the roots causing them to die. This would result in overlooking and privacy impacts.

Comment:

The trees in question are exempt species and can be removed without Council consent. The proposal was referred to Council's Landscaping team who have conditioned that should the existing screen planting be removed or damaged during construction it shall be replaced to ensure privacy is maintained.

- **Elevated Pool Deck**

The submissions raised concerns that the proposed pool deck of RL 61.13 would create overlooking impacts into the private open space areas of 2 Barrabooka Street to the west.

Comment:

A condition has been imposed to ensure that the proposed pool decking is no higher than RL60.5, which will match up with the existing rear ground floor terrace area and the existing natural ground level at the western boundary location.

- **Insufficient Pool Details**

The submissions raised concerns that there was insufficient details provided in relation to the pool materials, depth, pool filter location and anticipated noise levels.

Comment:

Amended plans were received which included a Pool Plan, Cross section and long section. The location of the pool filter has been annotated on the amended plans and a condition has been imposed to ensure the pool filter noise does not exceed 5dBA above background level at the nearest property boundary. It is considered that the amended proposal has resolved the issues raised in the submissions.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>General Comments</b></p> <p>This application is seeking consent for alterations and additions to a dwelling. A fireplace is proposed on the first floor in the living room. An email from the applicant dated 7 December 2023 has stated the fireplace is to be gas.</p> <p>Environmental Health recommends approval</p>
Environmental Health (Unsewered Lands)	<p><b>General Comments</b></p> <p>This application is seeking consent for alterations and additions to a dwelling. The application includes the addition of the swimming pool along the back boundary line. As the contours of the land slope to the East of the property and with residential properties below 1 Cutler Road, details on the proposed swimming pool's drainage need to be provided to allow Environmental Health to assess all impacts. There is potential for the swimming pool to overflow in times of rainfall and there needs to be drainage provided around the pool to adequately capture overflow but also backwashing.</p> <p>The applicant has provided an amended architectural plan prepared by Megan McGlinchey dated September 2023 drawing number</p>

Internal Referral Body	Comments
	<p>DA01. The architectural drawing identifies the installation of an <i>'infinity edge flowing to balance tank with overflow connected to sewer system'</i>.</p> <p>The matter of capturing the overflow from the swimming pool has been addressed therefore Environmental Health recommends approval subject to conditions.</p>
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the zone C3 Environmental Management objectives of Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• DCP section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,</li> <li>• DCP section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping.</li> </ul> <p>The landscape outcome of the zone C3 Environmental Management objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment.</p> <p>Landscape Referral notes under the MDCP 4.1.4.6 the setback requirement for pools adjoining National Park is 6 metres, and this matter will be assessed and determined on merit consideration by the Assessing Planning Officer. Should the pool be approved in its current location, the garden area between the southern boundary and the pool deck shall have sufficient screen planting installed. If existing vegetation is to be retained it must be capable of reaching a mature height of 1.8 metres above the finish level of the pool deck and maintained at that level, subject to the imposed conditions.</p> <p>The dispersion trench is located in close proximity to the western common boundary and this matter is deferred to Council's Development Engineer for comment. Should the dispersion trench be approved in its current location the existing screen planting, shown to be retained, will likely be impacted. Similarly, stormwater infrastructure may impact screen planting along the northern common boundary. Should the existing screen planting, shown to be retained, be removed or damaged during construction it shall be replaced to ensure privacy is maintained.</p> <p>No significant trees or vegetation are proposed to be removed and as such trees and vegetation shown to be retained must be protected during works in accordance with the requirements outlined in the conditions of consent.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposal has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The works are generally limited to the existing development footprint and will not impact upon native vegetation, wildlife or their habitats.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience &amp; Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The proposed development relates to renovating the lower level, including an expansion of the garage and rebuilding the upper floor at a higher level to obtain views across the bushland. In addition, the design incorporates the insertion a mezzanine level, below the new first floor level, with additional rumpus area, bedroom and bathroom. Externally, a pool is proposed in the rear yard.</p> <p><b><i>Coastal Management Act 2016</i></b></p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b></p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R &amp; H apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clause 2.12 of the SEPP R&amp;H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p>

Internal Referral Body	Comments
	<p><b>Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021</b></p> <p><b>Sydney Harbour Foreshores &amp; Waterways Area</b></p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28.</p> <p>On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed.</p> <p><b>Manly LEP 2013 and Manly DCP</b></p> <p><b>Foreshores Scenic Protection Area Management</b></p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Megan McGlinchey Architect dated November 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposal is for alterations and additions to the existing dwelling. The the site falls to the rear and the submitted stormwater plan proposes discharge to a level spreader via two OSD systems. The proposed level spreader location in close proximity to the rear boundary is not acceptable. A minimum 3m setback shall be provided for the level spreader in accordance with Council's Water Management for Development Policy.</p> <p><b>Additional Information Provided on 26/3/2024</b> The amended stormwater plan proposing the relocation of the level spreader are acceptable subject to conditions. No objections to approval subject to conditions as recommended.</p>
Parks, reserves, beaches, foreshore	<p>The property adjoins National Park to the south. As outlined in the Developments Adjacent to National Parks and Wildlife Service lands guideline, the National Park land shall not be used for access, or to store materials, equipment or machinery. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.</p> <p>Existing physical encroachment within the National Park is noted, including retaining walls and fencing, as shown on the Survey Plan. No prior application nor approval to encroach upon National Park land is found and any approval of this development application does not grant approval for the existing encroachments. National Parks reserves the future right to seek removal of any encroachment for public safety or for any other public capital works.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	<b>Discussion of reason for referral</b>
	<p>The proposal has been referred to Heritage as the subject site adjoins a heritage item</p> <p><b>I38 - Natural Landscape</b> - Dobroyd Head and Grotto Point, Sydney Harbour National Park</p>
	<b>Details of heritage items affected</b>
	<p><b>I38 - Natural Landscape</b>  <u>Natural Landscape</u>  Natural Landscape. Aesthetic, scientific.  <u>Physical Description</u>  Natural landscape; Prominent visual landform of headland, cliffs; upper slopes with indigenous vegetation communities. Provides a natural visual backdrop or foreground to the cultural aspects of the built environment of Manly. Important viewing position within Sydney Harbour area.</p> <p><b>Other relevant heritage listings</b></p>

Internal Referral Body	Comments		
	SEPP (Biodiversity and Conservation) 2021	No	Grotto Point Lighthouse is the nearest item
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to the dwelling including raising the height of the building, a pool, wrap around deck and internal reconfiguration of the dwelling. The heritage item is located directly to the south. The building is already located close to the item due to its position and the line of the boundary and the works proposed to this southern elevation are not considered to further impact the reserve or its significance. No works in the reserve are proposed either, although it is noted that an existing chain link fence has been aligned into the reserve and not on the boundary line. If the fence is to be replaced, it should be realigned to the boundary.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>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</p>		

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The proposal was referred to NSW Rural Fire Service who provided a response on 14 December 2023 stating that the proposal is acceptable subject to compliance with the recommended conditions. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	The proposal was referred to the Aboriginal Heritage Office who provided a response stating that the proposal is acceptable subject to

External Referral Body	Comments
	<p>recommendations which will be included as a condition of consent. The Aboriginal Heritage Officer provided the following comment:</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. Should any additional works occur then further review will be required.</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 and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

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

A BASIX certificate has been submitted with the application (see Certificate No. AAL-6751\_02 dated 25 March 2024).

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

### SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

## **SEPP (Biodiversity and Conservation) 2021**

### **Chapter 6 – Water catchments**

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

### **Part 6.2 Development in regulated catchments - Division 2 Controls on development generally**

#### **6.6 Water quality and quantity**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer, Development Engineer, Environmental Health Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

## **6.7 Aquatic ecology**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
  - (i) a controlled activity approval under the Water Management Act 2000, or*
  - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
  - (i) the erosion of land abutting a natural waterbody, or*
  - (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:*

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment.

## **6.8 Flooding**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.*

*(2) Development consent must not be granted to development on flood liable land in a regulated*

*catchment unless the consent authority is satisfied the development will not—*

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

## **6.9 Recreation and public access**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—*

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—*

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The proposal has been reviewed by Council's Parks, Reserves, Beaches and Foreshore Officer. The application will not alter or disrupt the existing recreation and/or public access within the catchment area.

## **6.10 Total catchment management**

*In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.*

Comment:

The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

## **Part 6.3 Foreshores and Waterways Area**

## Division 3 Development in Foreshores and Waterways Area

### 6.28 General

- (1) *In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—*
- (a) whether the development is consistent with the following principles—*
    - (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*
    - (ii) the public good has precedence over the private good,*
    - (iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,*
  - (b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*
  - (c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*
  - (d) whether the development promotes water-dependent land uses over other land uses,*
  - (e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*
  - (f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
  - (g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*
  - (h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*
- (2) *Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—*
- (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*
  - (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*
  - (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*
  - (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*
  - (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*
    - (i) the Foreshores and Waterways Area, and*
    - (ii) public places, landmarks and heritage items.*

#### Comment:

The above has been considered as part of the assessment of this application. The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts on the Foreshores and Waterways Area. Given the location and siting of the proposal, the works will not be able to be seen from the Foreshores and Waterways Area easily. The foreshores and waterways area will continue to be protected and maintained, in relation to its unique visual qualities.

### 6.29 Areas of outstanding biodiversity value

- (2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development will not have a significant adverse impact on the land.

Comment:

The proposal has been reviewed by Council's Bushland & Biodiversity Officer. Subject to conditions, the proposal will not impact the biodiversity value of the land.

### **6.30 National parks**

*(1) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied that the development—*

*(a) is not likely to affect land that is reserved under the National Parks and Wildlife Act 1974, and  
(b) is consistent with the document entitled Developments adjacent to National Parks and Wildlife Service lands: Guidelines for consent and planning authorities, published by the Department in 2020.*

*(2) Despite any other provision of this Chapter, development on land in the Foreshores and Waterways Area is permitted without development consent if—*

*(a) the development site abuts land reserved under the National Parks and Wildlife Act 1974 (reserved land), and*

*(b) the development spans the mean high water mark and is part of other development being carried out on the reserved land, and*

*(c) the development is for a purpose for which development is authorised to be carried out under the National Parks and Wildlife Act 1974.*

Comment:

The site abuts National Park land. The proposal has been reviewed by Council's Parks, Reserves, Beaches and Foreshore Officer, who are supportive the proposal satisfies the criteria above, subject to conditions.

### **Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005**

The Sydney Harbour Foreshores and Waterways Area Development Control Plan, continues to apply to the foreshores and waterways area as identified in Part 6.3 of the Biodiversity and Conservation SEPP 2021. The development control plan includes design guidelines for development and criteria for natural resource protection.

Comment

As mentioned above, the proposal will not impact the foreshores and waterways area.

Council is satisfied that the proposal is consistent with all relevant requirements and objectives of the SEPP (Biodiversity and Conservation) 2021.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 3 Coastal environment area**

Comment:

The subject site is located within land identified as "coastal environment area". The proposed development is not likely to cause adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

#### **Division 4 Coastal use area**

#### Comment

The site is located within the Foreshores and Waterways Area. Section 2.11 (2) stipulates that "This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6.

#### **Division 5 General**

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

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

#### Comment:

The proposal was referred to Council's Coast and Catchment's team who have confirmed that DA satisfies requirements under clause 2.12 of the SEPP R&H.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

#### **Chapter 4 – Remediation of Land**

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

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

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.9m	5%	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.32:1	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
4.6 Exceptions to development standards	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
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

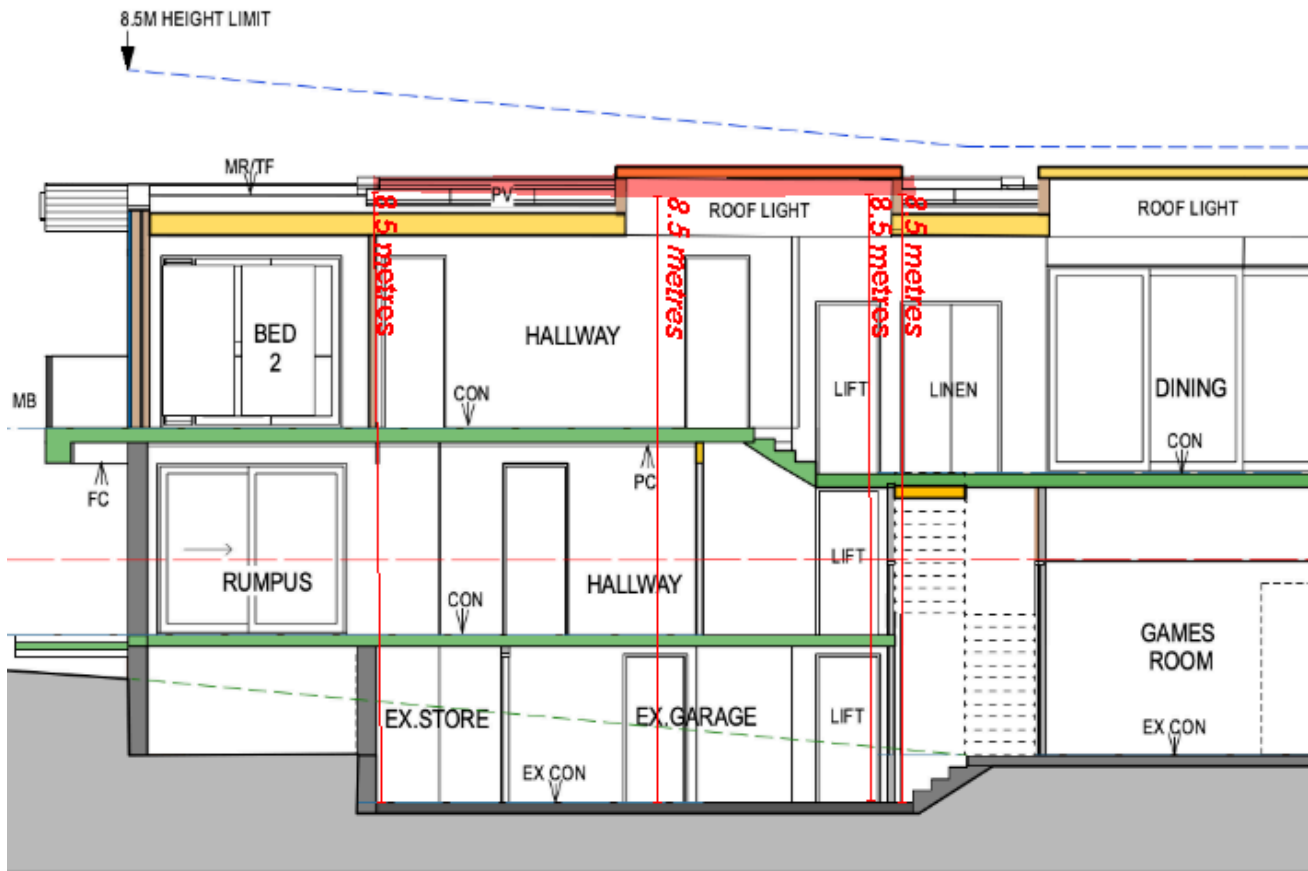
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 - Height of Buildings

Requirement: 8.5m

Proposed: 8.9m

Percentage of variation: 5%



'RIVACY SCREEN  
'  
RENDER AND PAINT  
JE

1 SECTION C  
Scale: 1:100

**Figure 1: Height of Building variation shown in red**

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 - Height of Buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 - Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The variation sought is very minor and will have no discernable impacts. Strict compliance with the control would result in poorer amenity results.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

**Ground 1 – Existing excavation for the Garage the cause of the breach**

*Sufficient environmental planning grounds exist to justify the height of buildings variation includes the artificially modified topography of the land which makes strict compliance difficult to achieve whilst distributing height and floor space in a contextually appropriate manner on this particular site. In this regard, I note that the prior disturbed levels of the site within the lower level garage distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would comply with the 8.5 metre height standard. Consistent with the finding of O'Neill C at paragraph 73 of Merman Investments Pty Ltd v*

*Woollahra Municipal Council [2021] NSWLEC 1582 such circumstance can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

**Ground 2 – Superior architectural design**

*The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of comparable bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.*

*Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or the street. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider locality.*

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- Approval of the variation would promote good design and amenity of the built environment (1.3(g)).*
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

*Overall, there are sufficient environmental planning grounds to justify contravening the development standard.*

Council's Planning Assessment Officer concurs with the applicant's justification.

The proposed variation to building height is contained to a minor portion of the new upper level roof. The proposed additions are comparable with that of the built form and overall height of surrounding dwellings. The works are confined to the existing building footprint and do not result in unreasonable excavation, tree removal or environmental impact. The non-compliance would also be a direct result of the existing built form and excavated garage. It is also agreed that the proposal will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance. The proposal has been designed to allow for adequate internal amenity, without compromising the amenity of adjoining properties.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 - Height of Buildings for the following reasons:

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

**Public Interest:**

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

**Conclusion:**

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances of the minor Height of Building non compliance due to existing site constraints and excavation, the proposed departure from

the development standard is acceptable and it is reasonable that flexibility to the standard be applied

## Manly Development Control Plan

### Built Form Controls

<b>Built Form Controls - Site Area: 1114sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.2.1 Wall Height	N: 6.7m (based on gradient 1:30)	7.7m	15%	<b>No (see comments)</b>
	S: 6.8m (based on gradient 1:20)	8m	18%	<b>No (see comments)</b>
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	18.8m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.4m (based on wall height)	1.2m (balcony) 1.75m (Bed 1)	N/A	<b>No (see comments)</b>
	Windows: 3m	1.9m	N/A	<b>No (see comments)</b>
4.1.4.4 Rear Setbacks	8m	6.4m	20%	<b>No (see comments)</b>
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m (common boundary)	1.2m (balcony) 1.75m (Bed 1)	N/A	<b>No (see comments)</b>
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	78%	N/A	Yes
	Open space above ground 25% of total open space	13%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	58%	N/A	Yes
	4 native trees	4 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	curtilage:1.1m water side/rear setback: 2.6m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

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

##### **Description of non-compliance**

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 6.7m (based on gradient 1:30) for the northern elevation.
- 6.8m (based on gradient 1:20) for the southern elevation.

The proposal presents a non-compliant wall height compliant wall height on the northern elevation of

7.7m, representing a variation of 15% to the control.

The proposal presents a non-compliant wall height on the southern elevation of 8m, representing a variation of 18% to the control.

### **Merit consideration**

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

#### **Comment:**

The proposal is of a comparable size, height and scale to surrounding development and the proposal is commensurate to surrounding residential development. The flat roof form has been designed to minimise the overall height of the development where possible. The vast majority of the proposed dwelling will be under the 8.5m requirement and the areas of height and wall non-compliance are minor and will not result in excessive bulk and scale. The building is appropriately articulated using modulated walls, fenestration, balconies and changes in materials to break up built form. The upper floor addition will be sufficiently setback from the front boundary which adequately reduces the bulk of the building as viewed from the street. The proposed development is considered to satisfy this objective.

*(b) to control the bulk and scale of buildings,*

#### **Comment:**

It is not considered that the breaches of this Clause contribute to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The proposed development is considered to satisfy this objective.

*(c) to minimise disruption to the following—*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

#### **Comment:**

The proposed non-compliance is not anticipated to result in the unreasonable loss of views or vistas from public or private spaces.

*(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

#### **Comment:**

the development is not considered to create unreasonable overshadowing on public or private spaces.

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

#### **Comment:**

The height and bulk of the proposal are not considered to impact on existing vegetation. No significant trees or vegetation are required to be removed, with the majority of all proposed works located within the footprint of the existing building.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

##### Description of non-compliance

Under Clause 4.1.4.2 of MDCP 2013, the requirements for all new windows that face the side boundary are to be setback at least 3m from side boundaries. The proposal includes new windows located 1.9m from the southern side boundary.

Under Clause 4.1.4.4 of MDCP 2013, the rear setback requirements state that the distance between any part of a building and the rear boundary must not be less than 8 metres. The proposed first floor balcony is located 6.4m from the western rear boundary.

Under Clause 4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2 for the following applies:

*a) Buildings, swimming pools and garden sheds on sites with a common boundary to land zoned in the LEP as Zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation must be set back at least 6m from this common boundary and in the case of rear setbacks, the minimum 8m setback prevails (see paragraph 4.1.4.4 of this plan). However, gazebos, barbecues, child play equipment and the like may be permitted within this setback provided they are designed to complement the natural or landscape character of the adjacent LEP Zones.*

Portions of the balcony and first floor additions are located at a minimum 1.9m from the southern side boundary which abuts Zone C1 National Parks. The majority of works are located over the existing building footprint and will not exacerbate any perceived impacts. The C1 zone is screened by vegetation at the site and within the National Park area, and the boundary is not a highly trafficked area in the National Park. It is considered that the proposal is acceptable, and will not result in any detriment from the natural and landscape character of the adjacent C1 zone.

The variations to the window setback, rear setback, and setback for development adjacent to LEP Zones C1 requirements are supportable in this circumstance 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 maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

##### Comment:

The proposed works are located more than 18m from the front boundary and will not result in any significant changes to the existing streetscape, proportions of the street, the street edge, or the

character of the street.

*Objective 2) To ensure and enhance local amenity by:*

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

Comment:

The proposal ensures and enhances local amenity by providing suitable privacy, noting that the proposed windows are adjoining a National Park, and as such will not result in any unacceptable privacy impacts. The amended proposal has decreased the size of the balcony facing the northern neighbours and included planter boxes and a privacy screen. A condition has been imposed to reduce the elevated pool deck to a maximum height of RL60.5 which will mitigate any overlooking to rear neighbours. The proposal has generous setbacks to the north and the rear non-compliance is limited to a small portion of the balcony, with the remainder of the balcony being compliant with the 8m control. Adequate access to light, sunshine, and air movement will be provided to the subject site, and the adjoining sites. The proposal facilitates appropriate view sharing, and the proposal allows for acceptable spacing between buildings through the varied setbacks. The proposal will not result in any detrimental changes to traffic conditions to Cutler Road.

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

Comment:

It is considered the proposed non-compliances are acceptable and appropriately located given the existing building envelope at the site and the spatial separation between neighbouring dwellings and private open space areas.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

The proposed development results in a compliant landscaped area that provides opportunity for plantings, and enhancement of vegetation. The subject site does not detract from the context of the site. The proposal will not result in any unacceptable impacts to the adjoining open space land. The State Environmental Planning Policy No 19 - Urban Bushland has been repealed, and as such does not apply.

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

Comment:

The subject site is located in bush fire prone land. The water contained within the proposed swimming pool can assist in any bushfire emergency.

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

Under Clause 4.1.9.1 Height above ground of the MDCP 2013, swimming pools must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and their curtilage and/or concourse more than 1m above natural ground level:

- i) would not detract from the amenity or character of the neighbourhood; and*
- ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

The proposed swimming pool is elevated above ground level and as a result has privacy and overlooking impacts to properties to the rear.

A condition as been recommended to lower the pool decking to RL 60.5, so as to ensure that no part of the decking is above 1m above ground level and reduce any mitigate any overlooking impacts.

Under Clause 4.1.9.2 Location and Setbacks of the MDCP 2013, swimming pools are required to have a minimum setback to the side and rear boundaries of 1.0 metres to the curtilage and 1.5 metres to the waterline.

The proposed pool is compliant with the setback requirements.

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 be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*

Comment:

A condition of consent as been to lower the swimming pool decking by 500mm, to ensure the mitigation of overlooking impacts. Landscape screen planting is to be provided to the western boundary for added privacy. A condition is also recommended ensuring the pool filter noise does not exceed 5dBA above background level at the nearest property boundary. It is considered the siting of the pool will not cause any unreasonable amenity impacts upon adjacent dwellings.

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

Comment:

The swimming pool is located to the west of the dwelling significantly setback from both the eastern street frontage. The proposed pool will not be visible from the street frontage and does not impact on the streetscape character.

*Objective 3) To integrate landscaping; and*

Comment:

Landscaping is to be provided adjoining the western edge of the pool including the retention of the existing screen planting.

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

Comment:

The subject site is located in a bush fire zone, and may be a viable water resource during bushfire emergencies.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$15,780 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,578,000.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

## **RECOMMENDATION**

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1678 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 758044, 1 Cutler Road, CLONTARF, subject to the conditions printed below:

## Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

### GENERAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA01	B	Site Plan	Megan McGlinchey	25.03.2024
DA02	B	Ground Floor Plan	Megan McGlinchey	25.03.2024
DA04	B	First Floor Plan	Megan McGlinchey	25.03.2024
DA05	B	North Elevation	Megan McGlinchey	25.03.2024
DA06	B	South Elevation	Megan McGlinchey	25.03.2024
DA07	B	East + West Elevation	Megan McGlinchey	25.03.2024
DA08	B	Sections A + B	Megan McGlinchey	25.03.2024
DA09	B	Section C	Megan McGlinchey	25.03.2024
DA15	A	Pool Plan + Sections	Megan McGlinchey	25.03.2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Megan McGlinchey	22.11.2024
Bush Fire Assessment Report	-	Bushfire Consulting Services	19.07.2022
Basix Certificate AAL-6751_02	-	Megan McGlinchey	25.03.2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	04.12.2024
Rural Fire Service	RFS Referral Response	14.12.2024

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

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

## 3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an 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 following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$15,780.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,578,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

## **6. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier 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](http://www.northernbeaches.nsw.gov.au)).

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

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **7. Swimming Pool Drainage**

The swimming pool drainage must be connected to Sydney Waters Wastewater System capturing all backwash water and swimming pool water overflow.

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

Reason: To ensure swimming pool water doesn't impact on lower properties below.

### **8. On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NB Consulting engineers, job number 2206111, drawing number D01 to D05, issue B, dated 26/3/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

**9. Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The swimming pool deck is to be shown as a maximum height of RL60.5

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

**10. Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

**11. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

**12. 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 Certifier 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.

**13. 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 Certifier prior to the issue of the Construction Certificate.

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

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

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o 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.

## DURING BUILDING WORK

**15. Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an

Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier, viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites, ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site, x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees, xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:

i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

#### 16. **Wildlife Protection**

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

Reason: To protect native wildlife.

#### 17. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

#### 18. **No Access Through Land Owned or Managed by NPWS**

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

Reason: Public safety, landscape amenity and tree protection.

#### 19. **Storage of Materials on Land Owned or Managed by NPWS Prohibited**

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

Reason: Public safety and environmental protection.

#### 20. **Removing, Handling and Disposing of Asbestos**

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;

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

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

**21. Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

**22. Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

**23. Installation and certification of solid/fuel burning heater**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

**24. Required Screen Planting**

a) screen planting shall be planted in accordance with the following:

- i) along the southern boundary for the full width of the pool deck; the selected planting is to comprise of species capable of attaining a height of 1.8 metres above the pool deck level at maturity; existing vegetation shall meet the height requirement and if not capable to reach the required height supplementary planting shall be installed,
- ii) any new planting is to be installed at minimum 1 metre intervals (or less) and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- iii) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS 1926.1 for a non-climbable zone,
- iv) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019,
- v) should any existing vegetation shown to be retained be damaged or removed during

construction, it shall be replaced with a like-for-like substitute to ensure the existing landscape character is maintained.

b) details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

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

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

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

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

**26. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

**27. Certification of solid fuel burning heaters**

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

**28. Swimming Pool Requirements**

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

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and

relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

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

### 29. Landscape Maintenance

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) shrubs required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any shrub required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

d) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

30. **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**



**Simon Ferguson Tuor, Planner**

The application is determined on 03/05/2024, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**