

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1813
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Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 2 DP 218836, 7 Bruce Avenue MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dwelling house including a boat shed
Zoning:	Manly LEP2013 - Land zoned C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	P3 Developments 1 Pty Ltd
Applicant:	P3 Developments 1 Pty Ltd

Application Lodged:	08/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	20/10/2021 to 03/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 37.64%
Recommendation:	Approval

Estimated Cost of Works:	\$ 975,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house.

One submission was received in objection to the development raising concerns regarding view loss, which was later withdrawn.

It should be noted that the site is subject to development consent DA2018/0639 for alterations and additions to the existing dwelling house. This application seeks consent for the demolition of further elements of the existing dwelling house, but maintains generally the same approved height, roof form and building footprint consistent with DA2018/0639.

The proposed application seeks a variation to the Height of Buildings development standard pursuant to

Clause 4.3 of the Manly LEP 2013. The application is referred to the Development Determination Panel (DDP) due to the application proposing a variation to the Height of Buildings development standard of more than 10% (3.2m or 37.64%)

The 4.6 request for the non-compliance with height standard arises due to the steep site topography and from the site being partially excavated underneath the existing ground level of the building by 5.7m for a small section of the building approximately 121m² in area.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for substantial demolition of the existing dwelling and construction of a three storey dwelling house, boatshed and garage with car stacker.

Specifically, the proposed development comprises of the following works:

- Demolition of existing internal walls and existing floor levels with the exception of the boatshed, north-east elevations, south-east elevations and part of the north-west elevation
- Reconstruction of the north-east and south-east elevations, and part of the north-west elevation
- Construction of new internal walls and floors and associated reconfiguration of the dwelling layout, including new balconies
- Addition of a new upper level master bedroom and terrace
- Alterations to the existing garage to accommodate a mechanical car stacker
- Demolition of existing side boundary stairs and construction of new stairs
- Associated landscaping and redesign of private open space

As demonstrated in Figures 1 to 3 below, the bulk and scale of the proposed alterations and additions will result in generally the same development as approved under DA2018/0639.

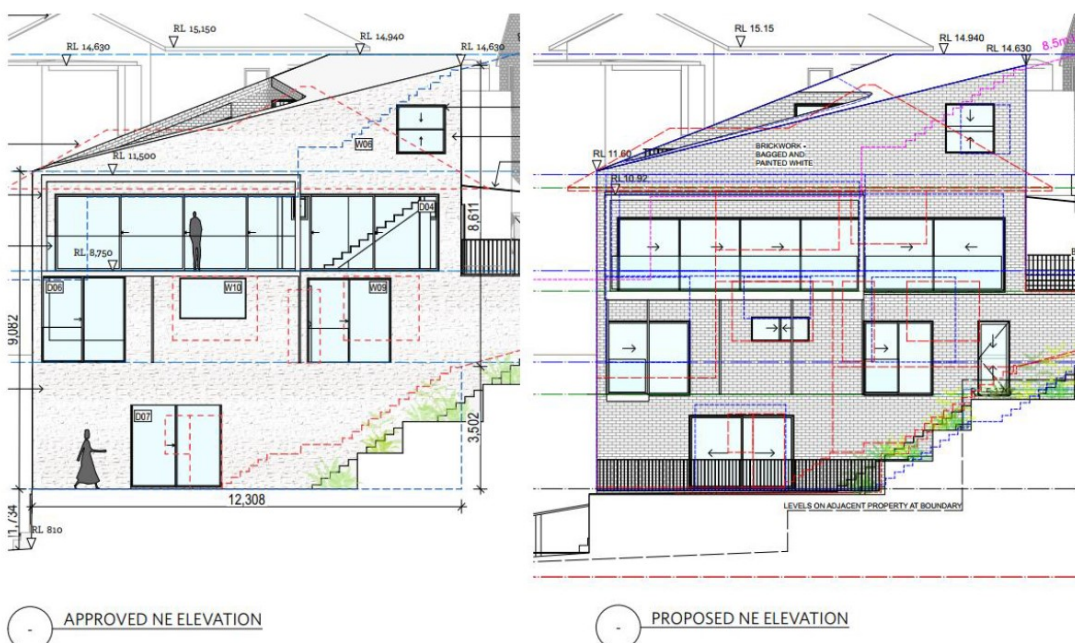


Figure 1 - Comparison of approved DA2018/0639 and proposal's North-Eastern Elevation

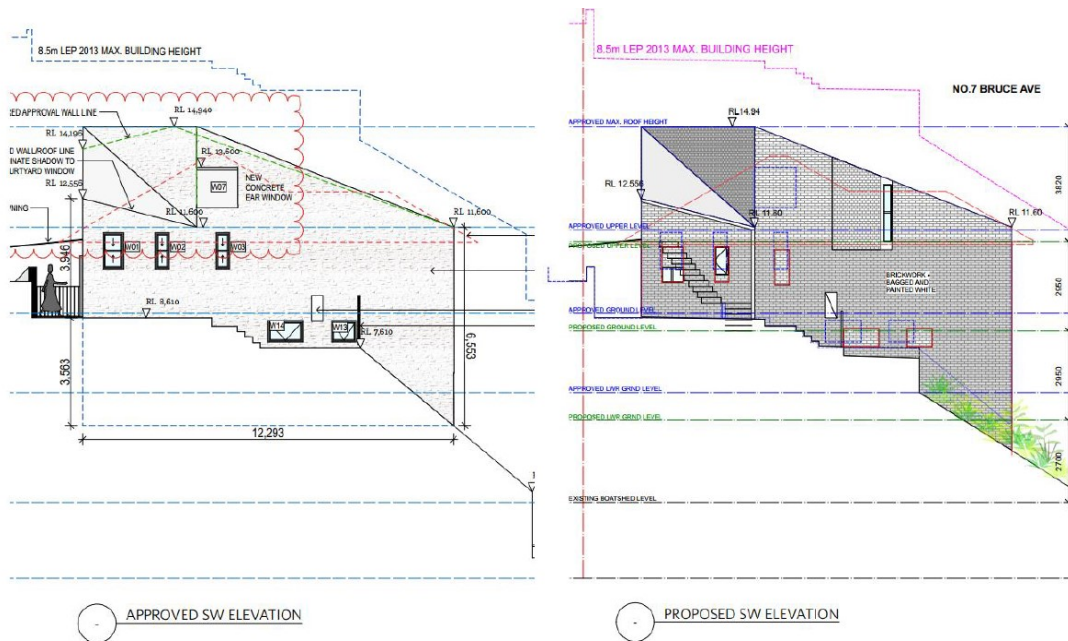


Figure 2 - Comparison of approved DA2018/0639 and proposal's South-Western Elevation

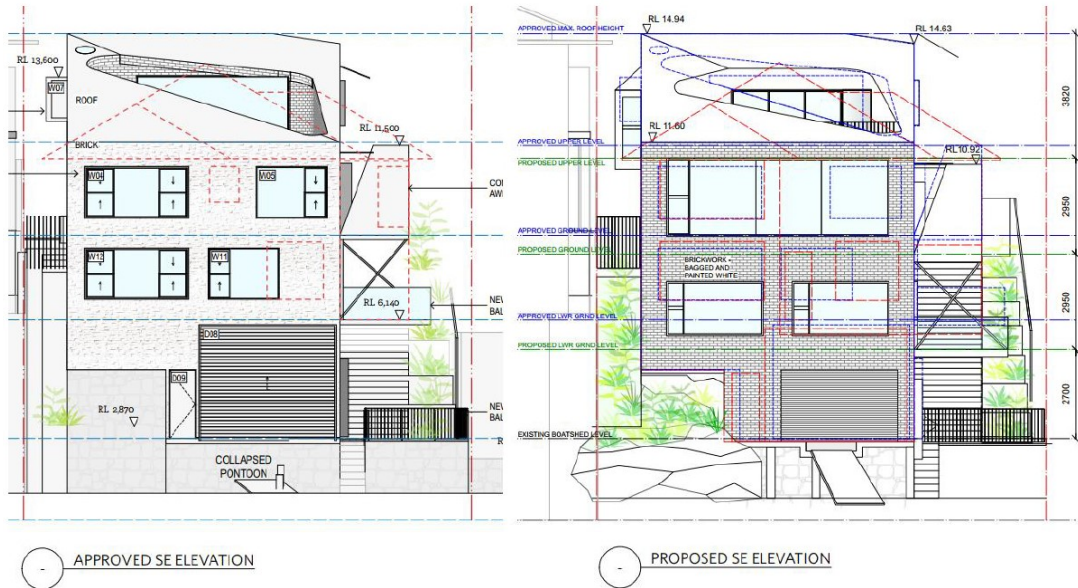


Figure 3 - Comparison of approved DA2018/0639 and proposal's South-Eastern Elevation

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 Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

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

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

SITE DESCRIPTION

Property Description:	Lot 2 DP 218836 , 7 Bruce Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-eastern side of Bruce Avenue.</p> <p>The site is irregular in shape with a frontage of 6.23m along Bruce Avenue via battle-axe access and an average depth of 21.9m. The site has a surveyed area of 430m².</p> <p>The site is located within the C4 Environmental Living zone from MLEP 2013 and accommodates a part two/part three storey brick dwelling house and detached garage.</p> <p>The site slopes from north-west to south-east corner and includes an approximate crossfall of 12m. Vegetation on the subject site includes lawn areas and garden beds. A natural rock formation abuts the south corner of the dwelling.</p> <p>The site fronts Little Manly Cove and is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins in Manly.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by detached dwelling houses, predominantly comprised of three and four storeys, and residential flat buildings.

Map:



SITE HISTORY

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

DA2018/0639 - Alterations and additions to an existing dwelling house. (Approved 18 December 2019)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/10/2021 to 03/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for substantial demolition and rebuilding of the existing dwelling house and proposed external landscape works redesign.</p> <p>The site is subject to development consent DA2018/0639 for alterations and additions to the existing dwelling house. This DA seeks consent for the demolition of further elements of the existing dwelling house, but maintains the approved height, roof form and building footprint consistent with DA2018/0639.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan E4 Environmental Living zone, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p>The objectives of the Zone E4 Environmental Living include: ensure that residential development does not have an adverse effect on in areas with special ecological, scientific or aesthetic values; protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore; ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation; and ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.</p>

Internal Referral Body	Comments
	<p>The proposed landscape works include: demolition of the stairs along the north-eastern boundary and construction of wider stairs providing continuous access from the upper level of the site to the lower terrace adjoining the boatshed; demolition of an existing garden bed and retaining wall and increase in the level of the existing terrace to create a larger contiguous terrace at the rear of the dwelling with a retractable awning; provision of new garden bed along the north-eastern boundary adjoining the new stairs; replacement of brick retaining wall with new stone wall; and replacement of existing paving with sandstone paving.</p> <p>The existing site does not contain any prescribed trees protected by the DCP. Garden planting exists within landscaped areas and these areas are to be replaced with a new landscape scheme as shown on the Landscape Plan.</p> <p>Concern is raised that the proposed tree planting of <i>Melaleuca quinquervia</i> (Paperbark) may cause structural issues to property in the long term as well as potential loss of water views to adjoining properties, and conditions shall be imposed for the deletion and replacement with a smaller native tree.</p> <p>Subject to conditions of consent, Landscape Referral are able to support the landscape proposal.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for the substantial demolition of the existing dwelling house and construction of a new dwelling house including landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> Coastal Environment Area <p>Manly Local Environmental Plan (MLEP)</p> <ul style="list-style-type: none"> Clause 6.5 (Terrestrial Biodiversity) <p>Manly Development Control Plan (MDCP)</p> <ul style="list-style-type: none"> Clause 3.3.1. a) iv) Landscaping Design Clause 5.4.2 (Threatened Species and Critical Habitat Lands) <p>The proposed development is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. The site also occurs approximately 100m north-east of the Area of Outstanding Biodiversity Value for Little Penguins (AOBV; formerly Little Penguin Critical Habitat) declared</p>

Internal Referral Body	Comments
	<p>under the Biodiversity Conservation Act 2016 (BC Act), and within close proximity to an active penguin nest on another property. Assessments of Significance (AoS) for Little Penguins and Long-nosed Bandicoots, prepared in accordance with Section 7.3 of the BC Act, have been submitted with the DA. The assessments conclude that the proposal is unlikely to result in a significant impact to threatened entities, subject to the following ameliorative conditions:</p> <ul style="list-style-type: none"> • Maintenance of current wildlife access to habitat on the property; • Timing restrictions on demolition, excavation and rock removal to avoid the penguin breeding season; • Pre-work surveys of potential penguin breeding habitat and restrictions on work if penguins/active nests are recorded; • Ground protection to reduce noise and visual disturbance to wildlife; • Restrictions on pneumatic hammers to reduce noise and vibration impacts; • Sediment control to protect water quality within North Harbour; • Landscaping to maintain habitat quality on site; • Wildlife-exclusion fencing and pre-work surveys to prevent injury to animals which may attempt to shelter in stockpiles. <p>It is also noted that the proposal occurs largely within the approved footprint of DA2018/0639.</p> <p>Council's Biodiversity Section supports the recommended ameliorative measures and the ecologist's conclusion that the proposal is unlikely to result in significant impact to threatened entities, subject to these measures as conditioned.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, Sydney Harbour Catchment Regional Environment Plan, 2005 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 application has also been assessed using Northern Beaches SREP assessment template.</p> <p><i>Coastal Management Act 2016</i> 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.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p>

Internal Referral Body	Comments
	<p>As the site is located within the SREP area. Hence, relevant clauses of the CM SEPP do not apply for this DA.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>Harbour Foreshores & Waterways Area</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 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by SJB Planning dated September 2021, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p><u>Wetland Protection Zone</u></p> <p>The subject site is located within the Wetland Protection Zone. Hence, Part 6, Clauses 61, 62 and 63 of the SREP (Sydney Harbour Catchment) 2005 apply for assessment of this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by SJB Planning dated September 2021, it is determined that the objectives, requirements of development consent and matters for consideration have been assessed and met.</p> <p><u>Referral (Schedule 2 Development)</u></p> <p>Proposed boatshed (lowering of ceiling, demolition of walls etc) is included in the Schedule 2 of the Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005. According to Division 3, Clauses 28 and 29 of the Sydney Regional Environment Plan (Sydney Harbour</p>

Internal Referral Body	Comments
	<p>Catchment), 2005, the application is referred to the Foreshore and Waterways Planning and Development Advisory Committee through the DA Officer of the Northern Beaches Council. Submission received from the Advisory Committee within 30 days after the date on which the application was forwarded to the Committee shall be considered before making any decision on the DA.</p> <p>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</p> <p>The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by SJB Planning dated September 2021, it is determined that the proposed development satisfies the requirements of the DCP.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Landslide/ Landslip Hazard Management</p> <p>The subject site is also shown to be as "Landslide risk" on Council's Landslide Risk Map in Manly LEP 2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>A Geotechnical Report by JK Geotechniquis dated 15 June 2021 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that the risk to property is 'Low', which is 'acceptable'. Adopting the above 'Rare' and 'Unlikely' likelihood of instability together with typical temporal, vulnerability, evacuation and spatial factors, the risk to life for the person most at risk would be less than 10-6 , which is 'Acceptable' i. We consider that our risk analysis has shown that the proposed development can achieve 'Acceptable' risk criteria, provided the recommendations are adopted.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013.</p>

Internal Referral Body	Comments
	<p data-bbox="520 387 963 421">Manly LEP 2013 and Manly DCP</p> <p data-bbox="520 533 1200 566">Foreshores Scenic Protection Area Management</p> <p data-bbox="520 600 1423 813">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 data-bbox="520 925 1423 1137">On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by SJB Planning dated September 2021, 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 data-bbox="520 1171 1375 1238">As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p> <p data-bbox="520 1417 976 1451">Development on Foreshore Area</p> <p data-bbox="520 1496 1439 1664">The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area.</p> <p data-bbox="520 1776 1439 1888">The DA proposes partial demolition and reconstruction of an existing building within the foreshores area. The proposed works are consistent with Clause 6.10(2).</p> <p data-bbox="520 2000 1439 2134">On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by SJB Planning dated September 2021, the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>1st Development Engineering referral response</p> <p>The applicant proposed a car stacker in the existing garage. In general, a waiting/ passing bay facility must be provided within the private property in order to operating the stacker. It prevents any delay of traffic on road and minimises any hazard in road reserve.</p> <p>However, there is no waiting bay/ space within the property to serve the proposed stacker. The distance between the garage and the boundary is only 2.5 m long. The applicant must amend the design to provide a waiting bay facility within the property. It shall also be referred to Our Traffic team for assessment.</p> <p>Also, there is a council pipeline nears to the development. The pipeline shall be identified and indicate in the design to prevent any damage to the pipeline.</p> <p>As this above, Development Engineering cannot support the application due to clause 3.7 and 4.1</p> <p>2nd Development Engineering referral response</p> <p>A discussion was undertaken with our Traffic coordinator about the operation of the car stacker. The proposed car stacker is acceptable with our traffic section. As such, Development Engineering has no objection to the application subject to the following conditions of consent.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	This property is not tagged as flood affected.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site contains a heritage item:</p> <p>Item I1 - Harbour foreshores - Municipal boundary adjacent to the Harbour</p>
	Details of heritage items affected
	Details of the item as contained within the Manly inventory is as follows:

Internal Referral Body	Comments																					
	<p><u>Statement of Significance:</u> Natural landscape type - Aesthetic.</p> <p><u>Physical Description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</p>																					
	<table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
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Internal Referral Body	Comments
	<p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u></p> <p>Is a Conservation Management Plan (CMP) Required? No</p> <p>Has a CMP been provided? No</p> <p>Is a Heritage Impact Statement required? No</p> <p>Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner Heritage Advisor</p> <p>DATE: 17 November 2021</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 as no Ausgrid assets are present. The proposal is accepted without conditions.
Aboriginal Heritage Office	<p>The application was referred to the Aboriginal Heritage Office who provided a response stating that given the fact that the proposal mainly remains within the envelope of the approved consent and the separation between the proposed works and the heritage item, the impact of the proposal upon the significance of the item, is considered manageable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</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.1197642S dated 16 August 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	52

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.

SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (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 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

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

Comment:

The proposed development for alterations and additions to the existing dwelling house is not likely to alter coastal processes, increase coastal hazards or reduce public amenity to the foreshore area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

The proposal will not adversely nor unreasonably affect the biophysical, hydrological and ecological environments. Existing public access to the foreshore area will not be affected by the proposal. The

application has been referred to the Aboriginal Heritage Office and is not anticipated to have any impact on Indigenous heritage.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The siting of the proposed development will not have foreseeable adverse impacts with regard to the matters raised within clause (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
- a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The building position is within an established urban zone and does not create any adverse environmental impacts on the coastal environment or unreasonable visual impacts on public places.

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 will not impact on the natural foreshore processes or cause environmental harm.

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	11.7m (existing modified ground level)	37.64% (3.2m)	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.53:1	-	Yes
	258m ²	229.7m ²		

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.7m
Percentage variation to requirement:	37.64%

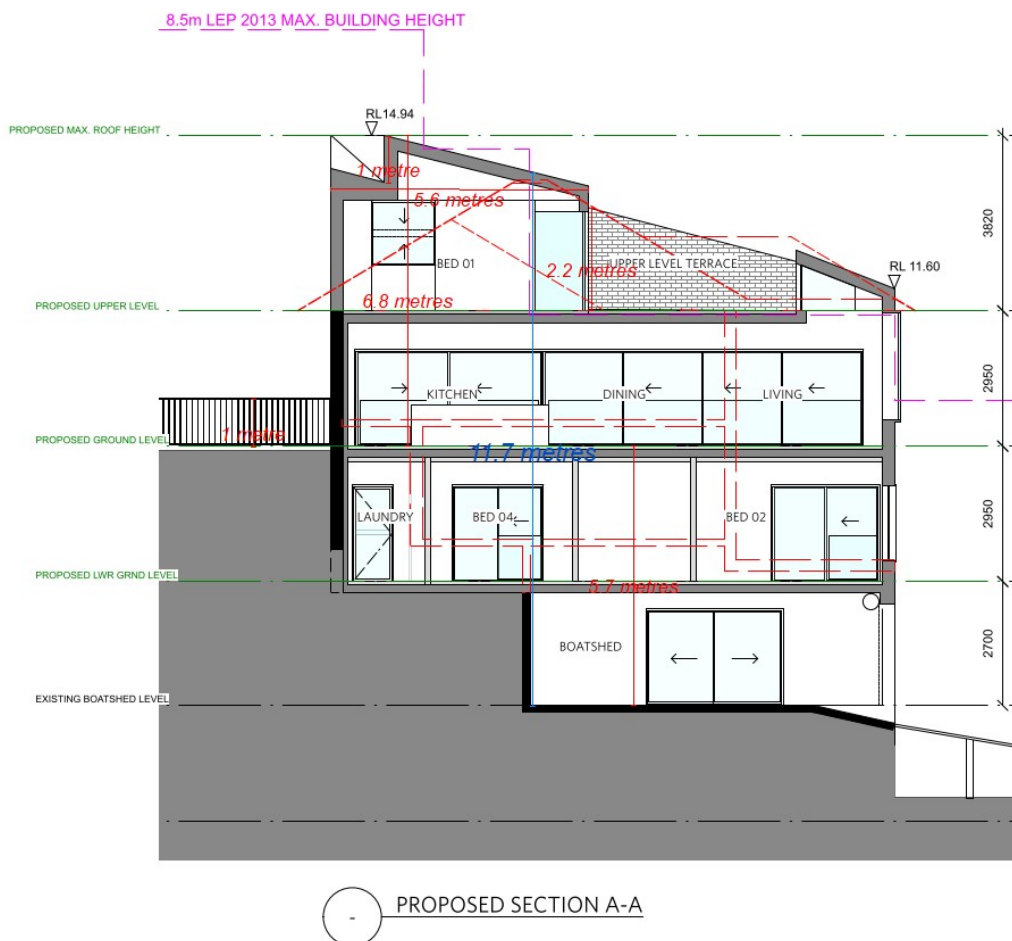


Figure 4 - Height of Buildings Non-Compliance (Blue Line)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The existing dwelling currently exceeds the height controls, which is largely attributed to the steep slope of the site. As the proposal maintains the footprint and siting of the existing dwelling and elements of the structure, and the steep site topography, it also exceeds the height controls.*
- *The proposal results in a marginal increase in the maximum height variation from the building*

height approved under the development consent to DA2018/0639 issued on 18 December 2019.

- *The height, scale and bulk of the proposal is consistent with the surrounding development and nearby dwellings fronting the foreshore. Importantly, the overall (ridge) height of the proposal sits below the ridge height of the adjacent dwellings. The proposal maintains appropriate scale relationships so that built form outcomes are compatible with surrounding development.*
- *The proposal locates the additional storey towards the north (rear) of the existing dwelling.*
- *The proposal does not have unreasonable amenity impacts on adjoining properties by way of overshadowing, visual and view impacts, or loss or privacy. As the proposal maintains generally the same building height of the approved DA2018/0639, it does not result in additional overshadowing or view loss impacts from what was previously assessed and determined to be acceptable.*
- *The height non-compliance does not adversely impact on the character or landscape setting of the harbour or foreshore. Removing the non-compliance would not significantly alter the perceived height and bulk of the building as viewed from the harbour and foreshore, or from surrounding development.*
- *The proposal complies with the FSR standard applying to the site.*

It is agreed that the proposal maintains the existing maximum building height, as the proposed development is consistent with the locality and neighbouring developments within the vicinity that are of similar scale. In terms of its strict compliance with this development standard it would not result in a net benefit to the desired future character of the locality, as the proposal is considered to be an appropriate design to preserve the residential low density setting.

In this regard, the applicant's written request has demonstrated that 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, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

When considering the constraints of the site, including the fall of the land and vicinity to the harbour, the height of the proposal is considered appropriate. The proposal has regard to the site topography by containing the upper level within a sloped roof form. The height is also setback to the rear of the existing dwelling, thereby ensuring a stepped built form that responds to the topographic landscape. As the site is generally a battle-axe block, the proposed additions will not be readily visible from Bruce Avenue. Furthermore, the height, scale and bulk of the proposal is consistent with the prevailing building height of adjoining and surrounding dwellings fronting the foreshore, thereby maintaining the streetscape character in the locality.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the proposal responds favourably to the topography of the site, the adjacent development and foreshore location. The visual bulk of the development when viewed from the public domain is not considered to be adverse nor unreasonable. In this regard, the proposal has an appropriate relationship and scale to the surrounding development and the foreshore location.

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 proposal is not considered to result in unreasonable view loss from public places or from surrounding residential development. Removing the non-compliance would not significantly alter the perceived height of the building as viewed from the harbour and foreshore. The height and bulk of the proposal is commensurate with adjacent development and will not have adverse impacts when viewed from the foreshore, harbour or Little Manly Beach.

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 proposed non-compliant maximum height of the building does not give rise to unreasonable overshadowing impacts to adjacent dwellings. Given the proposal maintains generally the same building height approved under DA2018/0639, it will not result in additional overshadowing impact from what was previously approved. The solar impacts of this aspect of the development are

minimal and acceptable in terms of the impacts on habitable rooms of adjoining properties and public open 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 bulk and height of the proposal responds appropriately to the site topography. The additional bulk is largely located to the rear of the property where the existing ground level is higher. Moreover, the proposal does not adversely impact on significant vegetation or landscape features, including the existing rock face. The proposal does not alter nearby bushland environment or involve the removal of natural vegetation.

Zone objectives

The underlying objectives of the C4 Environmental Living zone

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The proposal maintains the existing setback to the foreshore and primarily sits within the footprint of the existing dwelling, thereby providing for low-impact residential development. Furthermore, the application was referred to the Aboriginal Heritage Office and Council's Bushland and Biodiversity team who provided a response that there are no known special ecological, scientific or aesthetic sites of value recorded on the subject site and the proposed development is acceptable in terms of its impacts on the ecological, scientific and aesthetic values.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

The proposed works are not anticipated to have an adverse effect on the abovementioned values.

- ***To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.***

Comment:

The proposed works are not anticipated to have any impacts on tree canopies, and the subject site is not in close vicinity of any significant trees. Moreover, the bulk and scale of the proposal will not dominate the scenic qualities of the foreshore.

- ***To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.***

Comment:

While the proposal is located close to the foreshore, it does not alter the existing rock face on the subject site, or other nearby geological features. Furthermore, the proposal does not alter nearby bushland environment or involve the removal of any significant natural vegetation. The setback provided between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the harbour.

- ***To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in***

stormwater runoff on the ecological characteristics of the locality, including water quality.

Comment:

The proposed development does not involve works within the existing foreshore. Therefore, the proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

- ***To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.***

Comment:

The proposal ensures that the height and bulk of the proposed alterations and additions to the dwelling responds to the topography of the site by containing the upper level within a sloped roof form that is setback to the rear of the existing dwelling. The proposal also has regard to the adjacent developments, existing landscaping and topography of surrounding sites.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

6.5 Terrestrial biodiversity

The site is located on land identified as containing potential habitat for endangered populations of Long-nosed Bandicoot and Little Penguin, therefore this clause applies.

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this

clause applies, the consent authority must consider:

- (a) *whether the development is likely to have:*
 - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The application is accompanied by a Biodiversity Report prepared by GIS Environmental Consultants dated 15 July 2021 that concludes that the proposed development will not significantly alter the potential habitat on the property, and it is assumed that the demolition, excavation and construction works will not result in any disturbances to threatened species or native flora and fauna.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development has been designed utilise the site mostly existing disturbed and concrete areas. The proposal will retain access for movement of bandicoot species. The application's accompanying Biodiversity Report will be included in the conditions of consent to manage and mitigate any impacts of the proposed development.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The bulk and scale of the proposal is compatible with the surrounding development and will not adversely impact on the character or scenic qualities of the foreshore. Furthermore, the proposal does not negatively impact on the existing foreshore noting that it does not alter the existing rock face/natural rock outcrops or any other nearby geological features.

6.10 Limited development on foreshore area

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

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

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

Comment:

In accordance with Subclause 6.10(2)(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area can be constructed with the Foreshore Area with development consent. The proposal is for substantial demolition and rebuilding of the existing dwelling house and associated additions and is consistent with this clause and is permitted within the foreshore area.

The proposal has been assessed against the relevant considerations outlined in Clause 6.10 of the DCP as outlined below:

- *The bulk and scale and general appearance of the proposal is compatible with surrounding residential development. The architectural style of the proposal is not out of character with the diverse architecture that characterises the residential development along the foreshore.*
- *The proposal will not impact on the natural foreshore processes or cause environmental harm. The proposal is supported by a drainage concept plan to ensure stormwater runoff from the development does not cause pollution or siltation of the harbour, or have an adverse effect on drainage patterns or flora and fauna habitats.*
- *The proposed works do not compromise opportunities for public access along the foreshore that may be available within the vicinity of the site.*
- *The proposal will not have an adverse impact on the amenity or aesthetic appearance of the foreshore.*

As such, the proposal is deemed to be acceptable under this clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 430m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/250m ²	1	-	Yes
	Dwelling Size: 112m ² for 4 bedrooms	234m ²	-	Yes
4.1.2.1 Wall Height	NE: 8m (based on gradient 1:3)	11.2m	40% (3.2m)	No
	NW: 8m (based on gradient 1:2)	7m	-	Yes

	SE: 8m (based on gradient 1:2)	9.1m	13.75% (1.1m)	No
	SW: 8m (based on gradient 1:3)	7.4m	-	Yes
4.1.2.2 Number of Storeys	2	3	1 storey	No
4.1.2.3 Roof Height	Height: 2.5m	1m	-	Yes
	Pitch: maximum 35 degrees	10 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback (site is a battle-axe allotment and no change proposed to garage fronting Bruce Avenue)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	1/3 of the height of adjacent external wall of dwelling NE: 3.06m - 3.7m SW: 1.3m - 2.46m	NE: 3.4m - 4.1m (unenclosed balconies permitted to encroach under the DCP) SW: 0.6m - 1.6m (Ear window setback 0.6m from side boundary)	- Ear window: 53.85% (0.7m)	Yes No (ear window)
	Windows: 3m	Ear window: 0.6m	20% (2.4m)	No
4.1.4.4 Rear Setbacks	8m	5.9m	26.25% (2.1m)	No
4.1.4.5 Foreshore Building Lines and Foreshore Area	(based on wall height)	Much of the site is below the foreshore building line area	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (236.5m ²)	56.97% (245m ²)	-	Yes
	Open space above ground 25% of total open space (61.25m ²)	24.10% (57m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (82.775m ²)	21.56% (51m ²)	13.44% (31.775m ²)	No
4.1.5.3 Private Open Space	Minimum 18m ²	110m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.8m	-	Yes
Schedule 3 Parking	Dwelling 2 spaces	2 spaces	-	Yes

and Access				
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	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	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

A detailed view loss assessment was conducted for the previously approved dwelling house under DA2018/0639 in accordance with the planning principle established by the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah [2004] NSWLEC140* and Clause 3.4.3 of the Manly DCP. The views impacted under the assessment of DA2018/0639 are provided below:

No. 3 (Unit 1 and Unit 2) Bruce Avenue, Manly

The nature of the view affected from this property would be beach and harbour (water) views to the south. Particularly, the views of the land water interface will be impacted. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house (No.7 Bruce Avenue, Manly).



Photo 1 - Living room in Unit 2/3 Bruce Avenue (Standing)



Photo 2 - Living room in Unit 2/3 Bruce Avenue (Standing)



Photo 3 - Living room in Unit 1/3 Bruce Avenue (Standing)



Photo 4 - Study/rumpus room in Unit 1/3 Bruce Avenue (Standing)



Photo 5 - Outdoor living at Unit 1/3 Bruce Avenue (Sitting)



Photo 6 - Outdoor Living in Unit 1/3 Bruce Avenue (Standing)

No. 1 Bruce Avenue

The nature of the view affected from this property would be harbour (water) views to the south particularly, the views of the Heads and the land water interface will not be impacted. The views would be filtered through existing development and vegetation as pictured below. At present, a large portion of the existing views are to the side and over the top of the subject site dwelling house.



Photo 7 - Outdoor living at No.1 Bruce Avenue (Sitting)



Photo 8 - Outdoor living at No.1 Bruce Avenue (Standing)



Photo 9 - Living room at No.1 Bruce Avenue (Standing)

No.5 Bruce Avenue, Manly

The nature of the view affected from this property would be beach and harbour (water) views to the south and south-east. The views of the land water interface will not be impacted. The views would be filtered through existing vegetation as pictured below. At present there is a large portion of the views to the side and over the top of the subject site dwelling house.



Photo 10 - Outdoor living adjoining bedroom at No.5 Bruce Avenue (Standing)



Photo 11 - Outdoor living adjoining bedroom at No.5 Bruce Avenue (Sitting)



Photo 12 - Bedroom at No.5 Bruce Avenue (Standing)

No. (Unit 3 and 4) 46 Addison Road, Manly

The nature of the view affected from this property would be harbour views to the south-west, the views of the land water interface. The heads will not be impacted. The views would be filtered through existing vegetation and development as pictured below. At present a large portion of the views to the side and over the top of the subject site dwelling house.



Photo 13 - Living room at Unit 4/46 Addison Road (Standing)



Photo 14 - Living room balcony at Unit 4/46 Addison Road (Standing)



Photo 15 - Bedroom at Unit 4/46 Addison Road (Standing)



Photo 16 - Bedroom at Unit 4/46 Addison Road (Standing)



Photo 17 - Balcony at Unit 3/46 Addison Road (Standing)



Photo 18 - Balcony at Unit 3/46 Addison Road (Sitting)

No. 9 Bruce Avenue, Manly

The Nature of views affected from this property would be harbour and beach views to the south-east. Views of the land-water interface and the heads will not be impacted. The views would be filtered through existing development as pictured below.



Photo 19 - Outdoor Living East at No.9 Bruce Avenue (Standing)



Photo 20 - Outdoor Living West at No.9 Bruce Avenue (Standing)

The view impact assessment that was undertaken for DA2018/0639 concluded that the proposal did not cause unreasonable view loss to and/or from public spaces or private properties.

As the proposal maintains generally the same height, bulk and scale, the proposal will not result in additional view impacts. Therefore it can be concluded that the proposed development responds appropriately to the available views through the provisions of appropriate view corridors over the side and top of the proposed dwelling. Together with a design which incorporates substantial building articulation into the proposal, the proposal ensures highly valued views including water, beach and the land water interface are retained from all affected properties, with the overall impact of the proposal on neighbouring properties in terms of view loss being minor and moderate.

No submissions have been received for this application in regards to view loss.

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

Description of non-compliance

Clause 4.1.2.1 Wall Height of the Manly DCP stipulates that the maximum external wall height is calculated based on the slope of the land under the proposed wall. In this instance, the maximum wall height on the subject site is 8m. The proposal results in a maximum wall height on the north-east elevation of 11.2m, presenting a variation of 40% (3.2m) to the control. Meanwhile, the maximum wall height on the south-east elevation is proposed to be 9.1m, also presenting a numerical non-compliance and resulting in a variation of 13.75% (1.1m).

Clause 4.1.2.2 Number of Storeys requires buildings to not exceed 2 storeys except on land in areas 'L' and 'N1' on the LEP Height of Building Map. The proposal presents a variation to the number of storeys requirement of 2 storeys, proposing a 3 storey dwelling house. It should be noted that under Clause 4.1.2.2 variation to the maximum number of storeys may be considered where specific physical site constraints warrant an exception to this requirement.

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 responds to the topography of the site by containing the upper level within a sloped roof form that is setback towards the rear (north) of the existing dwelling. The overall height of the proposal at 14.94m is only marginally higher than the existing dwelling at RL13.97m. Furthermore, the overall height of the proposal sits below the ridge height of adjacent dwellings and is consistent with the streetscape character in the locality.

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

Comment:

It should be noted that the existing dwelling on the subject site is of part 2 and part 3 storey construction. The proposal incorporates an additional storey which has been setback to the rear. Notably, existing residential development on adjoining and surrounding sites is predominantly of 3 to 4 storey construction. The bulk and scale of the proposed dwelling is considered to be suitable for the

subjects site given the topography of the land that poses difficulties with adhering to strict compliance of the wall height requirements of the DCP.

(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:

Removing the non-compliant wall heights or additional storey would not significantly alter the perceived height of the building as viewed from the harbour and foreshore, or from surrounding development.

(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 non-compliance with the wall height and number of storeys control does not give rise to unreasonable amenity impacts in relation to visual impacts, loss of views, overshadowing or privacy to 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 proposal is not anticipated to have any adverse impacts on bushland or surrounding land uses.

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

Description of non-compliance

Clause 4.1.4.2 Side setbacks and secondary street frontages of the Manly DCP, requires setbacks between any part of a building and the side boundary to not be less than one third of the height of the adjacent external wall of the proposed building. The proposed development complies with these requirements except for a minor variation sought for the ear window on the south-western elevation which is setback 0.6m from the side boundary and presents a numerical non-compliance to the control.

Further, Clause 4.1.4.4 Rear Setbacks of the DCP stipulates that the distance between any part of a building and the rear boundary must not be less than 8m. The proposed setback to the rear of the site is 5.9m, presenting a variation of 26.25% (2.1m) to the requirements of the DCP. In this instance, the rear building line is the foreshore.

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 numerically non-compliant side setback along the south-western wall of the proposal will not result in any adverse impacts on the existing streetscape or desired spatial proportions of the street. The section of the wall is relatively minor in size and will not be easily observed from the street edge. Additionally, the proposal retains the existing rear setback to the foreshore.

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 alignment of the existing dwelling's external wall along the south-eastern boundary will remain the same, except for the inclusion of the proposed new concrete ear window associated with the bathroom on the new upper level. The design and orientation of this window will ensure it does not result in direct views into, or overlooking of, the adjoining dwelling to the south-east. Furthermore, the proposed development maintains the existing rear setback to foreshore, does not alter the existing rock shelf and generally sits within the footprint of the existing dwelling thereby maintaining the existing level of amenity to surrounding properties.

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

Comment:

Flexibility is afforded in this circumstance as the window setback variation will not result in unreasonably amenity impacts to adjoining sites. It should also be noted that the proposed south-west wall height complies with the requirements of the Manly DCP. As the proposal retains the existing rear setback, the variation presented by the proposed alterations and additions is supportable by the virtue of utilising the setbacks of the existing dwelling.

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 proposal does not require the removal of trees or any significant vegetation on the subject site, thereby ensuring deep soil zones and native vegetation is retained.

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

Comment:

The subject site is not located in bush fire prone land and therefore this objective is not relevant for this application.

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 section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires a minimum of 35% (82.77m²) of total open space on the subject site to be landscaped open space. The development proposes a landscaped open space of 21.55% (51m²), presenting a variation of 13.44% (31.77m²) to the numeric requirements of the control. It should be noted that the existing landscaped open space area on the subject site does not meet the DCP 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 retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal will not result in the removal of any important landscape features or vegetation on the subject site.

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

Comment:

The proposal will retain sufficient soft landscaping to encourage appropriate tree planting and the maintenance of existing vegetation. The vegetation which will be primarily located towards the northern end of the site closer to Bruce Avenue will also reduce the visual impact of the built form.

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

Comment:

The numerically non-compliant landscaped open space area will not unreasonably compromise amenity for adjoining properties of the subject site.

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

Comment:

The proposal provides ample soft pervious areas on the subject site that are sufficient to assist with stormwater infiltration and runoff. Furthermore, Council's Development Engineer has reviewed the

application and is satisfied the proposal will not have any adverse impacts in terms of stormwater flows.

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

Comment:

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

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

Comment:

The proposed development is not likely to affect any existing wildlife habitat or adversely impact the potential for wildlife corridors.

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

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

The proposal seeks to demolish and excavate part of the ground level of the existing single garage to accommodate a car stacker. This will increase the car parking on the subject site from one (1) to two (2) spaces. The height and elevations of the existing garage will remain unchanged.

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 \$9,750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,000.

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:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal for alterations and additions to the existing dwelling house has been referred to the Development Determination Panel (DDP) due to the application proposing a variation to the Height of Buildings development standard of more than 10% (3.2m or 37.64%).

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is sympathetic of the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval (subject to conditions).

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

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 clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1813 for Demolition works and construction of a dwelling house including a boat shed on land at Lot 2 DP 218836, 7 Bruce Avenue, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan & Site Analysis - Drawing No.A-DA2-100-000 Rev 04	Jan 2020	Durbach Block Jaggers
Demolition Plans - Sheet 1 - Drawing No.A-DA2-101-001 Rev 04	Jan 2020	Durbach Block Jaggers
Demolition Plans - Sheet 2 - Drawing No.A-DA2-101-002 Rev 04	Jan 2020	Durbach Block Jaggers
Excavation Plans - Drawing No.A-DA2-101-003 Rev 04	Jan 2020	Durbach Block Jaggers
Roof Plan - Drawing No.A-DA2-110-001 Rev 04	Jan 2020	Durbach Block Jaggers
Upper Level Plan - Drawing No.A-DA2-110-002 Rev 04	Jan 2020	Durbach Block Jaggers
Ground Level Plan - Drawing No.A-DA-110-003 Rev 04	Jan 2020	Durbach Block Jaggers
Lower Level Plan - Drawing No.A-DA2-110-004 Rev 04	Jan 2020	Durbach Block Jaggers
Boatshed Plan - Drawing No.A-DA2-110-005 Rev 04	Jan 2020	Durbach Block Jaggers
NW Elevation - Drawing No.A-DA2-210-001 Rev 04	Jan 2020	Durbach Block Jaggers
NE Elevation - Drawing No.A-DA2-210-	Jan 2020	Durbach Block Jaggers

002 Rev 04		
SE Elevation - Drawing No.A-DA2-210-003 Rev 04	Jan 2020	Durbach Block Jaggers
SW Elevation - Drawing No.A-DA2-210-004 Rev 04	Jan 2020	Durbach Block Jaggers
Section A-A - Drawing No.DA2-310-001 Rev 04	Jan 2020	Durbach Block Jaggers
Section B-B - Drawing No.DA2-310-002 Rev 04	Jan 2020	Durbach Block Jaggers
Materials and External Finishes - Drawing No.A-DA2-890-002 Rev 04	Jan 2020	Durbach Block Jaggers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No.1197642S	16 August 2021	Durbach Block Jaggers Architects
Terrestrial Biodiversity Report	15 July 2021	GIS Environmental Consultants
Geotechnical Report	15 June 2021	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Master Plan	15 July 2021	Landart

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	5 August 2021	P3 Living c/o SJB Planning

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

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

2. **Prescribed conditions (Demolition):**

(a) 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 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
- (ii) 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.

(b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(c) 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.

Reason: Legislative Requirement.

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 Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been

completed.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

5. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until

the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,750.00 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 \$975,000.00.

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.

7. Security Bond

A bond (determined from cost of works) of \$5,000 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).

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

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

8. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY . Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. No Bright Lighting – Bandicoot and Penguin Habitat

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of a Construction Certificate.

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

10. Access to Undercroft Areas – Bandicoot Habitat

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

11. **Preparation of CEMP**

A Construction Environmental Management Plan (CEMP) is to be prepared outlining all measures for the protection of native fauna and vegetation during the construction phase. Measures to be addressed in the CEMP include, but are not limited to, all conditions of this consent addressing construction-related biodiversity impacts.

The CEMP is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

12. **No Artificial Lighting – Penguin Habitat**

No artificial light is to be directed toward or illuminate the Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat) at any time during or post-construction.

No bright lighting or motion detectors which illuminate the formed back yard or foreshore areas are to be installed. Low intensity lighting may be used in the formed back yard for safety purposes only.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of a Construction Certificate.

Reason: Artificial light can prevent penguins from returning to shore and result in abandonment of chicks.

13. **Fencing for Wildlife Passage**

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Plans are to be certified as complying with this condition and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

14. **Runoff and Sediment Control – Penguin Habitat**

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works.

Reason: To prevent impacts to Little Penguins and their habitat, including the Area of Outstanding Biodiversity Value, in accordance with the Biodiversity Conservation Act 2016.

15. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

16. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

18. **Waste Management Plan**

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

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

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

19. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with Terrestrial Biodiversity Report (GIS Environmental 2021).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

20. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

21. **Compliance with Standards**

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

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

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

22. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

23. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. **Compliance with Ecologist’s Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with Section 6 of the Terrestrial Biodiversity Report (GIS Environmental 2021).

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

25. **Site Induction Required – Penguin and Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

26. **Fauna Protection Fencing – Penguin and Bandicoot Habitat**

Temporary fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

27. **Runoff and Sediment Control – Penguin Habitat**

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works.

Reason: To prevent impacts to Little Penguins and their habitat, including the Area of Outstanding Biodiversity Value, in accordance with the Biodiversity Conservation Act 2016.

28. **Works within 3m of known penguin nest**

There are to be no construction works within 3m of the known penguin nest (including the eastern stairs, garden bed and boat shed level patio) while there are penguins using this nest. Construction works include, but are not limited to, placement or removal of scaffolding, plumbing or fencing. When construction works are to occur within 3m of this nest, the absence of nesting

penguins is to be confirmed by weekly inspections by a suitably qualified ecologist. Absence of nesting penguins from the known nest is to be confirmed in writing by the site ecologist and forwarded to Council should works within 3m of the known nest site occur.

Reason: To protect penguins nesting on the foreshore and their habitat

29. **Pre-demolition check of penguin habitat**

Prior to commencement of demolition works, a suitably qualified ecologist is to confirm that no penguins are breeding or moulting on the site or within 20m of the site. If penguins or bandicoots are found on the site, works must cease and advice must be sought from the site ecologist.

Reason: Wildlife protection

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

31. **Tree and Vegetation Protection**

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

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an 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 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 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 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 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 to the Certifying Authority,
- 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 Australian Standard 4970-2009 Protection of Trees on Development Sites.

The Certifying Authority must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

32. **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.

33. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **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 Certifying Authority.

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

35. **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 Certifying Authority.

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

36. **Construction Hours – Manly LEP Clause 6.5**

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Compliance must be certified by the Project Ecologist.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

37. **Works to be undertaken outside penguin breeding season**

No demolition, excavation or rock removal works are to be undertaken on the property during the penguin breeding season (1 July to 29 February) or if there are penguins nesting within 20m of the property at any time of year.

Compliance must be certified by the Project Ecologist.

Reason: To prevent disturbance to nesting penguins on the foreshore

38. **Geotechnical Issues**

All conditions outlined in Geotechnical Assessments prepared by JK Geotechnics dated 15 June 2021 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations, footings, etc. is undertaken in an appropriate manner and structurally sound.

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

39. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) the proposed tree planting of *Melaleuca quinquervia* (Paperbark) shall be deleted and replaced with a small native tree capable of attaining a mature height no taller than the approved roof level,
- ii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- iii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space or solar collectors, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.

<https://5milliontrees.nsw.gov.au/>

40. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

41. **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with Section 6 of the Terrestrial Biodiversity Report (GIS Environmental 2021).

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

42. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the 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), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. 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 detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement 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 for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

43. **Geotechnical Certification Prior to Occupation Certificate**

A suitably qualified geotechnical consultant is to provide confirmation that the development is consistent with the recommendations of the Approved Geotechnical Report referenced in Condition 1 of this consent. Written certification is to be provided to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

44. **Geotechnical Issues**

Following construction activities provide Council with a geotechnical report that has investigated the stability of the site and provided an assessment of any new landslip hazards prior to the issue of an occupation certificate.

Reason: To ensure works are undertaken in an appropriate manner.

45. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

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

46. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover 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 the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

47. **Report Dead or Injured Penguins or Bandicoots – Penguin and Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots or Little Penguins found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots and Little Penguins in accordance with the Biodiversity Conservation Act 2016.

48. **Little Penguin Protection**

During the Little Penguin breeding season (1 July to 29 February), plywood hoarding is to be fixed along the southern 15m of the north-eastern boundary to a height of at least 1.5m from the existing ground level. The boards are to be in place before the start of the penguin breeding season and are to remain in place for the duration of the breeding season each year.

Reason: To reduce noise and visual disturbance to Little Penguin nesting within known breeding habitat.

49. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.