

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0306
Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 15 DP 1189590, 20 Spring Cove Avenue MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Christopher Robert Bayley Lee Vouch Sar
Applicant:	Harrison's Landscaping Pty Ltd
Application Lodged:	12/04/2023
Nominated Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/06/2023 to 03/07/2023
Exhibited Clause 56 EP&A Regulations:	05/06/2023 to 03/07/2023
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 276,084.73

EXECUTIVE SUMMARY

This application seeks development consent for the construction of a swimming pool, replacement and extension of a stone retaining wall with boundary pool fencing and associated landscaping works.

The subject site forms part of St Patrick's Estate which is a State Heritage Item. A such, development is Nominated Integrated Development pursuant of the Heritage Act 1977. Accordingly, the proposal was referred to Heritage NSW, with General Terms of Approval being issued.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal including partial demolition of a heritage item, in particular the removal of a section of existing stone retaining wall and garden. The demolition works do not significantly affect any original building fabric of the existing dwelling house or any other parts of St Patrick's Estate. However, any form of demolition associated with a heritage item is defined as a form of Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

The application has been assessed against the relevant local and State controls, and it has been found to be acceptable.

Based on a detailed assessment of the application, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the construction of a swimming pool and associated site works.

Specifically, the works consist of the following:

- Removal of part of an existing retaining wall and garden to accommodate the excavation and construction of a swimming pool;
- Replacement and addition of a new stone retaining wall and boundary pool fencing; and
- Landscaping works to accommodate new bandicoot habitat.

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 - Zone C4 Environmental Living
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 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 - 6.19 Development in St Patrick's Estate
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 5.3 St Patrick's Estate, Manly
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot 15 DP 1189590 , 20 Spring Cove Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Spring Cove Avenue.</p> <p>The subjects site is legally identified as Lot 15 in Deposited Plan 1189590, No. 20 Spring Cove Avenue, Manly.</p> <p>The site is irregular in shape with a surveyed area of 682.2m².</p> <p>The site is located within the C4 Environmental Living zone under the Manly Local Environmental Plan 2013 and accommodates a dwelling house. The site is included as part of the St Patrick's Estate which is of State Heritage Significance.</p> <p>The site is elevated above street level, but is however situated lower than the properties to the north. Landscaping on site is located towards the east which includes various vegetation forms and canopy trees. Smaller landscaped sections to the north-western and south-western corners also exist. The site is also located within a "vegetated link" (bandicoot movement corridor), under the Spring Cove Bandicoot Habitat Plan.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses including swimming pools of similar nature also located within St Patrick's Estate. In addition is adjacent to Sydney Harbour National Park, a C1 National Parks and Nature Reserve and North Harbour.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has not revealed any recent history in relation to No. 20 Spring Cove Avenue, Manly.

Application History

The development application was initially notified for a period of fourteen (14) days and resulted in no submissions.

The application was identified as nominated integrated development due to the purposes of the Heritage Act 1977, and was referred to Heritage NSW.

Council invited on 16 May 2023 through a request for information letter amended plans and additional information to address the following:

- **Statement of Heritage Impact Report:** A Statement of Heritage Impact, prepared in accordance with Heritage Council Guidelines, must be submitted for any development application on land which is identified as a heritage item.
- **Consent from the adjoining landowner** (No. 10 Spring Cove, Manly) to the application is necessary if works are to be located on the adjoining northern boundary line.
- **Council's Biodiversity Officer Request:** Compensatory planting required to be undertaken elsewhere on the property to ensure no net loss of bandicoot habitat.

The amended plans and additional information received on 30 May 2023 satisfied Council's requests. The development application was then re-notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

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 2013 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)	<p><u>Part 4, 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.</p> <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. Additional information was requested in relation to a Heritage Impact Statement.</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 clause is not relevant to this application.</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 2013 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 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Service, dated 16 February 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. The proposed development has satisfied the requirements of Section 4.14 of the Act.


NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/06/2023 to 03/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan. The exhibition period included the required public consultation for nominated integrated development under Clause 56 of the Environmental Planning and Assessment Regulations 2021.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported, subject to conditions.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan C4 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 C4 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> <p>The proposal is to: renovate the existing stone wall to improve drainage issues on site; construct a concrete swimming pool; and install associated landscape works. The majority of existing landscape area and character setting, excluding the proposed works, is retained including existing native trees and native understorey and as such the landscape objectives of Zone C4 are satisfied.</p> <p>An Arboricultural Impact Assessment is submitted and the report concludes that no existing trees are impacted by the works, and conditions shall be imposed for existing tree and vegetation protection.</p> <p>Landscape Plans are submitted that illustrate hard and soft landscape proposals and no concerns are raised.</p>
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions.</p> <p>Biodiversity Referral (2 June 2023) The amended landscaping proposal is noted and supported. Additional plantings in the eastern corner of the site will now provide for no net loss of bandicoot habitat and ensure compliance with the Bandicoot Habitat Plan for the Spring Cove Estate.</p> <p>Biodiversity Referral (12 May 2023) The proposal seeks approval for alterations and additions to a dwelling house including a swimming pool. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • Manly LEP 2013 - Part 6.5 Terrestrial Biodiversity • Manly DCP - Part 5.4.2 Threatened Species and Critical Habitat Lands. <p>The proposal would take place in the “vegetated link” (bandicoot movement corridor), which is required to</p>

Internal Referral Body	Comments
	<p>be maintained as bandicoot habitat under the Spring Cove Bandicoot Habitat Plan of the original estate consent. As the development would result in the removal of this vegetated link, compensatory planting is required to be undertaken elsewhere on the property to ensure no net loss of bandicoot habitat. Proposed measures to ensure no net loss of bandicoot habitat must be confirmed before compliance with relevant biodiversity controls can be assessed, and may be demonstrated by either an amended landscape plan (showing proposed areas of improved bandicoot habitat elsewhere on the site), or an ecology report (prepared by a suitably qualified ecologist) outlining proposed bandicoot habitat replacement measures.</p>  <p>Figure 1: Bandicoot Habitat Plan for the Spring Cove Estate.</p>
NECC (Coast and Catchments)	<p>Supported, subject to conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.7, 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP apply for this DA.</p> <p><u>Comment</u></p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Serenescapes Landscape Design dated February 2023, the DA satisfies requirements under clause 2.12 of the SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>State Environmental Planning Policy (Biodiversity & Conservation) 2021</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 6.6 and 6.7, Division 2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 apply in assessing this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Serenescapes Landscape Design dated February 2023, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>Coastal Wetlands and Littoral Rainforest Area</p> <p>The subject site is also identified as "Coastal Wetlands and Littoral Rainforest Area". Hence, clause 2.7 of the SEPP (R&H) apply for this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Serenescapes Landscape Design dated February 2023, the DA satisfies requirements</p>

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Strategic and Place Planning (Heritage Officer)	<table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">The proposal has been referred to Heritage as it is within a State heritage item - SHR #01724 St Patricks Estate, which is also listed as Item I131 - St Patricks Estate, Manly within Schedule 5 of Manly LEP 2013.</td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><th colspan="3">Statement of Significance</th></tr><tr><td colspan="3">St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The 1885-1935 buildings and grounds of the estate make up one of Australia's most outstanding collegiate ensembles unrivalled for its completeness, grandeur and extraordinary siting.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</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>Yes</td><td>St Patrick's Estate is on the register</td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>Yes</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>No</td><td></td></tr><tr><th colspan="3">Consideration of Application</th></tr><tr><td colspan="3">The proposal is for the construction of a new pool, with renovated retaining wall and landscaping, located in the rear yard of the existing dwelling.</td></tr><tr><td colspan="3">The site is included as part of the St Patrick's Estate heritage item which is on the State Heritage Register. As a result the application is integrated and a referral was required to Heritage NSW. Heritage NSW by letter dated 4 July 2023 have provided general terms of approval for this proposal.</td></tr><tr><td colspan="3">The proposed development is contained within the existing rear yard and will not physically or visually compromise the heritage significance of St Patricks Estate. It will also not impact on the views to and from the Archbishops Residence or views towards Spring Cove.</td></tr><tr><td colspan="3">Therefore, no objections are raised on heritage grounds, subject to all general terms of approval by Heritage NSW being included in any consent.</td></tr><tr><td colspan="3"><u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as it is within a State heritage item - SHR #01724 St Patricks Estate , which is also listed as Item I131 - St Patricks Estate, Manly within Schedule 5 of Manly LEP 2013.			Details of heritage items affected			Statement of Significance			St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The 1885-1935 buildings and grounds of the estate make up one of Australia's most outstanding collegiate ensembles unrivalled for its completeness, grandeur and extraordinary siting.			Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	Yes	St Patrick's Estate is on the register	National Trust of Aust (NSW) Register	Yes		RAIA Register of 20th Century Buildings of Significance	No		Other	No		Consideration of Application			The proposal is for the construction of a new pool, with renovated retaining wall and landscaping, located in the rear yard of the existing dwelling.			The site is included as part of the St Patrick's Estate heritage item which is on the State Heritage Register. As a result the application is integrated and a referral was required to Heritage NSW. Heritage NSW by letter dated 4 July 2023 have provided general terms of approval for this proposal.			The proposed development is contained within the existing rear yard and will not physically or visually compromise the heritage significance of St Patricks Estate. It will also not impact on the views to and from the Archbishops Residence or views towards Spring Cove.			Therefore, no objections are raised on heritage grounds, subject to all general terms of approval by Heritage NSW being included in any consent.			<u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes		
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Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>																																																									
Nominated Integrated Development - Heritage NSW - Heritage Act 1977	<p>Supported, subject to the General Terms of Approval.</p> <p>Heritage NSW have considered the nominated integrated development application, in accordance with</p>																																																									

External Referral Body	Comments
	Section 4.47 of the Environmental Planning and Assessment Act 1979. The general terms of approval have been included within this assessment and form part of the recommended conditions of consent

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 (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 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

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

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

6.6 Water quality and quantity

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

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

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

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

Comment

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

6.7 Aquatic ecology

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

- whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - a controlled activity approval under the Water Management Act 2000, or*
 - a permit under the Fisheries Management Act 1994,*
- whether the development will minimise or avoid—*
 - the erosion of land abutting a natural waterbody, or*
 - the sedimentation of a natural waterbody,*
- whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*

- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.

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

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

Comment

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

6.8 Flooding

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

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

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

Comment

The site is not located within a flood prone area.

6.9 Recreation and public access

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

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

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

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

Comment

The proposed works include a swimming pool and retaining walls within the boundaries of the property, and will be located to the rear of the dwelling house. This application will therefore, not alter or disrupt the existing recreation and/or public access within the catchment area.

6.10 Total catchment management

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

Comment

The proposal has been reviewed by Council's Coastal and Bushland & Biodiversity Officer. Based on the expert advice provided and recommended conditions, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

Part 6.3 Foreshores and Waterways Area

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—

- (a) whether the development is consistent with the following principles—
 - (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
 - (ii) the public good has precedence over the private good,
 - (iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
- (b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
- (c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
- (d) whether the development promotes water-dependent land uses over other land uses,
- (e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,

- (f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
- (g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
- (h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.

(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—

- (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
- (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
- (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
- (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
- (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
 - (i) the Foreshores and Waterways Area, and
 - (ii) public places, landmarks and heritage items.

Comment

The above has been considered as part of the assessment of this application. The subject site is located adjacent to the Zone 2 (Environment Protection). The proposed works are not considered to impact the Foreshores and Waterways Area nor be seen from the Foreshores and Waterways Area. The foreshores and waterways area will continue to be protected and maintained, in relation to its unique visual qualities.

6.29 Areas of outstanding biodiversity value

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

Comment

The proposed modifications will not impact the biodiversity value of the land.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

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

Comment

The proposed works will include the construction of a swimming pool and associated retaining walls and fencing, and are not considered to impact the foreshores and waterways area. The overall built form of the dwelling house will remain as existing, with the proposed works to be located to the rear of the dwelling which will not be viewed from the waterway or streetscape. Therefore, the existing character of the area will remain unchanged.

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment

The proposed works will not detrimentally impact the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest nor the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Division 3 Coastal environment area

Comment

The site is located within the Foreshores and Waterways Area. Section 2.10 (3) stipulates that “This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6”.

Division 4 Coastal use area

Comment

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

Division 5 General

Section 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 consists of a swimming pool and is not likely to increase the risk of coastal hazards within the locality.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment

The proposal is not inconsistent with relevant coastal management programs.

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	Fence and retaining wall: 2.0m	-	Yes
Floor Space Ratio	FSR: 0.6:1	No Change to existing dwelling house	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	N/A
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.19 Development in St Patrick's Estate	Yes

Detailed Assessment

Zone C4 Environmental Living

The C4 - Environmental Living zone objectives are addressed below:

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

Comment

The proposal consists of excavation and construction of a swimming pool to the rear of a dwelling house with associated retaining walls and fencing. The works will also include new bandicoot habitat planting to aid in maintaining the ecological, scientific or aesthetic values of the area.

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

Comment

In addition to the above, recommended conditions of consent have been included by Council's Biodiversity, Landscape and Coastal Officers to

ensure that impacts to the ecological, heritage, scientific or aesthetic values of the site, are minimised.

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

Comment

The proposed works will not be dominating in nature, and will be sited well below the surrounding tree canopy height. The works will be located to the rear of the dwelling, and will not be visual from the foreshore area.

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

Comment

The location of the proposed works do not contain any significant geological features and will not impact the nearby foreshore. The loss of existing vegetation to accommodate the swimming pool will be replaced to ensure no net loss to bandicoot habitat. The works have been reviewed by Council's Biodiversity Officer who is in support of new plantings, subject to recommended conditions.

- ***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 works as stated above, will not impact the foreshore area. The proposed hard service is minimal and will accommodate for foot traffic around the swimming pool. The remainder of the site will remain as existing, with no significant vegetation or tree loss. The works are not considered to impact on the water quality of the foreshore or increase run off.

- ***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 proposed works will not alter the height or bulk of the existing dwelling. The works as stated above, have regard to the existing vegetation and topography. In addition, no surrounding land uses will be impacted.

5.10 Heritage conservation

- (a) to conserve the environmental heritage of Manly,***
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,***
- (c) to conserve archaeological sites,***
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.***

Comment

The proposal is accompanied by a Heritage Impact Statement prepared by Damian O'Toole Town Planning and Heritage Services, which has been reviewed by Heritage NSW and Council's Heritage Officer. Council is therefore satisfied that the proposed works conserve the environmental heritage of Manly and conserve the heritage significance of heritage items (St Patrick Estate). The subject site is not located within any identified areas of Aboriginal Heritage Significance or objects.

It is also noted that Heritage NSW have considered the nominated integrated development application, in accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979. The general terms of approval have been included within this assessment and form part of the recommended conditions of consent

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and***

- (b) to allow earthworks of a minor nature without requiring separate development consent.***

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development***

Comment

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land***

Comment

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both***

Comment

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties***

Comment

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment

The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.5 Terrestrial biodiversity

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 proposal is accompanied with an Arboricultural Assessment Report prepared by Complete Arborcare which concludes that the works will not result in any long-term tree impact. This report has been reviewed by Council's Landscape Officer, who is in support of the proposal subject to recommended conditions. The site is located within a "vegetated link" (bandicoot movement corridor), which is required to maintain any bandicoot habitats. The works include the removal of lawn area and vegetation to the north-western corner. Replacement planting to the eastern corner of the site is therefore proposed, which will ensure no net loss to bandicoot habitat, providing compliance with the Bandicoot Habitat Plan for the Spring Cove Estate (DA 482/04). Council's Biodiversity Officer has reviewed the proposal and is in support, subject to recommended conditions.

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 subject site is limited in areas for the location of the proposed development due to the siting of existing structures, and significant vegetation (i.e. native trees). As stated above, the Arboricultural Assessment Report indicates that the works in its proposed location will not result in impacts to surrounding trees. In addition, replacement planting has been proposed, which is considered acceptable to avoid any adverse environmental impacts or overall net loss of the bandicoot habitat area.

Therefore, this application complies with the objectives and requirements of this clause.

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 proposed development will not impact the visual amenity of the harbor or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore. The works will not detrimentally impact the scenic qualities of the coastline, as these works will not be easily viewed from the coastline. The development is considered suitable in relation to its type, location, design and relationship to the foreshore, and will not result in impacting the qualities of the foreshore itself. The proposed works will not affect any land-based and water-based coastal activities.

Therefore, this application complies with the objectives and requirements of this clause.

6.19 Development in St Patrick's Estate

The objectives of this clause are as follows:

- (a) to protect the heritage significance, including the archaeological, natural and cultural heritage values, of St Patrick's Estate,
 (b) to ensure that development does not detract from the heritage significance of Moran House, Cerretti Chapel, St Therese's Convent and the Archbishop's Residence,
 (c) to ensure that any new buildings or structures in St Patrick's Estate are sympathetic in scale and built form to the heritage items that are situated in St Patrick's Estate.

In this regard, development consent must not be granted to development on land in "Precinct 10", as identified on the Key Sites Map, unless the consent authority is satisfied that the development:

- (i) will not involve the erection of a building within 5 metres of the western boundary of the Precinct or land in Zone RE1 Public Recreation, and
 (ii) will not involve the erection of a building within 10 metres of land in Zone EC1 National Parks and Nature Reserves, and
 (iii) will not involve the erection of a building within 5 metres of the centre of the pathway that extends from the Archbishop's Residence to Spring Cove and is identified on the Key Sites Map, and
 (iv) will retain the view to and from the Archbishop's Residence and Spring Cove, if the development is on land identified as "View Cone" on the Key Sites Map.

Comment

The proposed development does not include the erection of a building within 5 metres of the western boundary of the Precinct or land in Zone RE1 Public Recreation, within 10 metres of land in Zone EC1 National Parks and Nature Reserves, nor within 5 metres of the centre of the pathway that extends from the Archbishop's Residence to Spring Cove and is identified on the Key Sites Map. The works are located on land identified as "View Cone" on the Key Sites Map, however will not impact on the view to and from the Archbishop's Residence and Spring Cove due to the minor nature of the swimming pool and associated structures.

Therefore, this application complies with the objectives and requirements of this clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 682.2m ²	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line: Approx. 0.0m	Proposed Swimming Pool: Approx. 18.0m - consistent with prevailing building line	-	Yes
4.1.4.4 Rear Setbacks	8.0m	Swimming Pool/retaining wall: 0.0m - 0.3m	96.3% - 100.0%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55.0% of site area (375.2m ²)	Open Space to remain unchanged to that of existing. (Approx. 450.6m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35.0% of open space (157.7m ²)	> 35.0% (Approx. 323.5m ²)	-	Yes
4.1.5.3 Private Open Space	18.0m ² per dwelling	> 18m ²	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1.0m height above ground	< 1.0m height above ground	-	Yes
	1.0m curtilage/1.5m water side/rear setback	Curtilage/Water Line: 0.0m - 0.3m (northern rear setback) Curtilage: 0.4m (western side setback) Water Line: 1.5m (western side setback)	-	No

Note: The side setback controls do not apply in this instance, as the Manly Development Control Plan 2013 includes specific setbacks (as demonstrated above) for swimming pools.

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
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.3 St Patrick's Estate, Manly	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

4.1.9 Swimming Pools, Spas and Water Features

Clause 4.1.9.2 Location and Setbacks stipulate that the setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1.0m, with the water line being at least 1.5m from the boundary.

The proposed swimming pool outer edge is setback 0.6m from the western side boundary line. The water line is however, setback at a compliant 1.5m. The swimming pool outer edge/water line is setback 0.3m from the northern rear setback. Therefore, non-compliant with the numerical requirements of this clause.

It is noted that due to the siting of buildings, canopy trees and areas for bandicoot habitat, the swimming pool location is limited to the north-western corner of the site. Therefore, being the most acceptable location for the swimming pool, this will however result in numerical non-compliances in relation to the pool setbacks.

Merit Consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

- **Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.**

Comment

A condition of consent as been recommended to limit the noise of the pool filter to 5dB (A) above background level noise, to ensure mitigation of noise impact. The swimming pool is located behind boundary fencing, and is surrounded by vegetation, which will ensure acceptable visual privacy levels.

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

Comment

The swimming pool is located at the rear of the property, and will not be viewed from the street. Therefore, will not adversely impact on the streetscape or the established character of the locality.

- **Objective 3) To integrate landscaping.**

Comment

The proposal consists of replacement planting elsewhere on site and to the north-western corner behind the pool wall. This is to ensure that there is no net loss to bandicoot habitat and will also aid in softening the built form of the development. The replacement planting has ben reviewed by Council's Biodiversity Officer.

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

Comment

The swimming pool could be used as a water source in the case of an emergency.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

5.3 St Patrick's Estate, Manly

Clause 5.3.3 Indigenous Wildlife Habitat within the Estate requires the following:

a) Any new fencing of or within St Patrick's Estate, including the fencing of private landholdings within the Estate is to allow movement of the bandicoot population within the Estate, and between the Estate and the adjoining land (that is to say, the fencing is to provide for free circulation and not impede access for the Bandicoots). The access spaces in fencing are to be at least 300mm wide and 150mm high at intervals of 3.0m. This provision does not include swimming pool fencing which should exclude Long-nosed Bandicoots.

b) Consideration must also be given to indigenous wildlife habitat for the long nosed bandicoot by enabling access to undercroft areas within the development, minimising use of bright lights in open space areas (including movement sensors) and encouraging access by steps and retaining walls no greater than 200mm in height.

The proposed development includes boundary fencing atop a retaining wall, which will act as swimming pool fencing. Therefore, in accordance with this control the requirements for bandicoot access spaces for fencing are excluded.

As noted above, the proposed retaining wall will also act as a swimming pool fence and is incorporated into the swimming pool design. The retaining wall is measured 300mm - 800mm high from existing ground level. Therefore greater than the required 200mm height. It is noted that the existing retaining wall which is to be replaced is more than 200mm in height.

Merit Consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

Objective 1) To conserve and enhance the indigenous wildlife habitat within St Patrick's Estate.

Objective 2) To preserve and protect the landscape as habitat for the long nosed bandicoot.

Comment

The proposal includes the removal of lawn area and some vegetation to accommodate the swimming pool/retaining wall. However, new specific bandicoot habitat planting has been incorporated at the rear of the site to ensure compliance with the Bandicoot Habitat Plan for the Spring Cove Estate and that no net loss of bandicoot habitat occurs. Council's Biodiversity Team have reviewed the proposal, and is in support subject to relevant conditions. It is considered that these plantings are an improvement over the current lawn area. It is noted that to protect the well-established canopy trees on site and the overall amenity of the area, the location of the works (rear of dwelling) are considered to be most acceptable.

5.4.2 Threatened Species and Critical Habitat Lands

Council's Biodiversity Officer has provided the following comment in regard to Clause 5.4.2 Threatened Species and Critical Habitat Lands:

"The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head, as listed under Part 2 of the NSW Biodiversity Conservation Act 2016. As such, a 'threatened species test of significance' is required to be undertaken in accordance with s7.3 of the Act. This assessment has been undertaken and has concluded that the proposal will not result in a significant to the endangered population."

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 \$2,761 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$276,085.

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

PLANNING CONCLUSION

This proposal, for the construction of a swimming pool, replacement and extension of a stone retaining wall with boundary pool fencing and associated landscaping works, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to demolition of part of a State Heritage Item. Therefore, meets the requirements for the determination by the NBLPP for Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

The critical assessment included a detailed consideration of the relevant provisions under the State Environmental Planning Policy (Biodiversity and Conservation) 2021, as well as several other relevant State Environmental Planning Policy's, the Manly Local Environmental Plan 2013, and the planning controls listed under both the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013.

In addition, the proposal was referred to Heritage NSW, who responded with General Terms of Approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the NBLPP with a recommendation for **approval**.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0306 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 15 DP 1189590, 20 Spring Cove Avenue, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
L-01, Site Plan/Site Analysis/Sedimentation Control Plan, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.
L-02, Detail Plan, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.
L-03, Sectional Elevations, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.
L-04, Sectional Elevations, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment (Ref. AG 23117)	23 March 2023	AscentGeo Geotechnical Consulting
Bushfire Risk Assessment (Ref. 4257)	16 February 2023	Bushfire Planning Services
Arboricultural Impact Assessment	26 February 2023	Complete Arborcare
Heritage Impact Statement	May 2023	Damian O'Toole Town Planning and Heritage Services

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	13 March 2023	Harrison's Landscaping Pty Ltd.

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. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	21 April 2023
Heritage NSW	Heritage NSW General Terms of Approval	5 July 2023

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

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

3. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
 - (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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 \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out

- v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred 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.

5. **Heritage NSW General Terms of Approval**

The proposal shall strictly comply with the General Terms of Approval prepared by the Heritage Council of NSW as dated 5 July 2023. The General Terms of Approval, are referenced under Condition 2 of this consent.

Reason: Statutory Requirement.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,760.85 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 \$276,084.73.

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 \$2,000 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.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Waste Management Plan**

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

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

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

9. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

10. **Swimming Pools**

The backwash of Swimming Pool water must be discharged to Sydney Water's sewer in accordance with Australian/New Zealand Standard AS/NZS 3500. Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

Reason: To ensure compliance with legislation and Australian Standards and to protect public health, amenity and to ensure the protection and preservation of receiving waters.

11. **Compliance with Standards**

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

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

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

12. **Sydney Water "Tap In"**

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

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

13. **Works located within site boundary**

All parts of the approved swimming pool, retaining wall and fencing are required to be wholly located within the boundaries of the subject property (Lot 15 DP 1189590 - No. 20 Spring Cove, Manly) and shall not encroach beyond the lot boundary lines.

Reason: To ensure works are located within site boundary.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **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

DURING BUILDING WORK

15. **Tree and Vegetation Protection**

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

- i) all trees within the site, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

16. **Pre-clearance Survey**

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

17. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

18. **Survey Certificate**

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

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

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

19. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

20. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- c) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

21. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

22. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

23. **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 Certifier prior to the issue of an Occupation Certificate.

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

24. **Swimming Pool Requirements**

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

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

25. **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(s) and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

26. **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.

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

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

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