

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0040
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 13 DP 8075, 66 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing residential flat building
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes, under existing use rights.
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney Vahuvu Pty Ltd
Applicant:	Vahuvu Pty Ltd
Application Lodged:	20/01/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/02/2020 to 18/02/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 390,000.00

PROPOSED DEVELOPMENT IN DETAIL

The application seeks the approval to undertake alterations and additions to the parking structures of the existing apartment building at 66 Bower Street, Manly.

The proposal includes the following works:

- Replace the existing double carports with two new double garages in the same location, with internal widths of 6.0m x 6.2m (Garage 1) and 6.3m x 5.7m (Garage 2).
- New bin storage areas.
- New storage area under the garages. The storage area under Garage 1 is divided into 2 storage areas whilst the area under Garage 2 is a single storage area.

- New plant room between the storage areas.
- New entry stairs, and landscaping provided in the area between the apartment building and the garages.

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 E3 Environmental Management

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

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

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

SITE DESCRIPTION

Property Description:	Lot 13 DP 8075 , 66 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site is legally identified as Lot 13, DP 8075, known as No. 66 Bower Street, Manly. The site is located within the E3 Environmental Management zone pursuant to MLEP 2013.</p> <p>The subject site is located on the northern side of Bower Street, is irregular in shape, with a site area of 696.6sqm.</p>

The frontage to Bower street measures 5.405 metres, with a rear boundary of 15.405 metres to Marine Parade, and side east and west boundaries of 45.72 metres.

The land has a steep slope from Bower Street towards Marine Parade in two distinct areas. The carports are located at RL25.6, with the land sloping to the apartment dwellings, then the land drops steeply at its northern end down to Marine Parade at RL14.88.

The site is occupied by a 3-storey and 4-storey apartment building containing four (4) units, with pedestrian access, lawns, landscaping and a plunge pool.

The surrounding area has a mix of multi-storey dwelling houses, within in landscaped settings, generally 2-storeys and 3-storeys in height.

All dwellings within this area are orientated to take advantage of the views towards the Pacific Ocean, Headlands district views.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant Development Applications:

- Development Application **DA0481/2006** for the alterations and additions to an existing Residential Flat Building - Unit 3 was approved by Council on the 8 December 2006.
- Development Application **DA0233/2002** for a swimming pool was approved by Council on the 4 June 2004.
- A Pre-lodgement Meeting **PLM2019/0213** was held on 29 October 2019 for the proposed alterations and additions to a Residential Flat Building, including the construction of new

garages and storage areas. The proposed was generally supported by Council as the proposed location was consistent with the site's existing parking structures and is compatible with existing car parking structures within the vicinity of the subject site. However, it was advised that the applicant explore further opportunities to introduce additional landscaping to soften the visual impact of the built form when viewed from the Bower Street.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of a approved Development Application **DA481/2006**, which reveals that the use of the building commenced as a lawful purpose on 8 December 2006, prior to the coming into force of Manly Local Environmental Plan 2013.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building was lawfully approved by Council on 8 December 2006, prior to the coming into force of Manly Local Environmental Plan 2013.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The Applicant has provided evidence in the form of Development Application **DA481/2006**, which reveals that the use of the building was carried out on 8 December 2006, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The development will not change the approved building height, or bulk of the residential flat building as the alterations for the additional dwelling are at the front of the site (garages/storage and entry stairs) and do not change the building footprint. Non-compliance with the Manly DCP 2013 controls concerning the front and side setbacks are addressed in detail within this report.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposed development setbacks and the relationship of setbacks evident on surrounding land is not inconsistent with the pattern of development along this section of Bower Street. Car parking for each Unit and landscaped open space in the front setback will be improved and the rear setback landscaping will be retained. With minimal impact and no unreasonable impact on surrounding land, including the amenity of the site or its surroundings the proposal is considered to be in scale with the surrounding area.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

No change to the building bulk or scale is proposed since the redevelopment of the front garages is accommodated within the former garage footprint and continues to be separate to the residential flat building. The proposal maintains reasonable levels of amenity for the adjacent residents in terms of solar access, privacy and noise.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower

amenity than development generally.

Comment:

There is no change to the residential flat building, and therefore no change to the internal amenity of the existing residential flat building. The redevelopment of the car parking to provide new garages, with storage areas located below the garages is considered reasonable, improves the amenity to the current occupants, and the new structures allow appropriate access to daylight and natural ventilation. Glazing via clearstorey windows for the garages and windows in the storage area will provide reasonable solar access within the new structures. The front area of the site has been re-configured to provide more compliant car spaces on a durable and stabilized area, whilst retaining the tree within the front setback area and providing additional landscaped planting to soften the built form. Finished materials and colours will modernise and compliment the existing building. Therefore, the proposal is designed to maintain the amenity of neighbourings whilst enhancing the character of the immediate area.

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument Manly Local Environment Plan 2013 .

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Olivier Chretien	67 Bower Street MANLY NSW 2095

There was one submission received by Council that was in support of the application.

The submission stated the following:

"We believe the proposed development / design will greatly improve the street aspect of the current old flat garage roofs, and does not impact on our water views. We are very comfortable with the proposed DA and have no issue to raise."

Therefore, there are no issues or concerns to be specifically addressed as a result of the public notification of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for the alterations and additions to an existing apartment building including replacement of existing garages, storage areas, new entry stairs and landscaping.

Internal Referral Body	Comments
	<p>The application is assessed by Council's Landscape Referral section against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specific clauses: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping.</p> <p>The proposal in terms of landscape outcome is acceptable subject to conditions of consent to complete landscape works to satisfy the relevant landscape controls, and subject to the requirements to ensure the protection of trees and vegetation in proximity to the development works, and in particular within adjoining property and within the road verge.</p> <p>A landscape plan is provided in accordance with Council's DA Lodgement Requirements, and is generally acceptable.</p> <p>An Arborist Statement is provided assessing impact of development to existing vegetation in the vicinity of the development works. The Arborist recommendation to remove the street tree is not accepted and shall be retained and protected.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, assessment against Clause 7.3 of the Biodiversity Conservation Act is required. This assessment was undertaken and concluded that, given that works are generally restricted to the existing development footprint, the proposal will not result in a significant impact to the endangered bandicoot population. Conditions are recommended to mitigate potential construction-related impacts and to achieve compliance with Manly DCP Clause 3.3.1.a.iv. (Landscaping for Bandicoot Habitat).</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements of the Manly LEP 2013 and DCP 2013.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also</p>

Internal Referral Body	Comments
	<p>applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Geoff Goodyer dated December 2019, Council accepts the assessment that the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>No coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	A response was received from Ausgrid on the 12 February in regards to the proposal. Ausgrid stated they have no objection to the proposed development, subject to the works complying with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets. This referral response and listed requirements are included as part of the conditions of consent.
Aboriginal Heritage Office	<p>A referral response was received by the Aboriginal Heritage Office on the 6 February 2020. The response stated that there are no sites recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development and is supported subject to conditions.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid, a response was received with no objections to the proposal subject to conditions.

SEPP (Coastal Management) 2018

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed

development, the consent authority can be satisfied that the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Manly Local Environmental Plan 2013

Is the development permissible?	No
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	3.8m - 5.9m	-	Yes
Floor Space Ratio	0.45:1 (313.47m ²)	No Change	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone E3 Environmental Management

The land is zoned E3 Environmental Management where residential flat buildings are prohibited in the zone. However, the existing residential flat building benefits from existing use rights and, pursuant to the EPA Regulation 2000. Therefore, the use may continue and the proposed alterations and additions may be carried out with development consent.

6.2 Earthworks

The proposal will see excavation of the site to accommodate the new storage rooms. A Geotechnical Report, prepared by Crozier Geotechnical Consultants, Report Number 2019-138, dated December 2019 was submitted with the application. This report and its recommendations are included within the conditions of consent to ensure there are no adverse impacts to surrounding properties resulting from the proposed excavation of the storage areas.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is not likely to cause disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development as listed in clause 3(a);
- The proposal is not likely to effect of the development on the likely future use or redevelopment of the land as listed in clause 3(b);
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c) & (e);
- The proposal is not likely to effect of the development on the existing and likely amenity of adjoining properties as listed in clause 3(d);
- There are no relics on the site, therefore clause 3(f) is not applicable;
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(g); and
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(h).

As such, the proposal is considered to be consistent with the provisions and the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.2 Earthworks within the MLEP 2013.

6.4 Stormwater management

The proposal includes amendments to the stormwater management on the site. Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is reasonably designed to maximise the use of water permeable surfaces on the land as listed in clause 3(a);
- The proposal includes on-site stormwater retention for use as listed in 3(b); and
- The proposal has been reasonably designed avoid adverse impacts on the matters listed in clause 3(c).

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.4 Stormwater Management within Manly Local Environment Plan 2013.

The application has been referred to Council's Development Engineers who have assessed the proposed provisions for stormwater. Council's Development Engineers are satisfied with the stormwater provisions, subject to conditions of consent.

6.5 Terrestrial biodiversity

The proposed development is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(a)(i-iv);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(b); and
- The proposal has been designed, sited and will be managed, to avoid adverse impacts on the matters listed in clause 4(a)(b) and (c).

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.5 Terrestrial Biodiversity, within Manly Local Environment Plan 2013.

The application has been referred to Council's Biodiversity Officers who have assessed the proposal and have concluded that the proposal satisfies requirements under Section 7.3 of the Biodiversity Conservation Act 2016 and Section 5.4.2 of the Manly DCP.

6.8 Landslide risk

The site is identified as being within the G4 area on the Landslip Hazard Map, and the objectives of this clause are applicable in relation to the proposal.

A Geotechnical Report, prepared by Crozier Geotechnical Consultants, Report Number 2019-138, dated December 2019 was submitted with the application. This report and its recommendations are included within the conditions of consent to ensure there are no adverse impacts to surrounding properties resulting from the proposed excavation of the storage area.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal design has taken into account the existing layout and access as listed in clause 3 (a);
- The proposal is not likely to effect unreasonably impact the site or the surrounding sites through the design of the proposal, and the construction methods satisfying the matters as listed in clause 3(b);
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(d);
- There proposal, via the Geotechnical Report prepared by Crozier, has reasonably addressed the existing geotechnical constraints of the site as listed in clause 3(e);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(f); and
- The proposal has been designed, sited and will be managed, to avoid adverse impacts on the matters listed in clause 4(a)(b) & (c).

As such, the proposal is considered to be consistent with the provisions and the matters prescribed by sub-clauses 3 and 4 of Clause 6.8 Landslide Risk within the MLEP 2013.

6.9 Foreshore scenic protection area

The site is identified as being within a Foreshore Scenic Protection Area Map, and the objectives of this clause are applicable in relation to the proposal.

Following detailed assessment of the proposed development, Council is satisfied of the following:

- The proposal is unlikely to have unreasonable impacts to the visual amenity of the harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore, therefore satisfying the matters as listed in clause 3(a);
- The proposal is not likely to cause disruption to the scenic qualities of the foreshore as listed in clause 3(b);
- The proposal has been designed, and sited to avoid adverse impacts on the matters listed in

clause 3(c); and

- There is no conflict between the proposal and water based activities as listed in clause 3(d).

As such, the proposal is considered to be consistent with the objectives of the E3 Environmental Living zone, the character of the area and presentation to the Bower Street streetscape, and is also considered to be consistent with the matters prescribed by sub-clauses 1, 2, and 3 of Clause 6.9 Foreshore Scenic Protection, within the Manly Local Environment Plan 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 696.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings per 500sqm	1 dwelling per 174.15sqm (Existing use rights)	-	Yes
4.1.2.1 Wall Height	East 7.7m	Stairs/foyer: 6.3m Garage: 4.6m	-	Yes
	West 7.3m	Stairs/foyer: 6.3m Garage: 4.0m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.7m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Nil - Prevailing setback 0.9m Storage	- 85%	Yes No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East 1.53m West 1.33m	East 0m Garage East 0.9m Storage West 0m Garage West 0.9m Storage	100% 42% 100% 32%	No No No No
4.1.4.4 Rear Setbacks	8m	33m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (383.13sqm)	No change	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (134.1sqm)	> 35% 245.7sqm	-	Yes
	3 native trees	3 trees	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.5m - 6.8m	9.6%	No
Schedule 3 Parking and Access	Residents: 6 spaces	Residents: 4	Existing	Yes

	Visitors: 1 space	spaces Visitors: 0 space		
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The proposal makes no change to the existing number proposed garages (two garages) and there bulk

and scale and modernised design continues to be consistent with a number of provisions being:

The proposal ensures that the new garage proposal in the streetscape (including buildings, fences and landscaping) is designed to:

- i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- vi) visually improve existing streetscapes through innovative design solutions;*

The parking structures within this section of Bower Street are predominately double garages, with the north section of Bower Street demonstrating a dominance of double garages, on nil setbacks presenting to the street.

The two double garages maintain a consistent building height, with a compatible scale with adjacent garages at the street frontage, which continues to be consistent with predominant streetscape character.

The modernised design, and use of a mix of colours and natural materials assist to minimise the visual dominance of the proposed car parking structures to ensure the bulk and scale of the garage area is not overbearing.

It is acknowledged that the additional landscaping forward of the garages, and conditioned retention of the street tree visually improves the streetscape and softens the built form.

Therefore, the design of the garages and the treatment of the front setback continues to be consistent with the provisions of clause and is supported.

3.1.1 Streetscape (Residential areas)

The proposal makes no change to the existing number or width of the two (2) proposed garages and therefore continues to be consistent with a number of provisions of the clause being:

The proposal ensures that the new garage proposal in the streetscape (including buildings, fences and landscaping) is designed to:

- i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- vi) visually improve existing streetscapes through innovative design solutions;*

Parking structures within this section of Bower Street are predominately double garages, with the north section of Bower Street displaying a dominance of double garages, on largely nil setbacks presenting to the street.

The two double garages maintain a consistent building height, with a compatible scale to adjacent garages at the street frontage, which continues to be consistent with predominant streetscape character.

The modernised design, and use of colours and natural materials assist to minimise the visual dominance of the proposed car parking structures to ensure the bulk and scale of the garage area is not overbearing.

It is acknowledged that the additional landscaping forward of the garages visually improves the streetscape and softens the built form.

Therefore, the design of the garages and the treatment of the front setback continues to be consistent with the provisions of clause and is supported.

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

Description of non-compliance

The proposal is non-compliant with the front setback to the garage being 0m - 1m and 0m to 0.8m, and the storage area at 0.9m

The proposal is non-compliant with the numerical control for side setbacks. The control is 1.53m for the east and 1.3m for the west. The proposed setbacks are a nil setback for the garages, and 0.9m for the storage area for both the east and west.

The existing parking structures have nil side setbacks, consistent with numerous parking structures along this section of Bower Street, with the storage area being located below the garages not visually identifiable to the Bower streetscape.

Merit consideration:

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

- *Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

Comment:

The modernised design of the proposed garages will improve the presentation in the Bower streetscape, in that it is consistent with existing and approved parking structures within this area of Bower Street and the locality. The proposed storage areas are not visually identifiable from the streetscape. The proposed garage and associated storage area is of suitable design quality, thus maintaining and enhancing the streetscape character.

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

providing privacy;

providing equitable access to light, sunshine and air movement; and

facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.

defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and

facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

Comment:

The separation of the built forms enable the development to satisfactorily respond to this objective because:

- Each proposed garage and storage area has no additional windows on the east or west elevations property boundaries such that direct overlooking is avoided thereby providing privacy. The rear of the garages contain new windows, however these windows have a sill height of 2m thereby minimising and potential overlooking to surrounding neighbouring sites. The doors and windows for the storage areas are orientated into the subject site, thereby minimising privacy impacts.
- The siting of the garages and storage areas are within the footprint of the existing carports and enables the development to provide equitable access to light, sunshine and air movement through the site and through the neighbouring private and public properties.
- The garage roofline sits well below the residential flat building, and the location of the garages and below storage areas facilitates view sharing and limit impacts on views and vistas from private and public spaces.
- The modernised format of the development (with the storage areas below the garages), together with the offset contemporary design adds to the character of the Bower streetscape and creates a rhythm of spaces when viewed from the neighbouring private and public properties.
- The development uses the existing driveway which allows for satisfactory sightlines along Bower Street.

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

Comment:

The proposed garages are located within the existing carport footprints, with the proposed setbacks being reflective of the format of car parking structure development along Bower Street and its attempt to respond to the topographical constraints of the site. In this way, the development adopts a high level of flexibility in the siting of the buildings to preserve the natural features of the site and its relationship to its surrounds. The storage areas are located below the garage and not visually identifiable from the Bower Street frontage. Therefore, the proposal is sited in the most appropriate and only available front setback location.

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

accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;

ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

Comment:

The pavilion format enables the development to satisfactorily respond to this objective because:

- The separation between the garages and the residential flat building enables the retention and provision of consolidated deep soil zones which accommodate appropriate plantings including native vegetation and native trees.
- The spatial arrangement of the development enables plantings to be provided which

ensures that a satisfactory landscape transition is provided at the interface with Bower Street.

- Subject to conditions imposed by the Bushland and Biodiversity section of Council's Natural Environment Unit, the development satisfies the provisions of State Environmental Planning Policy No 19 - Urban Bushland

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

Comment:

The site is not identified as bush fire prone land and therefore does not require the establishment of bush fire asset protection zones.

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

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

Description of non-compliance

The requirement for width of a garage is a maximum of 50% of the frontage up to 6.2m.

The proposed garages are to be 6.5m and 6.8m in width, demonstrating a variation of up to 9.6%.

It is important to note, that the new garages propose additional areas for bin storage. This incorporation of the bins into the garage design allows a more integrated and preferred design outcome, rather than having the bins presenting to the streetscape or within a separate bin structure.

Merit consideration:

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

- *Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

Comment:

The whilst the parking allocation is not compliant with the current required car spaces for a residential flat building, the sites size, slope and location of the existing residential flat building does not allow for any further increases in car spaces. Therefore, the alterations and additions to the garages would result in providing the four car spaces that currently exist, and are adequately accessed from the street. Therefore, the proposal provides adequate parking for the use of the site.

The proposal provides accessible parking to the front setback of the site that is complementary

with other garages within this area of Bower Street to ensure the parking structure would not have an unreasonable visual impact.

- *Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

Comment:

The proposal provides for two garages for four car parking spaces on site. These spaces reduce demand for on street parking.and would sufficiently reduce demand for on-street car parking.

- *Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

Comment:

The proposal displays reasonable scale and is compatible with the surrounding garages within this section of Bower Street and are complementary to the existing streetscape. The garages will provide parking spaces with an efficient safe and convenient design. No concerns were raised by Council's Engineer in regards to the garages and the proposal does not alter the approved driveway crossing to the site.

- *Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

Comment:

The proposed car parking reasonably limits site excavation as the majority of space for each garage is above existing ground level.

- *Objective 5) To ensure the width and number of footpath crossings is minimised.*

Comment:

The proposed driveway crossing is not amended as a result of the proposal. The existing driveway crossover provides an adequate size access for two cars to each of the proposed garage, to ensure width and number of footpath crossings is minimised.

- *Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:

The proposal includes adequate landscaping, as detailed in the section of the report relating to Clause 4.1.5 Open Space and Landscaping of the MDCP 2013. Internal access arrangements are to be improved as part of the proposal with additional landscaping in the area between the garages and the residential dwelling house.

The proposed has included additional landscaping in front of the garages with a new planter

box, and the existing street tree is to be retained. The additional landscaping within the whole of the front setback of the site is designed to ensure the garage structures are reasonably integrated with natural features.

- *Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

Not applicable. The subject site is not located in a Centre.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$3,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$390,000.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0040 for Alterations and additions to an existing residential flat building on land at Lot 13 DP 8075, 66 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Proposed site and Roof Plan DA06 Issue 1	20/01/2020	Watershed Design
Proposed Lower Ground Floor DA07 Issue 1	20/01/2020	Watershed Design
Proposed Ground Floor DA08 Issue 1	20/01/2020	Watershed Design
Proposed Sections 01 DA09 Issue 1	20/01/2020	Watershed Design
Proposed Section 02 DA10 Issue 1	20/01/2020	Watershed Design
Proposed Elevations 01 DA12 Issue 1	20/01/2020	Watershed Design
Excavation and Fill Plan DA18 Issue 1	20/01/2020	Watershed Design
Demolition Plan DA15 Issue 1	20/01/2020	Watershed Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	December 2019	Crozier Geotechnical Consultants

Arborist Statement	22 November 2019	Blues Bros Arboriculture
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan DA15 Issue 1	20/01/2020	Watershed Design

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

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

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.



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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) 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 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$390,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

6. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **Waste Management Plan**

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

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

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

8. **Amend Landscape Drawings – Bandicoot Habitat**

The Landscape drawings, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, are to be amended so that at least 60% of new plantings (by total number of plants) are species listed in Manly DCP Clause 3.3.1.a)iv) and/or locally native species of the Manly Ward, as listed on Council's website. Plans are to be amended and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain consistency with relevant DCP landscaping controls.

9. **Access Spaces – Bandicoot Habitat**

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

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

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

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

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

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

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

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 Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Tree removal within the property**

The Arborist Statement prepared by Blues Bros Arboriculture nominates the following existing Palms for removal within the property due to the impact of development:

- T1, T2, T3, T4 and T5: all Kentia Palms

All of these are Exempt Species and do not require Council Consent for removal.

No other existing trees / palms may be removed. Any subsequent request for tree removal is subject to a Section 4.55 modification application, or an assessment by a AQF level 5 Arborist that determines that the tree presents an imminent risk to life or property.

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Road Reserve**

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

Reason: Public safety.

17. **Removing, Handling and Disposing of Asbestos**

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

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

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

18. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

19. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

20. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

21. **Project Arborist**

A Project Arborist with AQF minimum Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures for existing trees to be retained and protected, requiring site attendance during excavation and construction works, in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arborist Statement prepared by Blues Bros Arboriculture.

This shall include all tree sensitive works in the vicinity of the existing trees that have been identified as: T6, T7 and T8 (all Archontophoenix cunninghamiana) in adjoining property No. 68 Bower St, and the street tree T9.

The following activities shall be specifically supervised and certified as approved following attendance on site, review of the works and acceptance of the works:

- i) all excavations in the vicinity of T6,
- ii) trunk protection for T7 and T8 within adjoining property as specific in the recommendations of the Arborist Statement, (#)
- iii) trunk and canopy protection for T9, consisting of timber battens and/or temporary protection fencing in accordance with AS4970-2009 Protection of Trees on Development Sites.

(#) works as listed under this section require written approval to be gained by the owners of No.

68 to:

- a) undertake the works, and
- b) enter the property.

Public Liability Insurance currency documents must be provided to the owners of No. 68, and shall also be provided to the Certifying Authority should the request to undertake the works and enter the property be approved by the owners at No. 68.

The Arborist shall submit certification that the works described in the above sections have been correctly installed and adhered to during the construction period.

The tree protection measures specified in this clause must:

- iv) be in place before work commences on the site, and
- v) be maintained in good condition during the construction period, and
- vi) remain in place for the duration of the construction works.

The Certifying Authority or a Project Arborist AQF Level 5 must ensure that:

- vii) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and
- 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 on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: to ensure tree protection is provided and maintained.

22. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected as recommended in the Arborist Statement prepared by Blues Bros Arboriculture, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation, and in particular the existing Lillypilly tree identified as T9.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF minimum Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF minimum Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF minimum Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF minimum Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF

minimum Level 5 Arborist on site,

viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF minimum Level 5 Arborist, including advice on root protection measures,

ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF minimum Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,

xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: to retain and protect significant planting on development and adjoining sites.

23. Pre-clearance Survey Required – Bandicoot Habitat

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal or relocation of any stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

24. Report Dead or Injured Bandicoots – Bandicoot Habitat

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

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

25. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

26. Landscape works completion

Landscape works are to be implemented in accordance with the Landscape Plan DA15 prepared by Watershed Design.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the landscape plan and with any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

27. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: to retain and protect significant planting on development and adjoining sites.

28. Stormwater Disposal

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

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

29. Garbage and Recycling Facilities

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

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

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

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

30. Landscape maintenance

Any existing landscaping including trees required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

31. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

32. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

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

Signed



Catriona Shirley, Planner

The application is determined on 23/04/2020, under the delegated authority of:



Claire Ryan, Acting Development Assessment Manager