

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2023/0211 |
| Responsible Officer: | Claire Ryan |
| Land to be developed (Address): | Lot 28 DP 8075, 32 Bower Street MANLY NSW 2095 |
| Proposed Development: | Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools |
| Zoning: | Manly LEP2013 - Land zoned C3 Environmental Management |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Andrew Warren Swan [REDACTED] |
| Applicant: | Mark Davies |

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| Application Lodged: | 10/05/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Refer to Development Application |
| Notified: | 18/05/2023 to 01/06/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 26.82% |
| Recommendation: | Approval |

EXECUTIVE SUMMARY

This modification application seeks consent for modification of Development Consent DA2019/0916 granted for demolition works and construction of a dwelling house including swimming pools.

The application is referred to the Development Determination Panel (DDP) due to the original determination of the application by DDP and that this modification application is made under s4.55(2) of the *Environmental Planning and Assessment Act 1979*, and that the proposed modifications make

alteration to (but retain) the maximum non-compliant height of 10.78 metres, being a 26.82% variation to the height of buildings development standard under the MLEP 2013.

Concerns raised in the objections predominantly relate to whether the proposed modifications amount to substantially the same development, and view sharing from the public domain and from others' properties.

Critical assessment issues included the proposed building height, the proposed setbacks, the height of the pools above ground, and whether the proposed modifications amount to substantially the same development to that for which consent was granted.

The 4.6 request for the non-compliance with height standard arises from reconfiguration of the approved built form with maintenance of the maximum approved building height of 10.78 metres.

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

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* seeks to modify the built form approved under Development Consent DA2019/0916 as follows:

- Consolidation of two pavilions (referred to in the original assessment and hereon in this report as Buildings 2 & 3)
- Formation of a larger courtyard,
- Reorientation of the pavilions to align with eastern boundary,
- Relocation of the southern swimming pool to the courtyard,
- Reconfiguration of the northern swimming pool,
- Internal adjustments to provide consistent floor levels on the living level and include a lift,
- Reconfiguration of the roof forms, with new roof garden proposed on the northern pavilion,
- Alteration to the excavation volume by altering levels of the garage and the nearby bedroom level,
- Relocation of the driveway to the eastern boundary and the double garage closer to the driveway, and
- Revision of the landscape plan in accordance with the above.

Following a preliminary assessment of the application, Council raised concerns that would not allow for support of the application. The issues raised included:

- Suitability of the proposal under modification application
- Landscaping
- Stormwater
- Biodiversity
- Sydney Water Referral

In response to the concern raise the Applicant submitted additional information satisfying the concerns raised on 27 July 2023. In accordance with the Community Participation Plan, re-notification was not required, as Council was satisfied that there was no increased environmental impact.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

- Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
- Manly Local Environmental Plan 2013 - 6.2 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 Local Environmental Plan 2013 - 6.12 Essential services
- Manly Development Control Plan - 3.4.3 Maintenance of Views
- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
- Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

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| Property Description: | Lot 28 DP 8075 , 32 Bower Street MANLY NSW 2095 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the northern (low) side of Bower Street.</p> <p>The site is dogleg in shape with a curved frontage of 30.645 metres along Bower Street, a rear boundary of 18.58 metres facing Shelley Beach and a surveyed area of 1,859m². The site has an approximate width of between 17 and 18 metres at the locations of the proposed buildings.</p> <p>The site is located within the C3 Environmental Management zone pursuant to the Manly Local Environmental Plan 2013 and has been predominantly</p> |

cleared for the purpose of the works approved under DA2019/0916 (the consent proposed to be amended by this application).

The site slopes downward from the front boundary to the rear boundary by an average of 22.62m. The site also has a crossfall which slopes downward from the western boundary to the eastern boundary by an average of 4.38m. The site is underlain by Hawkesbury Sandstone bedrock below a combination of variable depth topsoil/fill and residual/colluvium soil.

Adjoining and surrounding development is characterised by dwellings of varying age and architectural style with a predominant two storey scale. Bower Reserve abuts the site to the east and extends down from Bower Street to Marine Parade.

As noted above, Marine Parade is situated immediately to the north of the site and extends to the east and west to form a pedestrian promenade. The Boathouse Shelley Beach cafe is located to the north-east of the site.

Map:



SITE HISTORY

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

- DA0146/2016 for demolition of existing structures, three (3) lot Torrens Title Subdivision, construction of a dwelling house on each lot, swimming pools, and landscaping works. The

application was approved by the former Northern Beaches Independent Assessment panel (NBIAP) on 16 March 2017.

- Pre-lodgement meeting PLM2018/0299 was held on 13 December 2018 to discuss construction of a dwelling house.
- DA2019/0916 for demolition works and construction of a dwelling house including swimming pools was approved by the Development Determination Panel on 26 February 2020. This is the parent application for the current modification application.

Demolition for the purpose of DA2019/0916 has commenced. Construction subject of DA2019/0916 and Mod2023/0211 has not been commenced, except for a portion of the approved (but not modified) driveway.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0916, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55 (2) - Other Modifications | Comments |
|---|--|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | <p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/0916 for the following reasons:</p> <p>The proposed modifications retain the single residential use of the site (being for a dwelling house). The proposed modifications do not alter the intent of the lot to be developed. The proposed modifications result in materially and essentially the same development as originally approved.</p> |

| Section 4.55 (2) - Other Modifications | Comments |
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| | <p>The proposed modifications retain built form in the same general locations, while including consolidation of the two approved central pavilions. The proposed modifications retain the general composition of the site, being a dwelling house over multiple pavilions. The proposed modifications retain the same number of bedrooms, kitchens, living rooms, areas of private open space and recreation, and swimming pools. With the exception of the southern pool, these modified elements of the development are generally in the same vicinity as approved.</p> <p>The proposed modifications retain the approved building heights, and result in a comparable gross floor area. The proposed modifications result in comparable outcomes with respect to the applicable built form controls. As such, the proposed modifications result in comparable bulk and scale to the approved development. The changes sought will only be readily visible from within the site itself.</p> <p>With regard to environmental impact, there are no unreasonable privacy, shadowing or view impacts that result from the proposed modifications. The development retains a bulk and scale consistent with and comparable to that of nearby properties, with no additional impact upon the adjoining RE1 Zone to the rear or Foreshore Scenic Protection Area.</p> <p>Given the above, the proposed modifications amount to a substantially the same reconfiguration of the approved development only.</p> |
| <p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p> | <p>Development Application DA2019/0916 did not require concurrence from the relevant Minister, public authority or approval body.</p> |
| <p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the</p> | <p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p> |

| Section 4.55 (2) - Other Modifications | Comments |
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| regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | See discussion on "Notification & Submissions Received" in this report. |

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration' | Comments |
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| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | There are no current draft environmental planning instruments. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Manly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and | <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 |

| Section 4.15 'Matters for Consideration' | Comments |
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| Assessment Regulation 2021 (EP&A Regulation 2021) | <p>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 stormwater and landscaping.</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 previously via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed previously via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed previously via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |

| Section 4.15 'Matters for Consideration' | Comments |
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| 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 Hazard Solutions, dated 10 February 2023) stating that the modifications 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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/05/2023 to 01/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

| Name: | Address: |
|--------------------------|--------------------------------|
| Ms Dorothy Gwyneth Burns | 45 Bower Street MANLY NSW 2095 |

The following issues were raised in the submissions:

- Concern that the modified development is not substantially the same as that for which consent was granted.
- View loss from the public domain and from Nos. 35, 37, 39, and 43 Bower Street.

The above issues are addressed as follows:

Substantially the Same

Comment:

The proposed modifications are considered against Section 4.55 (2)(a) of the *Environmental Planning and Assessment Act 1979* in the section of this report relating to Section 4.15 of the same Act.

Council is satisfied that modified development is substantially the same as that for which consent was granted under DA2019/0916.

View Loss

Comment:

The proposal has been assessed with respect to the requirements of Clause 3.4.3 of the Manly DCP in the section of this report relating to that clause. The assessment concludes that adequate view sharing is achieved.

REFERRALS

| Internal Referral Body | Comments |
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| Landscape Officer | <p>Original Comments Summary (22 June 2023): Updated arboricultural information was requested.</p> <p>Additional Information Comment (21 August 2023): The updated Arboricultural Impact Assessment is noted. The modification requires the additional removal of trees 25, 27 and 28. Tree 25 is an exotic species, and trees 27 and 28 have been heavily lopped. Trees 4 and 16 are also shown for removal; however, these trees have been previously removed. Should the modification application be approved, like for like native tree replacement shall be installed within the property boundaries to offset the further loss of existing trees. Landscape Referral supports the species selection outlined by Council's Bushland and Biodiversity team. The landscape proposal is generally supported, subject to conditions and tree replacement.</p> |
| NECC (Bushland and Biodiversity) | <p>Original Comments (26 June 2023): The proposal seeks approval for modifications to development consent DA2019/0916, granted for demolition works and construction of a dwelling house including swimming pools. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 • Biosecurity Act 2015 • SEPP (Resilience and Hazards) 2021 - Coastal use area • Manly LEP - Clause 6.5 Terrestrial Biodiversity • Manly DCP - Clause 5.4.2 Threatened Species and Critical Habitat Lands <p>The proposed modifications would take place within the previously approved footprint. The subject site is known habitat for the endangered population of Long-nosed Bandicoots and therefore, an updated Terrestrial Biodiversity Report has been submitted with the application and concluded that the proposed modifications will not represent a significant impact and "it is not likely that the proposal will have a significant impact on the Endangered Long-nosed Bandicoot population at North Head. Entry into the Biodiversity Offset Scheme (BOS) and further assessment in the form of a Biodiversity Development Assessment Report (BDAR) is not considered necessary for this population". This conclusion is concurred with.</p> <p>However, there are discrepancies between the submitted plans and documentation regarding the extent of additional tree removals</p> |

| Internal Referral Body | Comments |
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| | <p>required to facilitate the modification. While the Arboricultural Impact Assessment indicates that no additional prescribed native trees are to be removed for the modification, and indicates that Tree 17 will be retained, the landscape plan indicates that four (4) additional prescribed native trees will be removed - specifically Trees 4, 27 and 28 (Cheese Trees, <i>Glochidion ferdinandi</i>) and Tree 17 (Port Jackson Fig, <i>Ficus rubiginosa</i>). In addition, aerial photography indicates that one or more of these trees have already been heavily pruned and/or removed without consent as per DA2019/0916.</p> <p>As per the Landscape Referral, additional information (e.g. amended arborist report and/or landscape plan) are required for the Biodiversity referral to be completed. In particular, Tree 17 should be retained given its biodiversity and amenity values.</p> <p>Should the application be approved, <i>Raphiolepis indica</i> is to be deleted from the landscape plan as it is considered an invasive species.</p> <p>Amended Comments (21 August 2023): The amended Arboricultural Impact Assessment advises the following: Tree 4 which was to be retained as part of the conditions of consent for DA2019/0916 has been removed as it was "mistakenly removed along with the <i>Pittosporum undulatum</i> [...] in the initial stages of site establishment" (Botanics P/L, June 2023). Trees 27 and 28 have continued to decline when they were originally deemed suitable for retention. A site visit undertaken on 17/08/2023 has confirmed that the trees are in decline and have little retention value. Their replacement will be conditioned with like for like replacements to ensure continuity of habitat on the site. Tree 17, a high value retention tree has continued to decay and is recommended for removal. However, the tree had previously been recommended for retention and had also shown signs of improvement. As the tree is prescribed and will now be removed, additional tree replacements will be conditioned.</p> <p>Amendments to the submitted landscape plan will be required to provide replacement canopy trees to compensate for tree removals and to retain wildlife habitat on the site, including habitat for the endangered population of long-nosed bandicoots.</p> |
| NECC (Coast and Catchments) | <p>The proposal seeks approval for modifications to development consent DA2019/0916, granted for demolition works and construction of a dwelling house including swimming pools.</p> <p>The comments in this referral relate to the following applicable controls, provisions and supporting information:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; |

| Internal Referral Body | Comments |
|--------------------------------|---|
| | <ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity & Conservation) 2021; • Sydney Harbour Foreshores and Waterways Area DCP; and • Relevant LEP and DCP clauses. <p>The proposed modifications would take place largely within the previously approved footprint. The subject site is zoned C3 and is located in a foreshore scenic protection area and mapped as a landslip hazard.</p> <p>Manly LEP 2013 and Manly DCP 2013 Landslide/ Landslip Hazard Management</p> <p>The subject site is shown to be as “Landslide risk” on Council’s Landslide Risk Map in Manly LEP 2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>A Geotechnical Report by Crozier dated March 2023 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that no geotechnical reason for these changes not to be approved, provided all works are undertaken as per the recommendations of their reports.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013.</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be affected by the “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Section 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>The proposed modifications are generally consistent with the design of the originally approved development and can comply with the required outcomes of section 5.4.1., subject to conditions.</p> <p>From a coastal risk management perspective the modification application is supported subject to coastal conditions additional to those applied to the original development consent (DA2019/0916).</p> |
| NECC (Development Engineering) | <p>Original Comments (30 June 2023): Council is not supportive of the proposed method of stormwater discharge for the following reasons:</p> |

| Internal Referral Body | Comments |
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| | <p>1. The proposed discharge point is in a prominent area with high pedestrian and recreational traffic and the design will be pose a safety hazard to the public.</p> <p>2. Visual pollution of the proposal.</p> <p>3. Proposal does not address scour issues.</p> <p>Council advice is as follows:</p> <p>A. The applicant has the option to connect to an existing Council pipe or culvert. Advice from Councils Stormwater Operations & Planning section indicates that the 900 RCP that is assumed to be on the public walkway below 32 Bower Street diverts on to the beach to avoid hard sandstone. This will rule out connection to the pipe as Council will not accept pipe connections on the beach. The applicant may if they wish undertake investigation works at their expense to confirm the location of the pipe. If the proposed private pipe could connect to the 900 pipe, this would be acceptable to Council.</p> <p>B The applicant has the option to connect to Council Asset SPC40030 (Culvert). This option would require a sub-surface connection with a geotechnical study and detailed design.</p> <p>C. If the applicant cannot connect to a pipe system, Councils Low Level Property requirements come into effect. This would require an on-site detention system and a Level Spreader. Please refer to Councils Water Management for Development Policy Version 2 26 February 2021. The requirements for a Level Spreader are shown in Appendix 4. Council would be supportive of this measure subject to a detailed and compliant design.</p> <p>Updated Comments (3 September 2023): The applicant has chosen to connect to Councils 900 RCP. This is acceptable subject to detailed design and a Section 138 application. No further objections to the proposed development subject to the addition of the specified extra conditions and the removal of Condition of Consent No. 8 (Stormwater Disposal). All other engineering conditions of consent should be retained.</p> |
| Parks, reserves, beaches, foreshore | Parks, Reserves and Foreshores note additional information has been received and no further information is required. Conditions imposed under DA2019/0916 remain. |

| External Referral Body | Comments |
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| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent. |
| Aboriginal Heritage Office | No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of |

| External Referral Body | Comments |
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| | <p>surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p> |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 999238S_04 dated 1 March 2023).

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

| Commitment | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water | 40 | 40 |
| Thermal Comfort | Pass | Pass |
| Energy | 50 | 53 |

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or

an application for modification of consent) for any development carried out:

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The north-western corner of the rear of the site is located within the coastal environment area. No works are proposed in this portion of the site. As such, the proposed modifications to the approved development are not anticipated to result in any unreasonable adverse impact to the matters above.

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

- a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
- b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed modifications to the approved development are designed, sited and will be managed so as to avoid adverse impact.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed modifications to the approved development do not impact on the matters above beyond that of the approved development. As such, the modifications are designed, sited, and will be managed to avoid adverse impact. The proposed bulk and scale of the development has been considered throughout this assessment, as detailed in this assessment report.

Division 5 General

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

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

Comment:

The approved development been designed to respond to the topography of the site and provide appropriate waste and drainage management systems to avoid any increased risk of coastal hazard. The proposed modifications to the approved development are designed and sited so as not to cause increased risk of coastal hazard on the subject site or adjoining sites.

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 | Approved | Proposed | % Variation | Complies |
|----------------------|--------------------------------|------------------------------------|---|--------------------|-----------------|
| Height of Buildings: | 8.5m | Building 1: Max. 7.0m (RL 29.80) | Max. 9.7m* (RL 29.80) | 14.12% | No |
| | | Building 2: Max. 9.28m (RL 26.90) | Buildings 2 & 3 (conjoined): Max. 10.78m (RL 26.68) | 26.82% | No |
| | | Building 3: Max. 10.89m (RL 26.68) | | | |
| | | Building 4: Max. 9.4m (RL 23.32) | Max. 9.2m (RL 22.92) | 8.23% | No |
| Floor Space Ratio | 0.45:1 836.55m ² | 0.435:1 808m ² | 0.415:1 (772.2m ²) | - | Yes |

* The maximum height of building is numerically larger due to reconfiguration of the pavilion such that it sits over a lower part of the ground, but retains the approved roof RL of 29.80.

Compliance Assessment

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

| Clause | Compliance with Requirements |
|---|------------------------------|
| 4.6 Exceptions to development standards | Yes |
| 5.8 Conversion of fire alarms | Yes |
| 5.21 Flood planning | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |
| 6.5 Terrestrial biodiversity | Yes |
| 6.8 Landslide risk | Yes |
| 6.9 Foreshore scenic protection area | Yes |
| 6.12 Essential services | Yes |

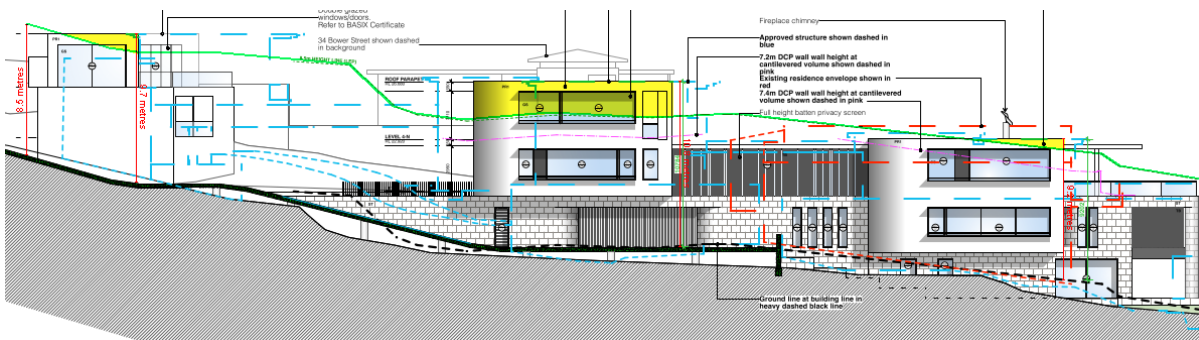
Detailed Assessment

4.6 Exceptions to development standards

Whilst the modification application will result in a building height that breaches the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, a written request to vary the development standard is not required.

Description of non-compliance:

| | |
|--------------------------------------|---|
| Development standard: | Height of buildings |
| Requirement: | 8.5 metres |
| Proposed: | Building 1: Max. 9.4 metres Building 2 & 3: Max. 10.78 metres Building 4: Max. 9.2 metres |
| Percentage variation to requirement: | Building 1: 14.12% Building 2 & 3: 26.82% Building 4: 8.23% |



Above: The extent of the breaches to the height of buildings development standard, shown in yellow.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

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

Comment:

As above, a written request is not required.

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the height of buildings development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

The underlying objectives of Clause 4.3 Height of Buildings are addressed as follows:

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

Comment:

The proposed modifications retain the general configuration of the development, being separated pavilions with flat roof forms. In this way, the proposed modifications provide a suitable response to the steep sloping topography of the site. The proposal is consistent with and comparable to existing developments nearby, and is generally consistent with the desired future character of this locality.

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

Comment:

The proposed modifications retain compliance with the floor space ratio development standard, the intention of which is to control bulk and scale. The proposed modifications retain the general configuration of the development, being separated pavilions with flat roof forms, which breaks up and minimises the bulk and scale of the resultant dwelling.

(c) to minimise disruption to the following—

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

Comment:

The proposed modifications retain adequate view sharing, as demonstrated in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The proposed modified development is designed and sited so as to retain adequate privacy for the subject site and the adjoining residential site to the west. The proposal results in an improved solar access outcome for that adjoining site, by consolidating Buildings 2 & 3.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation

zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not within a recreation zone or conservation zone.

Objectives of the Zone

The underlying objectives of the C3 Environmental Management zone are addressed as follows:

To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.

Comment:

The proposed modified development manages the ecological, cultural and aesthetic values of the site through its preservation of the unique topography evident on the site. The pavilion configuration enables an effective transition from residential land and the public reserve through the provision of dense landscaping throughout the eastern side of the site.

To provide for a limited range of development that does not have an adverse effect on those values.

Comment:

The proposed modified development will maintain the ecological, scientific, cultural and aesthetic values of the local area.

To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.

Comment:

The proposed modified development is sited to maintain and enhance vegetation. The proposed building heights, will not adversely affect the tree canopy nor dominate the natural scenic quality of the Shelley Beach foreshore.

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

Comment:

The proposed modified development is supported by a suitable landscape plan detailing adequate planting, and is designed to retain significant vegetation adjacent to Marine Parade and the Shelley Beach Reserve.

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 modifications retain compliance with the required total open space and landscaped area controls, thereby allowing for deep soil landscaping and stormwater infiltration throughout the site. The proposal is supported by suitable stormwater management plans.

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 modified pavilion forms enable the built form to satisfactorily respond to the existing vegetation, topography and surrounding land uses.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development

consent to be granted.

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

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 development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been recommended.

(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.

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

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 application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the development will not have adverse impact on the matters above and that appropriate measures have been taken to avoid, minimise and mitigate the impacts of the development.

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 application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the development is designed, sited and will be managed to avoid any significant adverse environmental impact.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) *matches the underlying geotechnical conditions of the land, and*
- (b) *is restricted on unsuitable land, and*
- (c) *does not endanger life or property.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) *site layout, including access,*
- (b) *the development's design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*

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

Comment:

The development is supported by architectural plans, stormwater plans, a geotechnical report, and a waste management plan to demonstrate the proposal is acceptable with respect to the above matters. The application was referred to Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

(a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or

(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or

(c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.

Comment:

The application was referred to Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development.

6.9 Foreshore scenic protection area

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

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The subject site, while immediately adjoining the foreshore along Shelley Beach (Marine Parade), is set above the foreshore land. The subject site is also surrounded by dense vegetation, given the adjoining RE1 Public Recreation land to the east. The development is also proposed to be well-vegetated on the subject site. The site's location, configuration and landscaped setting assist in obscuring the development from view from the foreshore. In this way, the proposed development

- does not unreasonably impact upon the visual amenity of Shelley Beach and surrounds,
- protects and improves scenic quality along the coastline,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The subject site is supplied with the above essential services. The approved development and proposed modifications retain and rely upon these services.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 1,859m² | Requirement | | Approved | Proposed | Complies |
|--|---|----------------|--|---------------------|-----------------|
| 4.1.1.1 Residential Density and Dwelling Size | Density: 500m ² per dwelling | | 1 dwelling on 1,859m ² site | Unchanged | Yes |
| | Size: Min. 90m ² | | 808m ² | 772.2m ² | Yes |
| 4.1.2.1 Wall Height (based on gradient) | Building 1: | E: Max. 8m | Max. 5.6m | Max. 8.75m | No |
| | | W: Max. 7.5m | Max. 7.0m | Max. 6.15m | Yes |
| | Buildings 2 & 3 | E: Max. 7.2m | Max. 10.6m | Max. 10.15m | No |
| | | W: Max. 7.1m | Max. 7.1m | Max. 6.75m | Yes |
| | Building 4: | E: Max. 7.4m | Max. 9.1m | Max. 9.2m | No |
| W: Max. 7.8m | | Max. 7.0m | Max. 6.8m | Yes | |
| 4.1.2.2 Number of Storeys | Max. 2 | | Max. 3 | Max. 3 | No |
| 4.1.2.3 Roof Height | Height: Max. 2.5m | | Flat | Flat | Yes |
| 4.1.4.1 Street Front Setbacks | Min. 6m | | Min. 4m | Min. 3.99m | No |
| 4.1.4.2 Side Setbacks (based on wall height) | Building 1 | W: Min. 2.05m | Min. 2m | Min. 1.815m | No |
| | Buildings 2 & 3 | W: Min. 2.25m | Min. 1.3m | Min. 1.5m | No |
| | Building 4 | W: Min. 2.27m | Min. 1.3m | Min. 1.5m | No |
| | Windows: 3m | | E: Min. 1m | E: Min. 3.5m | Yes |
| | | | W: Min. 2m | W: Min. 1.5m | No |
| 4.1.4.4 Rear Setbacks | Min. 8m | | Min. 13m | Min. 9.5m | Yes |
| 4.1.4.6 Setback to RE1 | Building 1 | Min. 6m (East) | Min. 700mm | Min. 6m | Yes |
| | Buildings 2 & 3 | | Min. 3m | Min. 3.5m | No |
| | Building 4 | | Min. 3.9m | Min. 3.5m | No |

| | | | | | |
|---|--|-----------------------------|-----------------------------------|----------------------------------|-----------|
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3 | Total Open Space: Min. 55% of site (1,022.45m ²) | | 63.23% (1,176m ²) | 59.8% (1,112m ²) | Yes |
| | Above Ground: Max. 25% of TOS (278m ²) | | 11.3% (133m ²) | 12.77% (142m ²) | Yes |
| 4.1.5.2 Landscaped Area | Landscaped Area: Min. 35% of TOS (389.2m ²) | | ~70% (825m ²) | 48.85% (543.2m ²) | Yes |
| | 3 Native Trees | | >3 trees | >3 trees | Yes |
| 4.1.5.3 Private Open Space | Min. 18m ² per dwelling | | >18m ² | >18m ² | Yes |
| 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas | Max. 50% of frontage, up to 6.2m | | Garage does not present to street | Unchanged | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | Pool 1 (South) | Max. 1m Above Ground | Max. 6m | Max. 1.6m | No |
| | | Setback to Coping: Min. 1m | >1m | 1.5m | Yes |
| | | Setback to Water: Min. 1.5m | >1.5m | 1.6m | Yes |
| | Pool 2 (North) | Max. 1m Above Ground | Max. 3m | Max. 3m | No |
| | | Setback to Coping: Min. 1m | E: 3m | Min. 1.9m | Yes |
| | | | N: Min. 8.5m | Min. 7.2m | Yes |
| | | Setback to Water: Min. 1.5m | E: 3.1m | Min. 2m | Yes |
| | N: Min. 8.6m | | Min. 7.3m | Yes | |
| | Schedule 3 Parking and Access | Min. 2 spaces | | 2 spaces | 2 spaces |

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 |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.3.3 Footpath Tree Planting | 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 |
| 3.6 Accessibility | Yes | Yes |
| 3.7 Stormwater Management | Yes | Yes |
| 3.8 Waste Management | Yes | Yes |
| 3.9 Mechanical Plant Equipment | Yes | Yes |
| 3.10 Safety and Security | Yes | Yes |
| 4.1 Residential Development Controls | Yes | Yes |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision | Yes | Yes |
| 4.1.1.1 Residential Density and Dwelling Size | Yes | Yes |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) | No | Yes |
| 4.1.3 Floor Space Ratio (FSR) | Yes | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.1.5 Open Space and Landscaping | Yes | Yes |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | 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 |
| 4.4.5 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

3.4.3 Maintenance of Views

A submission from No. 45 Bower Street to the south-west of the subject site raised concern that the proposed development will result in view loss to the public domain and Nos. 35, 37, 39 and 43 Bower Street. It should be noted no submissions were received from these properties. The proposed modifications are addressed with reference to the objectives of this control as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

Given the angle and distance of views from Nos. 35, 37, 39 and 43 Bower Street, the proposed

modifications to the approved development will not result in any unreasonable disruption of views. The portion of the development at the highest point of the site is the southern pavilion for the gym and guest room (Building 1). This pavilion has a roof height of RL 29.80, being identical to the approved height. Below is a photograph taken from street level outside No. 39 Bower Street, demonstrating the subject site, the approximate location of the southern-most pavilion (marked in red), and the view.



Above: The view from the street outside No. 39 Bower Street.

The black construction site fencing shown at the subject site is approximately 2 metres in height above the level of the footpath, and the roof of the southern-most pavilion is 2.2 metres above the level of the footpath. The pavilion is anticipated to obstruct the view to existing trees only and not the ocean. Further, it should be noted that the dwellings on Nos. 35, 37, 39 and 43 Bower Street are set much higher than street level, so the impact to the view would be significantly less in reality than as depicted in the photograph. These properties would instead look over the top of the pavilion. The remainder of the development is set much lower down the slope of the site, so will not be perceived from the street or properties in question. The proposed modifications result in an almost identical view impact to the approved development, and the approved development was assessed and determined as being acceptable with respect to view sharing. Given these factors, consideration of the proposed works under the relevant planning principle set by the NSW Land and Environment court under *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* is not necessary.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Comment:

From the points at which the view is available (on the footpath on the northern of Bower Street and from the nearby public recreation land) the view angle is due north over Nos. 34 and 36 Bower Street, to the north-east over the subject site. The view contains corridors to the ocean and distant headlands, obscured by vegetation. Given the retention of the approved building height to the southernmost pavilion, the angle of the subject site and the positions from which the view from the public domain is enjoyed, the proposed modifications to the approved development will not result in any perceptible additional obstruction beyond the approved development. The approved development was assessed and determined as being acceptable with respect to view sharing. Given these factors, consideration of the proposed works under the relevant planning principle set by the NSW Land and Environment court under *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046* is not necessary.



Above: The view towards the north from the footpath outside the subject site.



Above: The view towards the north from the land zoned RE1 Public Recreation to the east of the subject site.

Objective 3) To minimise loss of views, including accumulated view loss ‘view creep’ whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposed modifications will result in an almost identical impact on views than the approved development. The southernmost pavilion of the development retains the approved roof height of RL 29.80. The proposed modifications move the southern-most pavilion 100 millimetres to the south, which will result in an imperceptible change from approval.

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

There are no objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013. The proposal has been assessed against these objectives in the section of this report relating to Clause 4.6 Exceptions

to Development Standards of the MLEP 2013.

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

The proposed modifications include breaches to the front and western side setback controls, and the setback to RE1 land control, to the east.

- Building 1 includes a front setback of minimum 3.99 metres
- Building 1 includes a western side setback of minimum 1.815 metres, where 2 metres was approved and 2.05 metres is required.
- Buildings 2 & 3 and Building 4 include western side setbacks of minimum 1.5 metres, where 1.3 metres was approved and 2.25 (Buildings 2 & 3) or 2.27 (Building 4) metres are required.
- The proposed modifications include windows 1.5 metres from the western boundary, where 2 metres was approved and 3 metres is required.
- Buildings 2 & 3 and Building 4 include setbacks to the adjoining RE1 land (east) of 3 metres and 3.9 metres, respectively, where 6 metres is required.

The non-compliant elements are not dissimilar in extent to those approved under the original consent (DA2019/0916), and in some instances, the proposed modifications offer an improvement on the approved setbacks. The modified development is considered against the objectives of the control as follows:

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

Comment:

The proposed modifications to the approved development set the southern-most pavilion fronting the streetscape (Building 1) at the same maximum height, being RL 29.80. The proposed modifications shift the pavilion 100 millimetres to the south at 3.99 metres from the front boundary, which will result in an imperceptible difference from the approved 4 metre setback. The remainder of the development is set to the north, down the slope from the streetscape, so will not be readable from the street. The front setback area is proposed to be well-landscaped. The proposed modifications therefore retain the desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant setbacks.

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 proposed modifications retain a suitable level of privacy for the subject site and adjoining sites by orientating the majority of the indoor and outdoor recreational spaces to the north and east, towards public land. The proposal results in an improved solar access result to the adjoining residential property, in that it consolidates two of the pavilions into one (Buildings 2 & 3). The proposal is acceptable with respect to view sharing for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013. The proposed modifications retain much the same presentation to the streetscape, as detailed above. The proposed modifications result in a

greater traffic movement outcome, by way of simplification of the driveway.

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

Comment:

The proposed modifications allow for flexibility in the built form on the site, without resulting in any unreasonable impacts to the subject site or surrounding land.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed modifications retain compliant total open space and landscaped open space on the site. The proposal is supported by a suitable landscape plan, demonstrating acceptable planting. The proposed development does not unreasonably impact upon or detract from the context of the site, being adjacent to public recreation land to the north and east. The proposal does not impact upon urban bushland.

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

Comment:

The proposed modifications are certified as acceptable with respect to the bush fire prone status of the site, as detailed in the bush fire assessment report addendum submitted with the application.

4.1.9 Swimming Pools, Spas and Water Features

The proposed development includes two modified pools set 1.6 metres (southern pool) and 3 metres (northern pool) above ground, where the maximum allowable under this control is 1 metre. These pools were set 6 metres and 3 metres above ground in the approved development. The modified development is considered against the 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:

The modified pools are designed and sited such that they do not result in any unreasonable impact to the privacy of the subject site or adjoining sites. The modification of the southern-most pool results in a better outcome, in that it is relocated to a more logical location on the site, being next to dense vegetation on the adjoining residential site to the west, rather than adjacent to the neighbouring dwelling. The southern-most pool is also significantly lower to the ground than as approved, which is a positive outcome. The location and nuisance of the pool filter is controlled by way of condition of consent.

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

Comment:

The pools are located such that they will not be perceived from the street level.

Objective 3) To integrate landscaping; and

Comment:

The proposed modifications retain compliant total open space and landscaped open space on the site. The proposal is supported by a suitable landscape plan, demonstrating acceptable planting, including around the pools.

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

Comment:

The subject site is classified as bush fire prone. The modified pools are able to be used as an emergency water resource.

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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 modification of Development Consent DA2019/0916 granted for demolition works and construction of a dwelling house including swimming pools has been referred to the Development Determination Panel (DDP). The application is referred due to the original determination of the application by DDP and that this modification application is made under s4.55(2) of the Environmental Planning and Assessment Act 1979, and that the proposed modifications make alteration to (but retain) the non-compliant height of 10.78 metres, being a 26.82% variation to the height of buildings development standard under the MLEP 2013.

The concerns raised in the objections have been addressed throughout this report, by demonstration of the modifications amounting to substantially the same development, and assessment of the proposed modifications against the objectives of Clause 3.4.3 Maintenance of Views of the MDCP 2013.

Critical assessment issues included the proposed building height, the proposed setbacks, the height of the pools above ground, and whether the proposed modifications amount to substantially the same development to that for which consent was granted.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended 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 Council as the consent authority grant approval to Modification Application No. Mod2023/0211 for Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075,32 Bower Street, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

| Application Number | Determination Date | Modification description |
|----------------------------|--|--|
| PAN-323728 Mod2023/0211 | The date of this notice of determination | Reconfiguration of the approved pavilions, driveway, pools, and landscaping. Additional Conditions: |

| | | |
|--|--|---|
| | | <ul style="list-style-type: none"> Condition 1A Modification of Consent - Approved Plans and Supporting Documentation <p>Amended Conditions:</p> <ul style="list-style-type: none"> Condition 2 Compliance with Other Department, Authority or Service Requirements Condition 22 Tree Removal Within the Property Condition 34 Project Arborist Condition 35 Tree and Vegetation Protection Condition 41 Landscape Works <p>Deleted Conditions:</p> <ul style="list-style-type: none"> Condition 11 Amended Landscape Plan |
|--|--|---|

Modified conditions

A. Add Condition No.1A Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

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

| Approved Plans | | | | |
|-----------------------|------------------------|--|----------------------------------|---------------------|
| Plan Number | Revision Number | Plan Title | Drawn By | Date of Plan |
| A.01.01-A | A | General Arrangement / Site Plan | Eaton Molina Architects | 7 March 2023 |
| A.02.00-A | A | General Arrangement / Level 1 / Level 2 / Level 3 | Eaton Molina Architects | 7 March 2023 |
| A.02.01-A | A | General Arrangement / Level 4 / Roof Plan | Eaton Molina Architects | 7 March 2023 |
| A.03.00-B | B | General Arrangement / East Elevation / West Elevation | Eaton Molina Architects | 6 July 2023 |
| A.03.01-A | A | General Arrangement / North Elevation / South Elevation | Eaton Molina Architects | 7 March 2023 |
| A.03.02-A | A | General Arrangement / Section A-A / Height Blanket Perspective | Eaton Molina Architects | 7 March 2023 |
| A.07.01-A | A | Site Plan / Marine Parade Stormwater Connection | Eaton Molina Architects | 25 August 2023 |
| L-S4.55-03 | A | Tree Protection and Removal Plan | 360 Degrees Landscape Architects | 22 February 2023 |

| | | | | |
|------------|---|---|----------------------------------|------------------|
| L-S4.55-04 | A | Landscape Plan - Masterplan | 360 Degrees Landscape Architects | 22 February 2023 |
| L-S4.55-05 | A | Landscape Plan - Level 1 | 360 Degrees Landscape Architects | 22 February 2023 |
| L-S4.55-06 | A | Landscape Plan - Level 3 | 360 Degrees Landscape Architects | 22 February 2023 |
| L-S4.55-07 | A | Landscape Plan - Level 4 | 360 Degrees Landscape Architects | 22 February 2023 |
| L-S4.55-08 | A | Landscape Plan - Level 4 | 360 Degrees Landscape Architects | 22 February 2023 |
| D01 | A | Stormwater Management Plan 1 | iStruct Consulting Engineers | 20 February 2023 |
| D02 | A | Stormwater Management Plan 2 | iStruct Consulting Engineers | 20 February 2023 |
| D03 | A | Stormwater Management Plan 3 | iStruct Consulting Engineers | 20 February 2023 |
| D04 | A | Sediment & Erosion Control Plan & Details | iStruct Consulting Engineers | 20 February 2023 |
| D05 | A | Stormwater Outlet Plan | iStruct Consulting Engineers | 25 August 2023 |

| Approved Reports and Documentation | | | |
|---|-----------------------|---|-------------------------|
| Document Title | Version Number | Prepared By | Date of Document |
| BASIX Certificate No. 999238A_04 | - | Eco Certificates Pty Ltd | 1 March 2023 |
| Bushfire Assessment Report Addendum | 230316B | Building Code & Bushfire Hazard Solutions | 10 February 2023 |
| Geotechnical Assessment | 2015-241 | Crozier Geotechnical Consultants | 8 March 2023 |
| Terrestrial Biodiversity Report | Final | GIS Environmental Consultants | 23 March 2023 |

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

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

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

B. Modify Condition 2 Compliance with Other Department, Authority or Service Requirements to read as follows:

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 | 2023/595456 Ausgrid - Referral Response - OH and UG Cables | 15 September 2023 |
| | 2023/595450 Ausgrid - Referral Response - Overhead Cables | 15 September 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.

C. Add Condition 6A Construction, Excavation and Associated Works Security Bond(s) to read as follows:

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$40,000.

Crossing / Kerb & Gutter / Footpath Works

As security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent a bond of \$20,000.

Reason: Protection of Council's infrastructure.

D. Delete Condition 11 Landscape Plan as follows:

DELETED

E. Add Condition 20A Submission Roads Act Application for Civil Works in the Public Road to read as follows:

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of private pipe connection from property to Council's stormwater infrastructure (900 RCP) which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. Provide longitudinal section with all proposed invert levels and ground levels for proposed 300 mm pipe connection from Pit 18 to Council's 900 RCP.
2. Council does not support direct connection to its stormwater pipes for connecting pipes larger than 150 mm diameter. The connection shall be made using a junction pit.
3. Provide detailed design of proposed junction pit in accordance with Council's Standard Drawings, Drawing No. S1006. Use a solid cover.
4. The private connection to Council's 900 RCP shall be as far downstream as possible (90 degree connection) given site restraints. The connection shall be made under a paved surface and not on the beach sand.
5. The pipe connection to the proposed pit shall be as high as possible to limit hydraulic losses and subject to minimum cover requirements of Location 2 (a) (ii) (B) brick or unreinforced concrete for light vehicular loading of AS/NZS 3500.3:2003 or as amended.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

F. Add Condition 20B Pre-Construction Stormwater Assets Dilapidation Report to read as follows:

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

G. Add Condition 20C Pre-Commencement Dilapidation Report to read as follows:

The applicant must prepare and submit a dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

H. Add Condition 20D Stormwater Disposal to read as follows:

The applicant is to submit Stormwater Engineering Plans for the new development within this

development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Council's stormwater pipe.

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

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

I. Add Condition 20E Amendment of Landscape Plans to read as follows:

The submitted Landscape Plan is to be amended in accordance with the following:

- Provision of the following
 - A total of three (3) Cabbage Tree Palms (*Livistona australis*)
 - Two (2) Cheese Tree (*Glochidion ferdinandi*)
 - One (1) Port Jackson Fig (*Ficus rubiginosa*)
- All areas identified in the landscape plan as "Tree and Shrub Planting" are to be amended so that they are composed entirely of locally native groundcover and/or mid-story species, except where canopy trees are proposed or existing. Groundcover species are to be identified on the plan at a density of 4 plants per square metre (4/m²); mid-story species are to be shown at a density of 2 plants per square metre (2/m²).
- Species are to be selected from the Manly Ward section of the Native Planting Guide available on Council's website, and are not to include hybrids or cultivars.
- The planting schedule is to be amended in accordance with the above.

The Landscape Plan is to be amended by a qualified landscape architect and certified by a suitably qualified ecologist as complying with the above requirements. The amended landscape plan and ecologist's certification are to be provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

J. Add Condition 20F Erosion and Sediment Control Plan to read as follows:

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.

K. Add Condition 20G Stormwater Management to read as follows:

Stormwater shall be disposed of in accordance with Council's Policy. A stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Water quality is not to be reduced from pre-development conditions and water quantity is not to be increased from pre-development levels.

Details demonstrating compliance are to be prepared by a registered professional stormwater engineer with chartered professional status (CP Eng) and who has an appropriate level of professional indemnity insurance and must be submitted to the Certifier for approval prior to issue of the Construction Certificate.

Reason: To ensure that the generation of additional stormwater discharge from the site, due to increases in impervious surfaces, does not adversely impact receiving waters.

L. Modify Condition 22 Tree Removal Within the Property to read as follows:

a) This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

Tree 6: Pittosporum under 5m

Tree 7: Paperbark impacted by development with no alternative design potential (removal is subject to tree replacement within the development site)

Tree 8 and 9: Cocus Palms (exempt species)

Tree 10: Cheese Tree

Tree 13 and 14: Cordyline

Tree 15: Dragon Tree

Tree 17: Port Jackson fig

Tree 20: Chinese Cabbage Tree Palm (exempt species)

Tree 25: Camellia sasanqua

Tree 26: Macadamia impacted by development with no alternative design potential (removal is subject to tree replacement within the development site)

Tree 27 & 28: Glochidion ferdinandi

Tree 32: dead Ficus tree stump

b) A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

M. Modify Condition 34 Project Arborist to read as follows:

a) A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

b) The Project Arborist shall be in attendance and supervise all works in the tree protection zones of trees to be retained.

c) All tree protection measures specified 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.

d) The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s).

Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

N. Modify Condition 35 Tree and Vegetation Protection to read as follows:

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

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

b) Tree protection shall be undertaken as follows:

- i) Tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) Removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) Structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) Excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) Should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) Any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
- ix) The activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) Tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
- xi) The tree protection measures specified in this clause must: be in place before work commences on

the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

O. Add Condition 40A Wildlife Protection to read as follows:

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

If an uninjured Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the Bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (NPWS). For assistance to relocate a Bandicoot from the worksite, or to report a dead or injured Bandicoot, please contact:

- National Parks & Wildlife Service – Duty Officer (9457 9577)

Reason: To protect native wildlife.

P. Add Condition 40B Protection of Habitat Features to read as follows:

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

Reason: To protect wildlife habitat.

Q. Add Condition 40C Geotechnical Issues to read as follows:

All conditions outlined in the Geotechnical Assessment Reports for 32 Bower Street, Manly prepared by Crozier Geotechnical Consultants dated 17 January 2019 and 8 March 2023 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations and retaining structures are undertaken in an appropriate manner and are structurally sound.

R. Add Condition 40D Stockpiling Materials to read as follows:

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

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within

receiving waters throughout the construction period.

S. Modify Condition 41 Landscape Works to read as follows:

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

i) Planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,

ii) At minimum two (2) *Glochidion ferdinandi* shall be installed within the property boundary, one in the rear setback and one in the front setback; three (3) *Livistona australis* and one (1) *Ficus rubiginosa* shall be installed within the property boundaries,

iii) All native tree planting shall be a minimum pre-ordered planting size of 100 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

iv) Mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

v) The area in the rear setback (adjacent to Marine Parade) shown as existing garden to be retained shall be mass planted in accordance with Council's Bushland and Biodiversity's Amendment of Landscape Plans condition,

vi) 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,

vii) Where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019; the trees specified in ii) shall take priority for installation should APZ requirements limit proposed tree planting.

b) 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.

T. Add Condition 47A Post-Construction Stormwater Assets Dilapidation Report (Council Stormwater Assets) to read as follows:

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

U. Add Condition 47B Certification of Civil Works and Works as Executed Data in accordance

with Road Act Approval to read as follows:

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

V. Add Condition 47C No Weeds Imported On To The Site to read as follows:

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

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

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