


**Planning Proposal to the Northern Beaches Council**  
**Amendments to Manly Local Environment Plan 2013**  
Lot 1 in DP 1244511 (which adjoins 88 Bower Street, Manly)



Prepared on behalf of the Trustees of the Roman Catholic  
Church for the Archdiocese of Sydney

13 August 2020 | 19012

## Contents

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<b>Executive Summary</b>	<b>1</b>
<b>1.0 Preliminaries</b>	<b>2</b>
1.1 Introduction	2
1.2 Background	2
1.3 Scope of Planning Proposal	2
1.4 Description of the site	4
1.5 Site history	9
1.6 Existing statutory planning controls	15
<b>2.0 Indicative Development Concept</b>	<b>16</b>
<b>3.0 Planning Proposal</b>	<b>27</b>
PART 1 - OBJECTIVES OR INTENDED OUTCOMES	27
PART 2 – EXPLANATION OF PROVISIONS	27
PART 3 – JUSTIFICATION	27
A. Need for the Planning Proposal	27
B. Relationship to strategic planning framework	27
C. Environmental, social and economic impact	57
PART 4 – MAPPING	59
PART 5 – COMMUNITY CONSULTATION	62
PART 6 – PROJECT TIMELINE	62
<b>4.0 Conclusion</b>	<b>63</b>

## Figures

1	Site Location Plan (Source: Six Maps)	5
2	Aerial view of the site (Source: Six Maps)	6
3	Site Extract of Lot 1 DP 1244511 Deposited Plan (Source: Warren L. Bee dated 11 April 2018)	7
4	Photographs of the site and surrounding area (Source: RUP dated 5 April 2018)	8
5	Shelly Beach Reserve 31732 (Lot 7338 DP 1154560)	10
6	Manly Freshwater National Surfing Reserve 1028748 (Lot 7336 DP 1153371)	10
7	The site, and adjoining residential property to the south 88 Bower Street (Source: NearMap)	17
8	Extract of Coastal Management SEPP Mapping - Coastal Environment Area Map ( <a href="http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement">http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement</a> )	41
9	Extract of Coastal Management SEPP Mapping - Coastal Use Area Map ( <a href="http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement">http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement</a> )	42
10	Extract of Manly LEP 2013 Land Use Zoning Map (LZN_006) Zone - RE1 Public Recreation	60
11	<b>Proposed</b> Manly LEP 2013 Land Use Zoning Map (LZN_006) Zone - E4 Environmental Living	60
12	Extract of Manly LEP 2013 Minimum Lot Size Map (LSZ_006) - No Minimum Lot Size	60
13	<b>Proposed</b> Manly LEP 2013 Minimum Lot Size Map (LSZ_006) - 500m <sup>2</sup> Minimum Lot Size	60
14	Extract of Manly LEP 2013 Height of Building Map (HOB_006) - No Maximum Building Height	61
15	<b>Proposed</b> Manly LEP 2013 Height of Building Map (HOB_006) - 8.5m Maximum Building Height	61
16	Extract of Manly LEP 2013 Floor Space Ratio Map (FSR_006) - No FSR	61
17	<b>Proposed</b> Manly LEP 2013 Height of Building Map (FSR_006) - 0.45:1 FSR	61

## Tables

1	Summary of the development approvals for 88 Bower Street, Manly	14
2	Relevant provisions of Manly LEP 2013	18
3	Relevant provisions of Manly DCP 2013	22
4	Consistency with Shape 2028 Northern Beaches CPS 2017 - 2028	31
5	Consistency with Towards 2040 Local Strategic Planning Statement	34
6	Consistency of Planning Proposal with SEPPs	37
7	Compliance with the relevant provisions of the Coastal Management Act 2016	43
8	Compliance with the relevant provisions of SEPP Coastal Management	45
9	Planning Proposal timeline	62

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## Executive Summary

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This Planning Proposal is prepared by Robinson Urban Planning Pty Ltd (**RUP**) and is submitted to the Northern Beaches Council (**Council**) on behalf of The Trustees of the Roman Catholic Church for the Archdiocese of Sydney (**Archdiocese Trustees**) (the applicant and landowner).

The Planning Proposal relates to Lot 1 in DP 1244511 (the **site**) which is a small parcel of land with an area of 56.8m<sup>2</sup>. The site is to the immediate north of the residential property at 88 Bower Street, Manly.

The purpose of the Planning Proposal is to regularise the zoning of the site following its recent transfer of the site from the NSW Department of Industry (Lands) (**DoI Lands**) as Crown Land to the applicant. The site was considered surplus to requirements of DoI Lands.

The Planning Proposal would enable the orderly use of the site for residential purposes in connection with the adjoining residential property at 88 Bower Street Manly.

Accordingly, to support this change, the following maps contained within Manly Local Environment Plan 2013 (**Manly LEP 2013**) are proposed to be amended for the site:

- Land use zoning map (LZN\_006): Amend the zoning of the site from Zone RE1 Public Recreation to Zone E4 Environmental Living
- Minimum lot size map (LSZ\_006): Introduce a 500m<sup>2</sup> minimum lot size standard for the site (no existing lot size standard applies to the site)
- Height of building map (HOB\_006): Introduce an 8.5m height standard for the site (no existing height standard applies to the site)
- Floor space ratio map (FSR\_006): Introduce an 0.45:1 floor space ratio standard for the site (no existing FSR standard applies to the site).

Given the merit of the Planning Proposal, it is commended to Council for endorsement and forwarding to the NSW Department of Planning & Environment for a gateway determination.

## 1.0 Preliminaries

### 1.1 Introduction

The Planning Proposal relates to Lot 1 in DP 1244511 (the **site**) which is a small parcel of land with an area of 56.8m<sup>2</sup>. The site is to the immediate north of the residential property at 88 Bower Street, Manly. It explains the intent of, and justification for proposed amendments to Manly Local Environmental Plan 2013 (**Manly LEP 2013**).

It is submitted to the Northern Beaches Council (the **Council**) and has been prepared by Robinson Urban Planning Pty Ltd (**RUP**) on behalf of the land owner and applicant, The Trustees of the Roman Catholic Church for the Archdiocese of Sydney (**Archdiocese Trustees**).

The purpose of the Planning Proposal is to regularise the zoning of the site following its recent transfer of the site from the NSW Department of Industry (Lands) (**Dol Lands**) as Crown Land to the applicant. The site was considered surplus to requirements of Dol Lands.

The Planning Proposal would enable the orderly use of the site for residential purposes in connection with the adjoining residential property at 88 Bower Street Manly.

Accordingly, to support this change, the following maps contained within Manly Local Environment Plan 2013 (**Manly LEP 2013**) are proposed to be amended for the site:

- Land use zoning map (LZN\_006): Amend the zoning of the site from Zone RE1 Public Recreation to Zone E4 Environmental Living
- Minimum lot size map (LSZ\_006): Introduce a 500m<sup>2</sup> minimum lot size standard for the site (no existing lot size standard applies to the site)
- Height of building map (HOB\_006): Introduce an 8.5m height standard for the site (no existing height standard applies to the site)
- Floor space ratio map (FSR\_006): Introduce an 0.45:1 floor space ratio standard for the site (no existing FSR standard applies to the site).

Given the merit of the Planning Proposal, it is commended to Council for endorsement and forwarding to the NSW Department of Planning & Environment (**DPiE**) for a gateway determination.

### 1.2 Background

Prior to lodging this Planning Proposal, a pre-lodgement meeting was held at Council on 21 May 2019. The advice of Council officers given at this meeting (and subsequent email communications) has been addressed in this Planning Proposal.

A copy of the pre-lodgement meeting minutes is provided at **Appendix A**.

### 1.3 Scope of Planning Proposal

The Planning Proposal describes the site and locality, the site history and the following six part description/assessment (consistent with the document titled *A guide to preparing Planning Proposals*, by NSW Planning & Infrastructure (October 2012)):

- Part 1 Objectives or intended outcomes
- Part 2 Explanation of the provisions
- Part 3 Justification
- Part 4 Mapping
- Part 5 Community consultation
- Part 6 Project timeline.

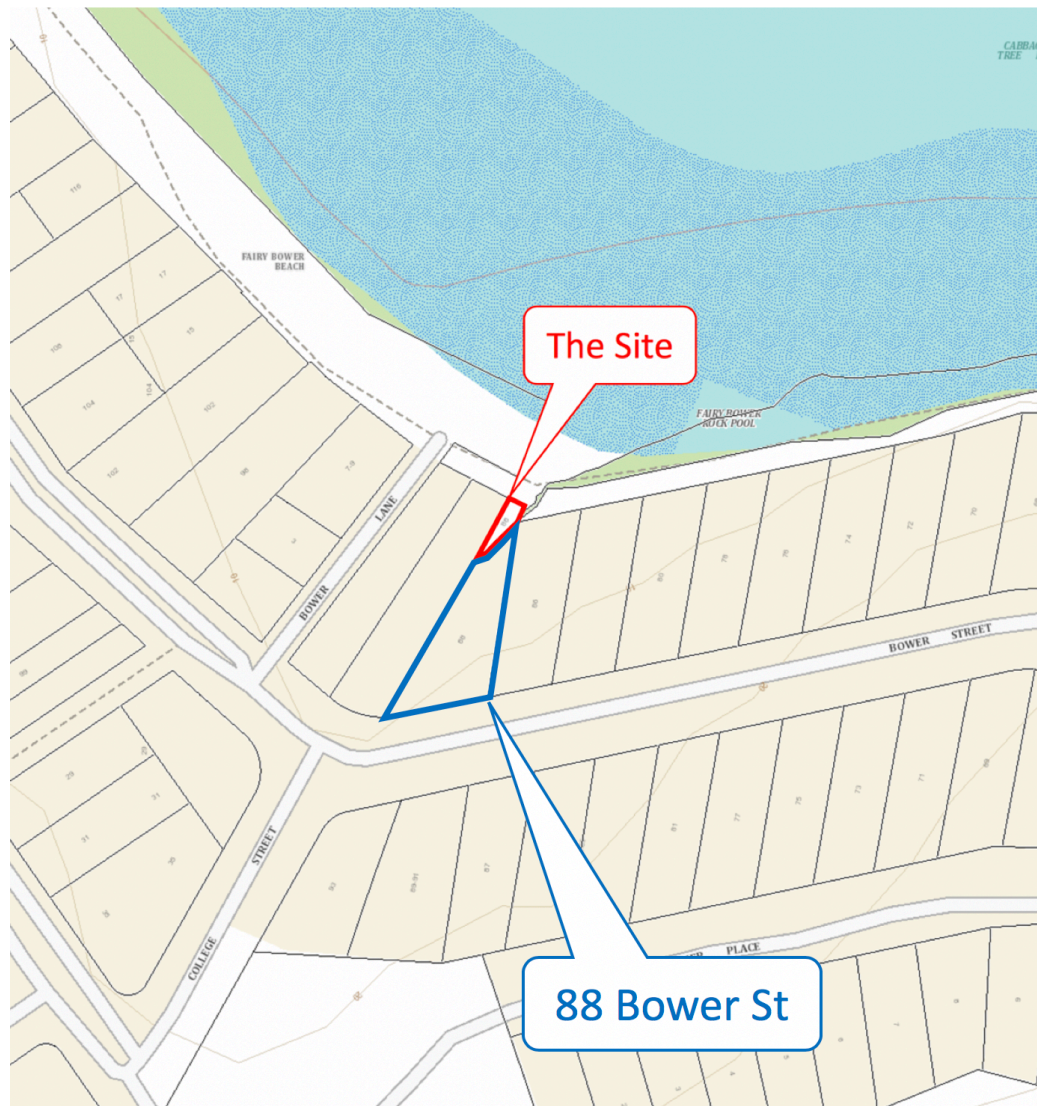
It is accompanied by the following Appendices:

- Appendix A** Pre-lodgement Meeting Minutes, by Northern Beaches Council (21 May 2019)
- Appendix B** Lot 1 DP 1244511 Deposited Plan, by Warren L Bee (11 April 2018)
- Appendix C** Existing Manly LEP 2013 Planning Maps
- Appendix D** Planning, Industry and Government Crown Land Government Information Public Access (**GIPA**)
- Appendix E** Previous Development Consents for 88 Bower Street, Manly
- Appendix F** Coastal Engineering Advice, by Horton Coastal Engineering (5 March 2020)
- Appendix G** Planning Certificate for the site (26 April 2019).

#### 1.4 Description of the site


The key characteristics of the site are summarised below:

Location	<p>The site is to the immediate north of the residential property known as 88 Bower Street, Manly.</p> <p>Bower Lane is to the west of the site and Marine Parade is immediately to the north.</p> <p>Shelly Beach is approximately 400m to the east of the site.</p> <p>Fairy Bower Beach and Ocean Pool and Cabbage Tree Aquatic Reserve are to the north of the site, beyond the pedestrian walkway.</p> <p>Refer to <b>Figures 1</b> and <b>2</b>.</p>
Legal description	Lot 1 in DP 1244511 (Refer to <b>Figure 3</b> ).
Site area	56.8m <sup>2</sup>
Zoning	Pursuant to Manly LEP 2013 the site is in Zone RE1 Public Recreation.
Heritage	<p>The site is not identified as a heritage item and it is not located within a heritage conservation area.</p> <p>The following heritage items are in the vicinity of the site:</p> <ul style="list-style-type: none"><li>• Heritage Item No. I167 (Fairy Bower Pool)</li><li>• Landscape Item No. I168 (Ocean Foreshores).</li></ul>
Existing use	<p>The site adjoins the residential property known as 88 Bower Street, Manly (Lot 3 in DP 8075) and is currently used as part of the principal private open space for the two/ three storey dual occupancy (attached) that occupies 88 Bower Street.</p> <p>Photographs of the site and adjoining 88 Bower Street are shown at <b>Figure 4</b>.</p>
Surrounding area	<p><i>North</i> To the north of the site is Marine Parade and beyond that Cabbage Tree Bay Aquatic Reserve</p> <p><i>South</i> To the south of the site, on the opposite side of Bower Street, is a row of dwelling houses</p> <p><i>East</i> To the east of the site is three storey dwelling house (at 86 Bower Street) with residential development beyond</p> <p><i>West</i> To the west of the site is a three storey residential flat building, (at 92 Bower Street) with a mixed use development beyond (ground floor retail with residential accommodation above).</p>



**LEGEND**

 The Site

 88 Bower Street


**Figure 1 – Site Location Plan (Source: Six Maps)**





**LEGEND**

 The Site

 88 Bower Street

**Figure 2** – Aerial view of the site (Source: Six Maps)

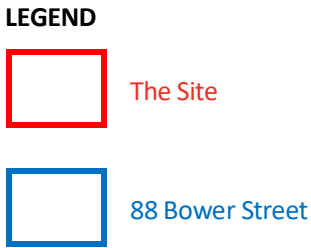
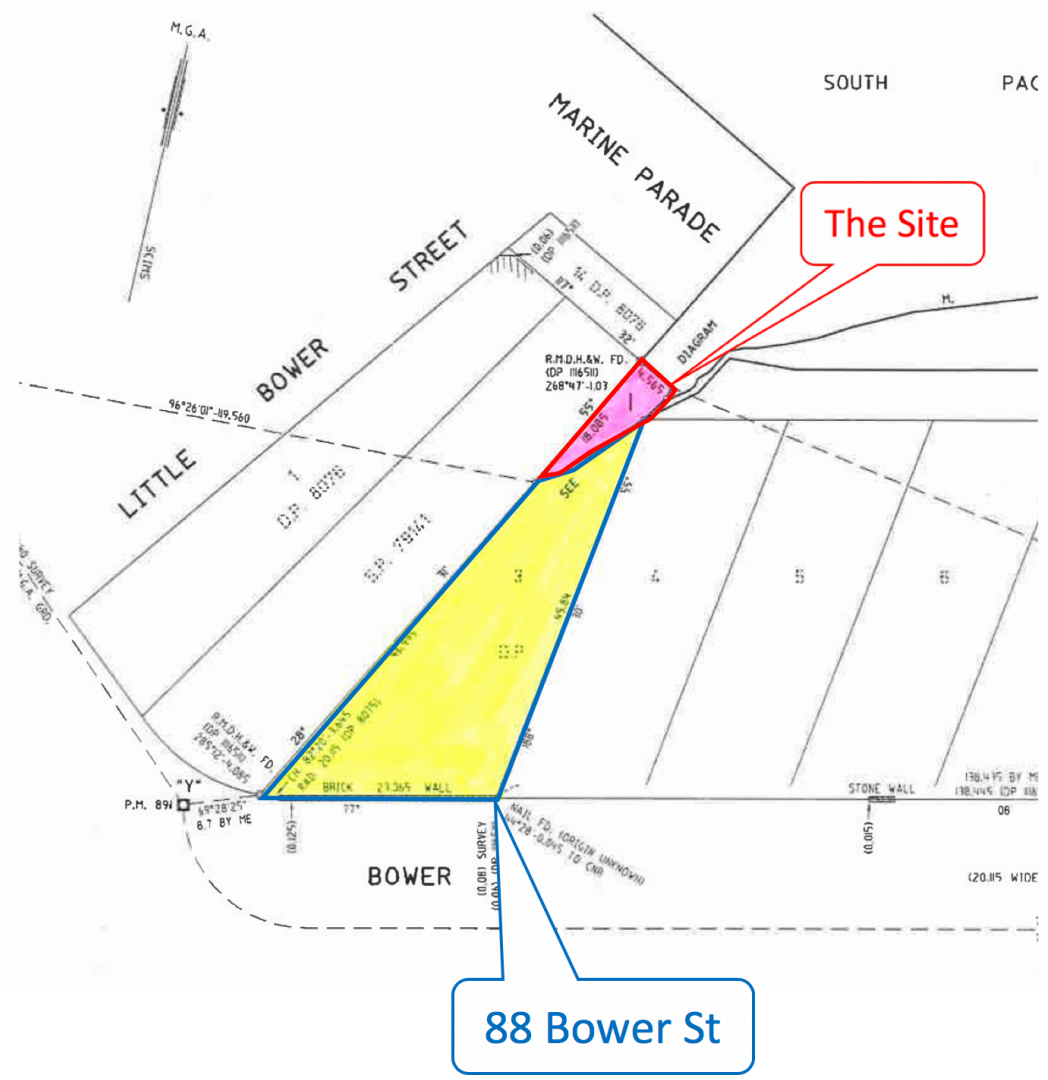


Figure 3 – Site Extract of Lot 1 DP 1244511 Deposited Plan (Source: Warren L. Bee dated 11 April 2018)



*(a) The site and adjoining property at 88 Bower Street as viewed from Marine Parade*



*(b) The site comprising lawn, path, rockery and fencing in the foreground and the adjoining property 88 Bower Street behind*



*(c) Adjoining property to the east (86 Bower Street)*



*(d) Adjoining property to the west (92 Bower Street)*

**Figure 4** – Photographs of the site and surrounding area (Source: RUP dated 5 April 2018)

### 1.5 Site history

As set out in Council's pre-lodgement meeting minutes, and in support of the proposed Planning Proposal, Council requested the following research:

*Further details of the recent land dealings in relation to the land that is no longer available for a public purpose under the Crown are sought. In this regard it is understood the Proponent is investigating why the lot was sold by the Dept. of Industry following queries raised by Council at the meeting. In particular:*

- (a) "Did the Lands Office carry out a review of its holdings, and determine the site was no longer required or was redundant, and decided to sell?" and*
- (b) "Was Council consulted during that time, to see if they would be interested in purchasing the public land?"*

*In relation to the above questions, it is anticipated that the Planning Proposal would be accompanied by the Lands Office assessment report, prepared in relation to suitability of the sale of this lot.*

In response, GIPA applications were made to obtain access to the relevant files of the DoI Lands, the NSW State Library, and Council to view applications, reports, consents and photos of the site.

Detailed below is a summary of the research findings. **Appendix D** provides copy of all correspondence received from the DoI Lands regarding the sale of the site, noting that the DoI Lands waived the requirement for a lands assessment in relation to its disposal.

#### 1.5.1 Disposal of Crown Land

Until 28 August 2018, the site was Crown Land. Prior to this dated, the site formed part of the following two larger Crown Land Reserves:

- **Shelly Beach Reserve** (Lot 7338 DP 1154560) which is held under Reserve 31732 from Sale for public recreation, notified 10 November 1900, which is managed by Council (under the Shelly Beach Reserve Trust) (the portion of the site in this reserve has an area 12m<sup>2</sup>)
- **Manly Freshwater National Surfing Reserve** (Lot 7336 DP 1153371) which is held under Reserve 1028748 for surfing recreation, notified 24 September 2010. (the portion of the site in this reserve has an area 43m<sup>2</sup>)

**Figures 5 and 6** show the location and boundaries of these Crown Land Reserves and the site.

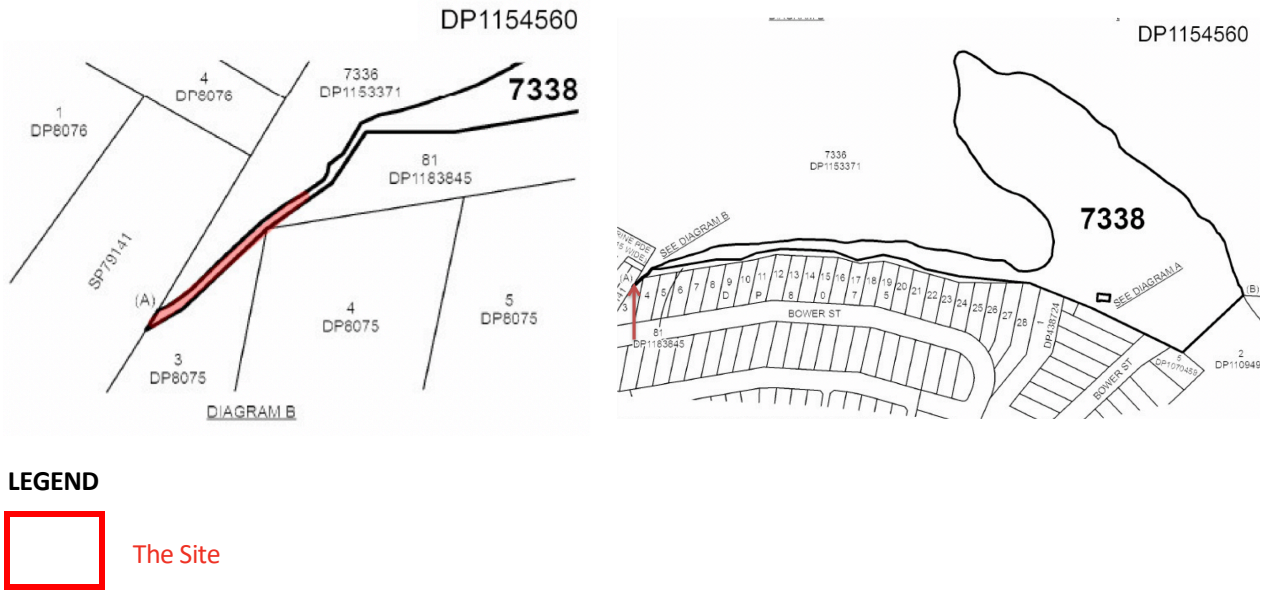


Figure 5 – Shelly Beach Reserve 31732 (Lot 7338 DP 1154560)

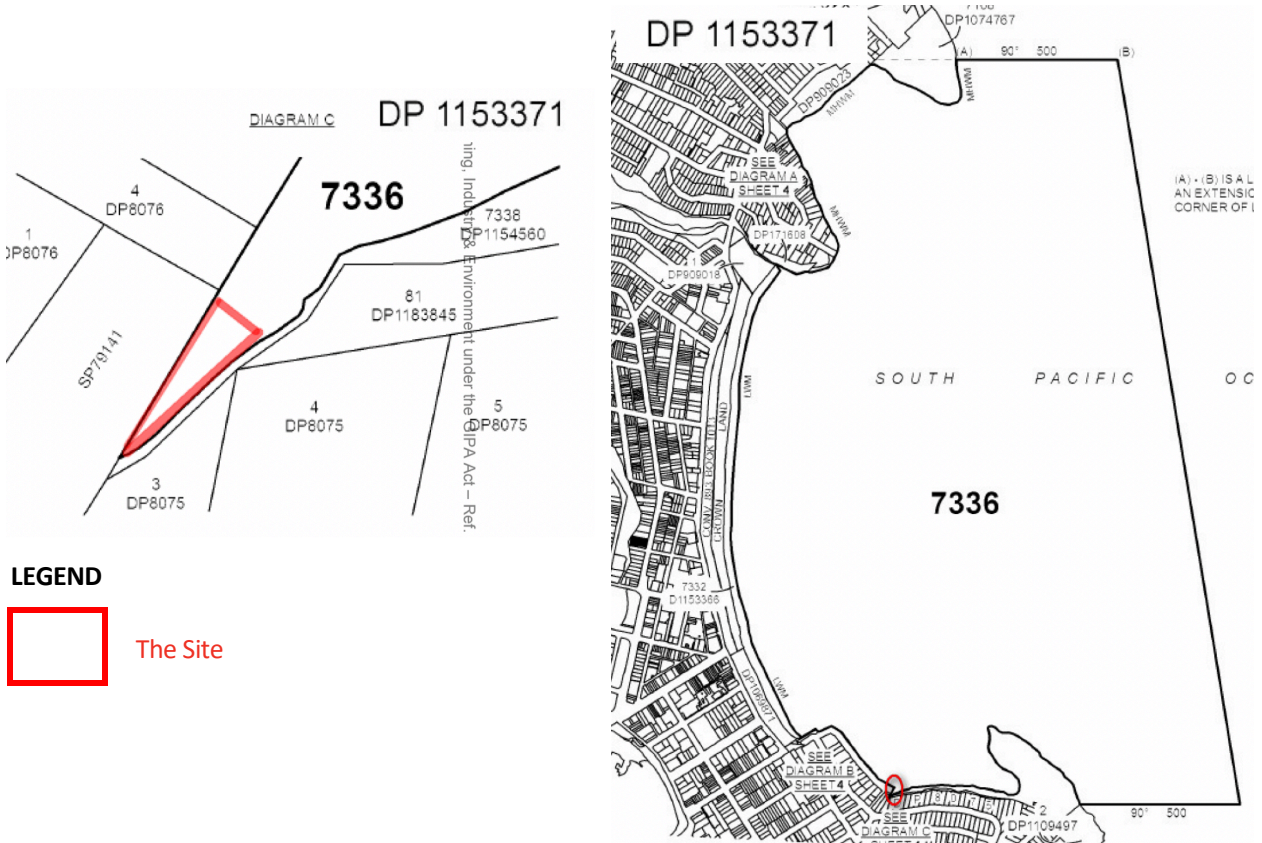


Figure 6 – Manly Freshwater National Surfing Reserve 1028748 (Lot 7336 DP 1153371)

Since 1964, the site formed part of the two wider Crown Land Reserves. It had been continuously held under a Crown tenure, whereby the land was privately leased for the purpose of occupation, to the various Lessees of the adjoining residential freehold land (88 Bower Street, Manly) in the form of a Permissive Occupancy and Licence (No. 301336) for the purpose of lawn area, footpath, rockery and beautification.

The Archdiocese Trustees currently own the adjoining freehold land at 88 Bower Street, Manly. Mr and Mrs Carroll currently lease the site from the Archdiocese Trustees (under a long term lease arrangement).

Upon taking tenure of the property at 88 Bower Street, Manly in 2009, Mr and Mrs Carroll then leased the adjoining parcel of Crown Land directly from the DoI Lands, under a Permissive Occupancy and Licence for the purpose of private occupation to be used in association with the main dwellings.

During 2010, Mr and Mrs Carroll approached the DoI Lands in relation to purchasing the site directly. However, they were advised by the DoI Lands that the registered owner of 88 Bower Street, Manly being the Archdiocese Trustees would be required to make an application to purchase the site.

On 19 December 2011, the Archdiocese Trustees approached the DoI Lands seeking approval to purchase the site directly from the DoI Lands. An extract of that request is provided below:

*I act on behalf of The Trustees of the Roman Catholic Church for the Archdiocese of Sydney ("Church") as the Estate Manager for St. Patrick's Estate. On behalf of the Church I would like to apply to purchase the Crown land contained within License No. 301336 (a part of reserve R31732) Marine Parade, Manly (the Land). The Land is held under license No. 301336 and is 12.6 square metres in area. The Church is the owner of the adjoining lands (lots 2 and 3 in DP 8075).*

*Mr and Mrs Noel and Pauline Carroll hold lot 3 DP8075 (adjoining land) under Lease from the Church and occupy the Land pursuant to license 301336. Lot 3 DP8075 has a street address of 88 Bower Street, Manly. If the Church is able to purchase the Land from the Crown it will be consolidated within lot 3 DP8075 (under a new lot and DP reference) and included within the Lease to the Carrolls - or any future Lessee.*

*The Land comprised within license 301336 is a triangular slither of land that cuts into what would otherwise normally be considered the northern boundary or front garden area of 88 Bower Street, Manly (as per diagram attached). It would be practical and in our view sensible to have the Land consolidated within 88 Bower Street as this would ensure its incorporation with 88 Bower Street on an ongoing basis. 88 Bower Street would then have a consistent shape and subdivision pattern with adjoining lands to the east and west along Bower Street and Marine Parade. Maintenance obligations would pass to the Church and/or the Lessees of 88 Bower Street and as such the Land would no longer burden the Crown.*

Following this request, the DoI Lands began investigating the potential direct private sale of the site to the Archdiocese Trustees.

Correspondence of the proposed potential future private sale was forwarded to Council (known as Manly Council at the time) on 14 January 2016, as the Trust Manager of the Shelly Beach Reserve Trust, advising of the proposed sale (**Appendix D**).

An extract from that correspondence is provided below:

*DPI-Lands are currently investigating the sale of a small parcel of Crown land at Manly being part of Lot 7338 DP1154560 consisting of an approximate area of 43m<sup>2</sup>.*

*The land in question is subject to Crown lands licence 301336 for the purpose of beautification (refer to the area hatched in purple on Diagram A attached). Note that part of the Shelly Park*

*Reserve will be affected by the proposed sale. The area affected is approximately 12.5m<sup>2</sup>. Shelley Park Reserve Trust is currently managed by Manly Council and is outlined in red in Diagram A.*

*The request to purchase was received by the licensees Noel Leon and Pauline Veronica CARROLL on behalf of the registered holders of the adjoining land Lot 3 DP 8075 (The Trustees of the Roman Catholic Church for the Archdiocese of Sydney).*

*It should be noted that the land has been the subject of a Crown land tenure for the purposes of Occupation (private rockery, lawn & pathway) since the 1970s, and currently forms part of the northern lawn and walled garden enclosed within the residential property located at 88 Bower Street Manly. The area that is likely to form part of the Contract of Sale will be that area of lawn and garden defined by black hatching in Diagram B. This will be defined further by Plan of Subdivision of Lot 7338 creating two Lots (one lot being that area hatched black and the second the remainder of Lot 7338). Note that the proposed subdivision may be considered exempt from subdivision certificate under Section 23G(b) of the Conveyancing Act 1919.*

*The Department would appreciate Council's consideration to the proposed sale and advise whether Council may have any interests and/or objections to the sale of the subject area.*

*If a reply is not received within the specified 40 day period from the date of this letter it will be assumed that Council have no objections to the sale of the parcel in question*

Following this request to Council, no further correspondence was received by the DoI Lands from Council regarding its interest or objection to the sale of the site to the applicant (refer to **Appendix D**).

In accordance with NSW Trade & Investment, Crown Lands Direct Negotiations Criteria 2015, a DoI Lands assessment and justification for Direct Negotiations with the applicant was undertaken. A copy of this assessment (dated 27 February 2017) is provided at **Appendix D**.

In summary, the assessment by the DoI Lands approved the direct sale of the land to the applicant under delegation, as follows (using our emphasis):

*It is recommended the Director Crown Property Services agrees to exercise delegation Level 2 under Section 35(2) of the Crown Lands Act 1989 to waive the requirement for land assessment in respect of the proposed sale of Part of Lot 7338 DP 1154560 and Part Lot 7336 DP 1153371 (being that land identified in Attachment A - Diagrams 1 & 2, as land outlined in RED and level with northern boundary of adjoining lot SP79141) and in doing so is satisfied that it is in the public interest to exercise such delegation and that due regard has been given to the principles of Crown land management.*

With the final recommendation set out below:

- 1. Approve the sale of part Lot 7338 DP 1154560 and part Lot 7336 DP 1153371 (being that land identified in Attachment A - Diagrams 1 and 2, as land outlined in red and level with northern boundary of adjoining lot SP79141 ) by direct negotiation to The Trustees of the Roman Catholic Church for the Archdiocese of Sydney without Public Competition in accordance with section 34(1)(a) of the Crown Lands Act 1989.*
- 2. Approve the revocation of Reserve 31732 for Public Recreation notified 10 November 1900 in relation to the affected section of Lot 7338 DP 1154560 (being that land identified*

*in Attachment A - Diagram 2, as land outlined in red and level with northern boundary of adjoining lot SP79141 ) in accordance with section 90 of the Crown Lands Act 1989.*

3. *Approve the revocation of Reserve 1028748 for Surfing Recreation notified 24 September 2010 in relation to the affected section of Lot 7336 DP 1153371 (being that land identified in Attachment A - Diagram 1, as land outlined in red and level with northern boundary of adjoining lot SP79141 ) in accordance with section 90 of the Crown Lands Act 1989.*

Dol Lands agreed to the direct private sale of the site under delegation for the following reasons:

- Correspondence was forwarded to Council (then Manly Council) advising of the proposed future sale of the Crown Land. No correspondence was received from Council regarding its interest or objection to the sale of the site
- The site in question is reclaimed foreshore land, the majority of which was originally below the mean high water mark. The land has been reclaimed to a depth of several metres with imported material associated with surrounding residential development, public foreshore improvements and works authorised by Crown tenures specific to the site since 1964 (these being tenures for private rockery, lawn, pathway and later beautification consistent with the reserve purpose)
- The site is considered surplus to public and government requirements
- The site adjoins the applicant's freehold site
- There are no Aboriginal Land Claims registered
- Sale of the site will not restrict public access to the remainder of the crown land contained within Reserve 31732 for Public Recreation and Reserve 1028748 for surfing recreation. Even if ungated the land being a small triangular area does not lead anywhere and offers no public amenity
- The site has been occupied by private persons since 1964 as a backyard, lawn, garden area. As such it is unlikely to be perceived as a public land use due to the long term occupation
- The occupation does not impact on the public's use and enjoyment of the adjoining reserves
- The potential for multiple uses of the site, if any ever existed, ceased with the enclosure of the site as a backyard area for the adjoining freehold land
- The site is not required for access to waterways, recreation scenic protection, re-vegetation or soil conservation purposes.

Subsequently, the proposed future sale of the site was advertised in the Local Newspaper (North Shore Times) on 25 May 2018. An extract of the Public Notice is provided below:

*Under the provisions of Sec34(3) and Sec90(2) of the Crown lands Act 1989, the Minister administering the Crown Lands Act 1989, after 14 days from publication of this notice, intends to publish in the Government Gazette a notice revoking the reservation and allowing the sale, lease, exchange or otherwise dispose or deal with the land described as follows. Location: Manly. Parish: Manly Cove. County: Cumberland. Being part of Reserve 31732 and part of Reserve 1028748 identified by Proposed Lot 1 in Plan of Subdivision of Lot 7338 DP1154560 & Lot 7336 DP1153371 being an area of approximately 56.8m<sup>2</sup> Reference: 12/08118.*

It is unknown if any submissions were received by the Dol Lands during the notification of the proposed sale.



On 13 July 2018, the subdivision of Lot 7338 DP 1154560 and Lot 7336 DP 1153371 (being the two Crown Land Reserves) was registered with the new lot created being Lot 1 in DP 1244511 (the site).

The site was subsequently purchased by the Archdiocese Trustees, with settlement occurring on 28 August 2018.

Following the settlement, a pre-lodgement meeting was held with Council on 21 May 2019, to discuss this Planning Proposal .

#### 1.5.2 Development approval history for adjoining property 88 Bower Street, Manly

Set out below is a summary of the development approval history for 88 Bower Street, Manly.

The development approval history for 88 Bower Street has only ever related to Lot 3 DP 8075. None of the previous approvals for 88 Bower Street, have included or relied on the site (being Lot 3 DP 8075) for density or open space etc. Notwithstanding, the site physically forms part of the adjoining property due to the current fencing configuration which incapsulates the site as part of 88 Bower Street.

**Table 1** provides a summary of the development approvals for 88 Bower Street, Manly, a copy of the relevant consents obtained are provided at **Appendix E**.

**Table 1 – Summary of the development approvals for 88 Bower Street, Manly**

Application Reference, property and consent authority	Approved	Development
<b>Building Application 38/57</b> Lot 3 in DP 8075 Manly Council	4 December 1957	Site cleared and a dwelling with garage erected
<b>Building Application 309/76</b> Lot 3 in DP 8075 Manly Council	21 September 1976	Erection of a new part two/part three brick dwelling house, with elevated driveway for two on-site car spaces
<b>Development Application 216/07</b> Land and Environment Court (LEC) Appeal 11247 of 2008	29 May 2009	Alterations and additions to a residential dwelling house to create two dwellings, with four car spaces Site area 679.4m <sup>2</sup> GFA 379m <sup>2</sup> FSR 0.56:1

### 1.6 Existing statutory planning controls

Manly LEP 2013 planning maps are attached at **Appendix C** (showing the location of the site). Key provisions are noted below:

- **Zoning** (LZN\_006 and cl. 2.3) - The site is in Zone RE1 – Public Recreation, the following uses are permitted with consent:
  - Aquaculture; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Depots; Emergency services facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Information and education facilities; Jetties; Kiosks; Marinas; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Respite day care centres; Restaurants or cafes; Roads; Take away food and drink premises; Water recreation structures; Water recycling facilities; Water reticulation systems; Water storage facilities
- **Minimum subdivision lot size** (LSZ\_006 and cl. 4.1) – The site is not subject to a minimum subdivision lot size standard
- **Building height** (HOB\_006 and cl. 4.3) – The site is not subject to a building height standard
- **FSR** (FSR\_006 and cl. 4.4) - The site is not subject to a FSR standard
- **Heritage** (HER\_006 and cl. 5.10) – The site is not identified as a heritage item and it is not located within a heritage conservation area. The following heritage items in the vicinity of the site:
  - Heritage Item No. I167 (Fairy Bower Pool)
  - Landscape Item No. I168 (Ocean Foreshores)
- **Acid sulphate soils and earthworks** (CL1\_006 and cl. 6.1) – The site is affected by Acid Sulphate Soils (Class 5)
- **Terrestrial Biodiversity** (CL2\_006 and cl. 6.5) - The site is located on land identified as Terrestrial Biodiversity
- **Foreshore Scenic Protection Area** (FSP\_006 and cl. 6.9) – The site is located within the Foreshore Scenic Protection Area
- **Foreshore Building Line Map** (FBL\_006 and cl. 6.10) - The site is not affected by the Foreshore Area or Foreshore Building Line.

## 2.0 Indicative Development Concept

As set out in Council's pre-lodgement meeting minutes, and in support of the proposed Planning Proposal, Council requested the following information:

*Having regard to the size and shape of the subject site, future use of the site under this Planning Proposal is not likely to be considered for separate residential development. In this regard, the land consolidation with 88 Bower Street, Manly is to be addressed with the Planning Proposal.*

*Consideration should be given to how the consolidation of the land with 88 Bower Street, Manly will affect the future development of the future combined parcel. In this regard, the application of development standards and DCP controls in relation to the future redevelopment of 88 Bower Street, Manly should be addressed.*

Further comments were also provided by Council's Coastal Risk Team as follows:

*With regard to the location of the land in relation to the Coastal Zone and Coastal Erosion and Inundation mapping, the views of Council's Coastal Risk Team are as follows:*

- *Should the rezoning of the parcel enable the combined site at 88 Bower Street to be subdivided or residential use intensified, sole access (or increased access) to the site from Marine Parade is not supported due to above-mentioned coastal hazards making this area sometimes unsafe and impassable. Marine Parade is periodically closed to the public in such conditions. Primary access to the site is to remain from Bower Street.*
- *The site has been identified by a policy regarding landslip 'Manly Landslide Risk Map' (see Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study, 2003). Restrictions apply to works on this land under Manly DCP 2013 and Clause 6.8 – Manly LEP 2013.*

With this in mind, this section of the Planning Proposal provides an overview of the indicative development concept that could be accommodated if the Planning Proposal proceeds.

Given the site's small size (being only 56.8m<sup>2</sup>), development of the site as a standalone block is severely constrained, and it is therefore considered to only be of value to the adjoining land holder (being the Archdiocese Trustees, the applicant).

Should the Planning Proposal be supported by Council for endorsement and forwarding to the DPIE for a gateway determination, a future separate Development Application (DA) is to be lodged to Council to:

- Amalgamate the site (Lot 1 in DP 1244511) with the adjoining residential property at 88 Bower Street (Lot 3 DP 8075) to create a consolidated lot with an area of 736.2m<sup>2</sup> (56.8m<sup>2</sup> + 679.4m<sup>2</sup>)
- Change its use to residential to enable its continued use as private open space in the form of lawn area, footpath, rockery and fencing to be used in connection with the existing dual occupancy (attached).

No other works are proposed or required to facilitate this concept given that the site already physically forms part of the property known as 88 Bower Street, is appropriately serviced and is currently used as private open space in connection with the residential dwellings as shown at **Figure 4**.

Furthermore, no change to site access arrangements is proposed, with the primary street address and frontage to remain from Bower Street.

**Figure 7** highlights the residential character of the area, and how the proposed change to the Land use Maps from RE1 Public Recreation to E4 Environmental Living, to support residential uses on the site, is entirely consistent with the predominate form of development in the area. As set out in **Table 2** the primary development standards contained within Manly LEP 2013 that would apply to the proposed development described above are summarised. **Table 3** outlines the relevant planning controls contained within Manly DCP 2013, that would also apply to the proposed development as described above.



**LEGEND**



The Site



88 Bower Street

**Figure 7** – The site, and adjoining residential property to the south 88 Bower Street (Source: NearMap)

**Table 2 – Relevant provisions of Manly LEP 2013**

Control	Control	Proposal/Compliance
<b>Zones objectives and land use table</b> (cl. 2.2 - 2.3(2))	<p><b>Zone E4 Environmental Living</b></p> <p><b>1 Objectives of zone</b></p> <ul style="list-style-type: none"> <li>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</li> <li>To ensure that residential development does not have an adverse effect on those values.</li> <li>To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.</li> <li>To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.</li> <li>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.</li> <li>To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.</li> </ul> <p><b>2 Permitted without consent</b> Home-based child care; Home occupations</p> <p><b>3 Permitted with consent</b> Attached dwellings; Bed and breakfast accommodation; <u>Dual occupancies (attached)</u>; Dwelling houses; Environmental protection works; Flood mitigation works; Health consulting rooms; Home businesses; Multi dwelling housing; Oyster aquaculture; Pond-based aquaculture; Residential flat buildings; Roads; Secondary dwellings; Semi-detached dwellings; Tank-based aquaculture; Water supply systems</p> <p><b>4 Prohibited</b> Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or</p>	<p>√ In Zone E4, a dual occupancy (attached) is permitted</p> <p>√ Consistent with the relevant zone objectives, the future amalgamation of the site and 88 Bower Street (with no work):</p> <ul style="list-style-type: none"> <li>Retains the existing residential accommodation on site</li> <li>Supports a variety of housing types on the combined site</li> <li>Makes efficient use of the land, as the small site has limited utility as a standalone site</li> <li>Makes efficient use of existing infrastructure and services</li> <li>Provides for residential accommodation in an accessible location.</li> </ul>
<b>Lot size</b> (Cl. 4.1)	The proposed minimum lot size would be 500m <sup>2</sup>	<p>√ Proposed combined lot size of 736.2m<sup>2</sup></p> <ul style="list-style-type: none"> <li>Lot 1 in DP 1244511 56.8m<sup>2</sup></li> <li>Lot 3 DP 8075 679.4m<sup>2</sup></li> </ul>
<b>Height of buildings</b> (cl. 4.3)	The proposed maximum height standard would be of 8.5m	N/A No change

Control	Control	Proposal/Compliance
<b>Floor space ratio</b> (cl. 4.4)	The proposed maximum FSR would be 0.45:1	N/A – Existing GFA at 88 Bower St is approximately 379m <sup>2</sup> (as calculated under Manly LEP 1988 GFA definitions) with a site area of 679.4m <sup>2</sup> , this equates to a FSR of 0.56:1 on that site – With an increased site area (736.2m <sup>2</sup> ) as a result of the lot amalgamation, the FSR across the combined sites would be 0.5:1 (under Manly LEP 1988 definition of GFA)
<b>Heritage Conservation</b> (cl. 5.10)	The objectives of this clause are as follows: <ul style="list-style-type: none"> <li>To conserve the environmental heritage of the Manly,</li> <li>To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</li> <li>To conserve archaeological sites,</li> <li>To conserve Aboriginal objects and Aboriginal places of heritage significance.</li> </ul>	✓ The proposal will have no impact on the significance of the nearby heritage item, as no works are proposed ✓ No known archaeological sites or items of Aboriginal significance are located on site.
<b>Acid sulfate</b> (cl. 6.1)	Development does not disturb, expose or drain acid sulfate soils and cause environmental damage. Class 5: <ul style="list-style-type: none"> <li>Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres AHD and by which the watertable is likely to be lowered below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land.</li> </ul>	N/A The site is located on land identified as Class 5 acid sulfate soils. No works are proposed within 500m of adjacent class 1, 2, 3 or 4 to land below 5m AHD.
<b>Stormwater management</b> (cl. 6.4)	Development consent must not be granted unless the development: <ul style="list-style-type: none"> <li>is designed to maximise the use of water permeable surfaces</li> <li>includes on-site stormwater retention for use</li> <li>avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland</li> </ul>	N/A No change
<b>Terrestrial biodiversity</b> (cl. 6.5)	The consent authority must consider whether the development is likely to have: <ul style="list-style-type: none"> <li>Any adverse impact on the condition, ecological value and significance of the fauna and flora on the land</li> <li>Any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and</li> <li>Any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and</li> </ul>	✓ Given the site's existing residential use, its exposed location, small size and form (comprising lawn, path); the site is not expected to provide a suitable habitat for the Long-nosed Bandicoot or Little Penguin. The species are unlikely to utilise the site for breeding or nesting habitat as the vegetation lacks adequate cover and refuge. Therefore, the proposed use of the site for residential purposes (the same as the present

Control	Control	Proposal/Compliance
	<ul style="list-style-type: none"> <li>Any adverse impact on the habitat elements providing connectivity on the land, and</li> <li>Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</li> </ul>	conditions) is unlikely to have an impact on the two populations and a Species Impact Statement is not considered necessary.
<b>Landslide risk</b> (cl 6.8)	The consent authority must be satisfied <ul style="list-style-type: none"> <li>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</li> <li>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</li> <li>If that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.</li> </ul>	✓ Given the site's existing residential use, its topography (flat), small size and form (comprising lawn, path); the site and proposal is unlikely to generate any landslide risk over and above existing conditions.
<b>Foreshore scenic protection area</b> (cl. 6.9)	Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters: <ul style="list-style-type: none"> <li>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,</li> <li>Measures to protect and improve scenic qualities of the coastline</li> <li>Suitability of development given its type, location and design and its relationship with and impact on the foreshore,</li> <li>Measures to reduce the potential for conflict between land-based and water-based coastal activities.</li> </ul>	✓ Consistent with the foreshore provisions, the proposed residential land use with lot consolidation: <ul style="list-style-type: none"> <li>Will not result in any additional overshadowing, or loss of views to and from the site as a result of its proposed residential use, as the site is already used for private residential uses (open space), and no works are required to facilitate this change</li> <li>Will not alter the current visual amenity or scenic quality of the coast, as a result of its proposed residential use (open space), and lot consolidation, as it is consistent with the current conditions</li> <li>Is consistent with the residential character of the area</li> <li>Will not restrict public access to the adjoining public recreation areas, and its residential occupation does not impact on the public's use and enjoyment of the adjoining beach reserves.</li> </ul>
<b>Limited development in the foreshore area</b> (6.10)	Development consent must not be granted on land in the foreshore area except for <ul style="list-style-type: none"> <li>the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,</li> </ul>	N/A <ul style="list-style-type: none"> <li>The site is not identified within the Limited Development in the Foreshore Area. Meaning Council does not consider it necessary to limit or restrict certain types of development</li> </ul>

Control	Control	Proposal/Compliance
	<ul style="list-style-type: none"><li>• the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,</li><li>• boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).</li></ul>	<p>on the site as a result of its proximity to the coast.</p> <ul style="list-style-type: none"><li>– Regardless the proposed use of the site for residential purposes and subsequent lot consolidation, does not intensify the use of the site as the proposal does not require any physical works to take place to support this change, given the site already physically forms part of the adjoining residential property and is currently used as private open space in connection with the residential dwellings. Further, the site is already appropriately serviced by water, electricity, sewer, telecommunications and stormwater. The proposal therefore does not result in any physical intensification of the use of site, as it is already appropriately serviced to support its proposed (and current) residential use.</li></ul>



**Table 3 – Relevant provisions of Manly DCP 2013**

Control	Compliance
<b>3.0 GENERAL PRINCIPLES</b>	
<b>3.1 Streetscapes and Townscapes</b>	
<p><b>Design and visual improvement</b></p> <p>Development in the streetscape should be designed to:</p> <ul style="list-style-type: none"> <li>• Complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality.</li> <li>• Ensure the bulk and design of development does not detract from the scenic amenity of the area.</li> <li>• Maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment.</li> <li>• Address and compliment the built form and style of any heritage property in the vicinity.</li> <li>• Visually improve existing streetscapes through innovative design solutions.</li> </ul>	<p>N/A</p> <ul style="list-style-type: none"> <li>– The site is already used for residential purposes and physically forms part of the adjoining property.</li> <li>– No works are required to facilitate the proposed development as it is appropriately serviced</li> <li>– The future lot consolidation and residential use would be consistent with the predominate residential form of development in the area (as demonstrated at <b>Figure 7</b>).</li> </ul>
<b>3.2 Heritage considerations</b>	
<p><b>Development in the vicinity of a heritage item or conservation area</b></p> <p>Proposed development in the vicinity of a heritage item or conservation area must ensure that:</p> <ul style="list-style-type: none"> <li>• It does not detract or significantly alter the heritage significance of any heritage items, conservation area or place;</li> <li>• The heritage values or character of the locality are retained or enhanced; and</li> <li>• Any contemporary response may not necessarily seek to replicate heritage details or character of heritage buildings in the vicinity, but must preserve heritage significance and integrity with complementary and respectful building form, proportions, scale, style, materials, colours and finishes and building/street alignments.</li> </ul>	<p>√ Consistent with the provisions:</p> <ul style="list-style-type: none"> <li>– The site is not identified as a heritage item and it is not located within a heritage conservation area.</li> <li>– The following heritage items in the vicinity of the site:                             <ul style="list-style-type: none"> <li>Heritage Item No. I167 (Fairy Bower Pool)</li> <li>Landscape Item No. I168 (Ocean Foreshores)</li> </ul> </li> <li>– The future lot consolidation and residential use will not detrimentally impact the scenic qualities of these two items (residential use with no works), intervening public walkway and distance separation.</li> </ul>
<b>3.3 Landscaping</b>	
<p>The design, quantity and quality of open space should respond to the character of the area. In particular:</p> <ul style="list-style-type: none"> <li>• In low density areas: (including LEP Zones R2 Low Density, E3 Environmental Management and <u>E4 Environmental Living</u>) open space should dominate the site. Setbacks of buildings from open space should also be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshore.</li> </ul>	<p>√ The future lot consolidation and residential use will improve the quality of open space for the combined site, technically increasing the size of open space/private open space by 58m<sup>2</sup>.</p>

Control	Compliance
<b>3.4 Amenity (Views, Overshadowing, Overlooking, Privacy, Noise)</b>	
<p><b>Solar access</b></p> <ul style="list-style-type: none"> <li>New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties</li> <li>Where there is no winter sunlight available to open space of adjacent properties, the calculations for the purposes of sunlight will relate to the equinox in March and September.</li> </ul> <p><b>Maintaining solar access into living rooms of adjacent properties</b>                      In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:</p> <ul style="list-style-type: none"> <li>For adjacent buildings, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June)</li> </ul>	<p>N/A No change</p> <ul style="list-style-type: none"> <li>The site is north facing and receives more than 2hrs between 9am and 3pm midwinter.</li> </ul>
<p><b>Privacy and security</b></p> <ul style="list-style-type: none"> <li>Use narrow, translucent or obscured glass windows to maximise privacy where necessary.</li> <li>When building close to boundaries, windows must be off-set from those in the adjacent building.</li> <li>Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties.</li> <li>To provide casual surveillance of the street and to provide a sense of security sight lines to the street frontage should not be obscured by trees or any other object; fences, walls and landscaping should minimise opportunities for concealment.</li> </ul>	<p>√ The future lot consolidation and residential use will not adversely affect any visual privacy concerns over and above the existing conditions (no change proposed).</p>
<p><b>Acoustic privacy</b></p> <ul style="list-style-type: none"> <li>Consideration must be given to the protection of acoustical privacy in the design.</li> <li>Development likely to generate noise should be located in a manner, which considers the acoustical privacy of neighbours.</li> </ul>	<p>√ The future lot consolidation and residential use will not adversely affect any acoustic privacy concerns over and above the existing conditions (no change proposed).</p>
<p><b>Views</b></p> <ul style="list-style-type: none"> <li>The design of any development, including the footprint and form of the roof is to minimise the loss of views.</li> <li>Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.</li> </ul>	<p>√ The future lot consolidation and residential use will not adversely affect any public or private views over and above the existing conditions (no change proposed).</p>
<b>4.0 DEVELOPMENT CONTROLS FOR DEVELOPMENT TYPES</b>	
<b>4.1 Residential Development Controls</b>	
<b>Density</b>	X/√ Existing non-compliance

Control	Compliance
<ul style="list-style-type: none"> <li>The maximum permissible residential density is 1 unit per 500sqm of site area (D5)</li> </ul>	<p>The adjoining property at 88 Bower Street, contains a dual occupancy (attached) on a 679.4m<sup>2</sup> lot.</p> <p>The future lot consolidation and residential use will increase the lot size to 736.2m<sup>2</sup> reducing the extent of non-compliance.</p>
<p><b>Height of buildings</b></p> <ul style="list-style-type: none"> <li>Maximum wall height 6.5m (flat)</li> <li>Maximum wall height 8m (slope &gt;1:4)</li> </ul>	<p>N/A No change</p>
<p><b>Number of storeys</b></p> <ul style="list-style-type: none"> <li>Buildings must not exceed 2 storeys</li> </ul>	<p>X/V Existing non-compliance</p> <p>The adjoining property at 88 Bower Street contains a part two/part three storey dual occupancy (attached)</p> <p>No change is proposed to the dwellings on the adjoining site.</p>
<p><b>Roof height</b></p> <ul style="list-style-type: none"> <li>Pitched roof structures must be no higher than 2.5m above the actual wall height</li> <li>The maximum roof pitch must be generally no steeper than 35 degrees</li> </ul>	<p>N/A No change</p>
<p><b>Setbacks</b></p> <ul style="list-style-type: none"> <li><b>Front setbacks</b> must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.</li> <li><b>Side setbacks</b>, setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries</li> <li><b>Rear setbacks</b>, the distance between any part of a building and the rear boundary must not be less than 8m</li> <li><b>Foreshore building line</b>, development on any property with a foreshore building line may be required to be setback a further distance from the mean high water mark than required by the LEP Foreshore Building Line Map to satisfy the objectives of the LEP in instances where the proposed height of building on the foreshore frontage is greater than 15m. The minimum foreshore setback for development in this instance is to be no less than the maximum wall height at the foreshore frontage. Development of land that is permitted in the foreshore area is to be designed to complement the natural or established landscaped character of the waterfront and must not be used for accommodation</li> <li><b>Setbacks for development adjacent to LEP Zones RE1, RE2, E1 and E2</b>, buildings, swimming pools and garden sheds on sites</li> </ul>	<p>✓ Complies</p> <p><b>Setbacks</b></p> <ul style="list-style-type: none"> <li>No change to front, and side setback of the building to be retained</li> <li>The rear setback to the existing building at 88 Bower Street, will technically increase as a result of the lot consolidation, increasing the rear setback from 1m - 5.5m to 11m - 18m</li> </ul> <p><b>Foreshore building line &amp; Setbacks adjacent RE1</b></p> <ul style="list-style-type: none"> <li>The site is not affected by the foreshore building line, which is currently 9m north of the rear boundary of the site (approximate position of the seawall)</li> <li>As stated above, the rear setback to the existing dwelling at 88 Bower Street, will technically increase as a result of the lot consolidation, increasing the rear setback from 1m - 5.5m to 11m - 18m</li> <li>Further, the future lot consolidation and residential use does not intensify development on the site as there is no physical works. In addition, the site is already</li> </ul>

Control	Compliance
<p>with a common boundary to land zoned in the LEP as Zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation must be set back at least 6m from this common boundary and in the case of rear setbacks, the minimum 8m setback prevails. However, gazebos, barbeques, child play equipment and the like may be permitted within this setback provided they are designed to complement the natural or landscape character of the adjacent LEP Zones</p>	<p>appropriately serviced by water, electricity, sewer, telecommunications and stormwater.</p>
<p><b>Open space and landscaping</b></p> <ul style="list-style-type: none"> <li>Total open space at least 55% of the site (minimum dimensions of 3m, and minimum of 12sqm unbroken)</li> <li>Landscaped area at least 35% of open space area</li> </ul>	<p>√ Complies</p> <ul style="list-style-type: none"> <li>Total open space will technically increase by 58m<sup>2</sup></li> <li>Principal private open space will technically increase by 58m<sup>2</sup>.</li> </ul>
<p><b>Private open space</b></p> <ul style="list-style-type: none"> <li>Minimum area of principal private open space for a dwelling house is 18sqm</li> </ul>	
<p><b>Car parking</b></p> <ul style="list-style-type: none"> <li>2 parking spaces for each dwelling house, semi-detached dwellings and secondary dwellings.</li> </ul>	<p>√ Complies (no change)</p> <ul style="list-style-type: none"> <li>Four on-site car spaces provided (two per dwelling).</li> </ul>
<p><b>4.4.8 Subdivision</b></p>	
<p><b>Access and Services</b></p> <ul style="list-style-type: none"> <li>All subdivisions will provide adequate vehicular access to a public road.</li> <li>The provision of drainage, easements and servicing requirements must be considered and any resultant adverse impacts - environmental or otherwise are to be minimised or resolved in the design. In particular, sufficient details of stormwater management are to accompany DAs for subdivision.</li> </ul>	<p>√ Consistent with the provisions, the future lot consolidation and residential use:</p> <ul style="list-style-type: none"> <li>Provides access to the site from a public road (Bower Street), when previously there was no direct road access</li> <li>Drainage and servicing requirements are already in place for the site</li> <li>Provides for a consistent and regular subdivision pattern</li> </ul>
<p><b>Prevailing subdivision pattern and natural features</b></p> <ul style="list-style-type: none"> <li>New Subdivisions must complement the prevailing subdivision pattern respecting traditional street patterns; open space patterns and streetscape as well as both built and natural heritage..</li> <li>New Subdivisions must have regard to existing vegetation, topography, views, scenic values and natural bushland and other natural features. Any resultant adverse impacts- environmental or otherwise are to be minimised or resolved in the design and addressed in the Statement of Environmental Effects accompanying the DA.</li> </ul>	<ul style="list-style-type: none"> <li>Does not result in any adverse impacts as the site already physically forms part of the adjoining residential property with which it is to be amalgamated with</li> <li>No tree removal or other natural features are required to be modified or removed to support the future lot consolidation and residential use</li> <li>The new regular shaped lot is oriented in a north/south direction, supporting solar access to the site.</li> </ul>
<p><b>Energy Efficiency</b></p> <ul style="list-style-type: none"> <li>The orientation and design of new allotments should maximise optimum solar access and provide for energy efficiency for future development under BASIX.</li> </ul>	

Control	Compliance
<b>5.0 Special Character Areas and Sites</b>	
<b>5.4 Environmentally Sensitive Lands</b>	
<p><b>Foreshore Scenic Protection Area</b></p> <p>Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:</p> <ul style="list-style-type: none"> <li>• Minimise the contrast between the built environment and the natural environment;</li> <li>• Maintain the visual dominance of the natural environment;</li> <li>• Maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;</li> <li>• Not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;</li> <li>• Locate rooflines below the tree canopy;</li> <li>• Consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and</li> <li>• Use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.</li> <li>• Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshores in Manly.</li> </ul>	<ul style="list-style-type: none"> <li>√ Consistent with the provision of the Foreshore Scenic Protection Area, the future lot consolidation and residential use:                         <ul style="list-style-type: none"> <li>– Will not alter the current visual amenity or scenic quality of the coast, as a result of its proposed residential use (open space), and lot consolidation, as it is consistent with the current conditions</li> <li>– Is consistent with the residential character of the area</li> <li>– Will not result in any additional overshadowing, or loss of views to and from the site as a result of its proposed residential use, as the site is already used for private residential uses (open space), and no works are required to facilitate this change.</li> </ul> </li> </ul>
<p><b>Threatened Species and Critical Habitat Lands</b></p> <ul style="list-style-type: none"> <li>• Any development of land with known habitat for threatened species must consider the likely impacts of the development and whether further assessment needs to be undertaken by a Species Impact Statement.</li> <li>• Any DA on land identified in Schedule 1 - Map D, being land generally to the south-east of Ashburner Street, Manly and including North Head must be accompanied by an Assessment of Significance Report ('7 Part Test') under Section 1.7 EP&amp;A Act 1979. Critical habitat for the little penguin (<i>eudyptula minor</i>) and habitat for the long nosed bandicoot (threatened species) is prescribed in the Threatened Species and Conservation Act 1995</li> </ul>	<ul style="list-style-type: none"> <li>√ Complies                         <ul style="list-style-type: none"> <li>– Given the site's existing residential use, its exposed location, small size and form (comprising lawn, path) the site is not expected to provide a suitable habitat for the Long-nosed Bandicoot or Little Penguin. Given the species are unlikely to utilise the subject site for breeding or nesting habitat as the vegetation present lacks groundcover, that would provide adequate cover and refuge. Therefore the proposed use of the future lot consolidation and residential use (the same as the present conditions) are unlikely to have a significant impact on the two populations and a Species Impact Statement is not considered necessary.</li> </ul> </li> </ul>

### 3.0 Planning Proposal

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#### PART 1 - OBJECTIVES OR INTENDED OUTCOMES

##### Objectives

The objective of this Planning Proposal is to enable the orderly use of the site for residential uses in connection with the adjoining site.

##### Outcomes

The outcomes of the Planning Proposal would be to:

1. Allow residential uses on the site which are currently prohibited in Zone RE1 Public Recreation
2. Allow the site to be amalgamated with adjoining residential property (88 Bower Street, Manly).

#### PART 2 – EXPLANATION OF PROVISIONS

The objectives and intended outcomes set out above will be achieved by the following amendments to Manly LEP 2013:

- Amend land use zoning map (LZN\_006) from RE1 Public Recreation to E4 Environmental Living
- Amend minimum lot size map to (LSZ\_006) to 500sqm
- Amend height of building map (HOB\_006) to 8.5m
- Amend floor space ratio map (FSR\_006) to 0.45:1.

#### PART 3 – JUSTIFICATION

This part of the Planning Proposal describes and justifies the amendments described in Part 2. The following questions have been extracted from the document titled *A guide to preparing Planning Proposals*, by NSW Planning & Environment (October 2018):

##### A. Need for the Planning Proposal

*1. Is the Planning Proposal a result of an endorsed local strategic planning statement, strategic study or report?*

NO

This Planning Proposal follows the recent disposal of the site by DoI Lands as Crown Land to the applicant, as it was considered surplus to requirements.

*2. Is the Planning Proposal the best means of achieving the objective or intended outcomes or is there a better way?*

YES

A Planning Proposal, and amendment of Manly LEP 2013, is the most effective way of providing certainty for Council, the local community and the applicant and allows for orderly and economic development of the site.

##### B. Relationship to strategic planning framework

This part assesses the relevance of the Planning Proposal to the directions outlined in key strategic planning policy documents. Questions in this section consider State and local government plans including the NSW Government's *Greater Sydney Regional Plan A Metropolis*

of *Three Cities*, the *North District Plan*, State Environmental Planning Policies (SEPPs), local strategic and community plans and applicable Ministerial Directions.

*3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional, or district plan or strategy (including and exhibited draft plans or strategies)?*

YES

#### ***Greater Sydney Region Plan - A Metropolis of Three Cities***

On 18 March 2018, the NSW Government released *A Metropolis of Three Cities*, which is the first regional plan developed by the Greater Sydney Commission. The regional plan presents the vision and actions for managing Sydney's growth and enhancing its status as one of the most liveable global cities over the next 40 years. The plan aspires to a 30-min city, where jobs, services and quality public spaces are in easy reach of people's homes.

To achieve a 30-min city, *A Metropolis of Three Cities* sets out ten directions:

1. A city supported by infrastructure
2. A collaborative city
3. A city for people
4. Housing the city
5. A city of great places
6. A well connected city
7. Jobs and skills for the city
8. A city in its landscape
9. An efficient city
10. A resilient city.

To achieve these directions, the plan proposes 38 Objectives. Relevant to the site and proposal, are the following Objectives:

- Objective 10: Greater housing supply
- Objective 11: Housing is more diverse and affordable
- Objective 14: Integrated land use and transport creates walkable and 30-minute cities
- Objective 25: The coast and waterways are protected and healthier
- Objective 28: Scenic and cultural landscapes are protected
- Objective 31: Public open space is accessible, protected and enhanced.

The Planning Proposal is consistent with relevant directions and objectives of *A Metropolis of Three Cities* in that it will:

- Provide land for residential purposes
- Provides for a diversity of housing types
- Facilitates residential accommodation on the site which is close to multiple public transport options, job opportunities, public services and public open space (a 30-min city)
- Preserves the scenic and cultural landscape
- Does not impact on the public's use and enjoyment of the adjoining reserves.

### **North District Plan**

A *Metropolis of Three Cities* is built on a vision of three cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places, being:

- Western Parkland City,
- Central River City and
- Eastern Harbour City.

This vision seeks to rebalance the economic and social opportunities and deliver a more equal and equitable Greater Sydney.

Greater Sydney's three cities reach across five districts: Western City District, Central City District, Eastern City District, North District and South District.

The North District forms a large part of the Eastern Harbour City, and its economy leans to the Harbour CBD, which is the North District's metropolitan centre, and encompasses the local government areas of Ryde, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches and Willoughby

This 20 year plan is designed to bridge the gap between regional and local planning, and to inform local environmental plans, community strategic plans and the assessment of Planning Proposals.

Each District Plan contains:

- Four key themes: Infrastructure and collaboration, Liveability, Productivity and Sustainability
- Ten Directions: to guide delivery of the theme in a balanced way

Key planning priorities of the North District Plan, of relevance to this Planning Proposal are:

- Infrastructure and collaboration
  - Planning Priority N1 Planning for a city supported by infrastructure (a 30-minute city)
- Liveability
  - Planning Priority N4 Fostering healthy, creative, culturally rich and socially connected communities
  - Planning Priority N5 Providing housing supply, choice and affordability with access to jobs, services and public transport
  - Planning Priority N6 Creating and renewing great places and local centres, and respecting the District's heritage
- Productivity
  - Planning Priority N12 Delivering integrated land use and transport planning and a 30-minute city
- Sustainability
  - Planning Priority N17 Protecting and enhancing scenic and cultural landscapes.

This Planning Proposal supports the above key planning priorities and the District Plan more broadly in that it will:

- Contribute to the urban renewal of Manly by improving and regularising the street pattern by consolidating the small, isolated site with the adjoining site to create a larger, regular sized lot, consistent with the prevailing street pattern in the area



- At present the small, isolated site, which was considered surplus to requirements by DoI Lands has very limited value or development potential as a stand-alone site. By consolidating the site with the adjoining property, it capitalises on a surplus piece of land and utilises it for residential purposes
- Provides for additional residential accommodation which is close to multiple public transport options, job opportunities, public services and public open space (a 30-min city)
- Not limit or prevent the public's use and enjoyment of the adjoining reserves or diminish their access to it.

**4. Will the Planning Proposal give effect to a Council endorsed local Strategic Planning Statement, or another endorsed local strategy or strategic plan?**

YES

The following local strategic planning documents are relevant to the Planning Proposal:

- Shape 2028 Northern Beaches Community Strategic Plan 2017 - 2028
- Towards 2040 Northern Beaches Council Local Strategic Planning Statement

Each of these strategies are addressed in detail below.

***Shape 2028 Northern Beaches Community Strategic Plan 2017 - 2028***

This Community Strategic Plan (CSP) is a long term strategic plan that Council must develop on behalf of their communities. It is a shared vision of what the Northern Beaches community values and aspires to for the next ten years.

As outlined in the CSP, the vision for the Northern Beaches is:

*a safe, inclusive and connected community that lives in balance with our extraordinary coastal and bushland environment*

To achieve this vision, the CSP outlines eight community outcomes, 22 goals and 71 strategies which align with the directions contained within the *North District Plan*.

As demonstrated in **Table 4**, this Planning Proposal is consistent with the community outcomes and goals outlined in the *Shape 2028 Northern Beaches SCP 2017 - 2028*.

**Table 4 – Consistency with Shape 2028 Northern Beaches CPS 2017 - 2028**

Goal	Assessment of consistency	Assessment of consistency
<b>Community Outcome: Protection of the Environment</b>		
1	Our bushland, coast and waterways are protected to ensure safe and sustainable use for present and future generations	This Planning Proposal is consistent with the protection of environment community outcome, as follows <ul style="list-style-type: none"> <li>– The site is reclaimed foreshore land, the majority of which was originally below the mean high water mark. The site has been reclaimed to a depth of several metres with imported material associated with surrounding residential development, public foreshore improvements and works authorised by Crown tenures specific to the site since 1964 (these being tenures for private rockery, lawn, pathway and later beautification)</li> </ul>
2	Our environment and community are resilient to natural hazards and climate change	<ul style="list-style-type: none"> <li>– The site was considered surplus to public and government requirements by DoI Lands in 2018</li> <li>– The use of the site for residential purposes will not restrict public access to the remainder of the crown land contained within Reserve 31732 for Public Recreation and Reserve 1028748 for surfing recreation.</li> <li>– The site has been occupied by private persons since 1964 as a backyard, lawn, garden area. As such it is unlikely to be perceived as a public land use due to the long term residential occupation</li> <li>– The use of the site for residential purposes does not impact on the public's use and enjoyment of the adjoining reserves</li> <li>– The site is not required for access to waterways, recreation scenic protection, re-vegetation or soil conservation purposes.</li> </ul>
3	Our community is well-supported in protecting the environment	
<b>Community Outcome: Environmental Sustainability</b>		
4	Our Council is recognised as a community leader in environmental sustainability	This Planning Proposal supports the economic and sustainable development of the site as the site presently has limited utility as stand-alone site. Even if the site was unfenced, the site being a small triangular area does not lead anywhere and offers no public amenity. By consolidating the site with the adjoining property and enabling residential uses, it capitalises on a surplus piece of land and utilises it for residential purposes. Ensuring the site is used in an orderly, and sustainable manner for present and future generations.
5	Our built environment is developed in line with best practice sustainability principles	
6	Our community will continue to work towards sustainable use of resources	
<b>Community Outcome: Places for People</b>		
7	Our urban planning reflects the unique character of our villages and natural environment and is responsive to the evolving needs of our community	This Planning Proposal contributes to the urban renewal of Manly by regularising the street pattern through consolidating the small, isolated site with the adjoining lot to create a larger, regular sized lot, consistent with the prevailing street pattern in the area. At present the small, isolated site, which was considered surplus to requirements by DoI Lands has very limited value or development potential as a stand-alone site. By consolidating the site with the adjoining property, it capitalises on a surplus piece of land and
8	Our neighbourhoods inspire social interaction, inclusion and support health and wellbeing	

Goal	Assessment of consistency	Assessment of consistency
9	Our community is healthy, active and enjoys a broad range of creative, sporting and recreational opportunities	utilises it for residential purposes. Further, the Planning Proposal provides for residential accommodation in close proximity to multiple public places, and recreation areas.
<b>Community Outcome: Community and Belonging</b>		
10	Our community is stimulated through a diverse range of cultural and creative activities and events	There are no known Aboriginal Land claims registered against the site, further the site is not listed as a heritage item nor is it located within a Heritage Conservation Area. The Planning Proposal does not impact or detract from the heritage and cultural significance of the site or the area.
11	Our community feels safe and supported	
12	Our community is friendly and supportive	
<b>Community Outcome: Vibrant Local Economy</b>		
13	Our businesses are well-connected and thrive in an environment that supports innovation and economic growth	This Planning Proposal relates to the provision of additional land for residential purposes. Whilst not directly relevant to this community outcome due to its nature, the Planning Proposal does lend its support to the local economy through supporting an active and safe urban environment in keeping with the local character of the area. The Planning Proposal also supports the local business centre of Manly by providing a residential land use in close proximity and easy access to the centre.
14	Our economy provides opportunities that match the skills and needs of the population	
15	Our centres attract a diverse range of businesses, providing opportunities for work, education, leisure and social life	
<b>Community Outcome: Transport, Infrastructure and Connectivity</b>		
16	Our integrated transport networks meet the needs of our community	This Planning Proposal will facilitate a development consistent with the principle of transit oriented development through the provision of a residential land use in a highly accessible location.
17	Our community can safely and efficiently travel within and beyond Northern Beaches	
18	Our community can easily connect and communicate through reliable communication technologies	
<b>Community Outcome: Good Governance</b>		
20	Our Council is transparent and trusted to make decisions that reflect the values of the community	The DoI Lands consulted with Council (Manly Council) advising of the proposed future sale of the Crown Land. No correspondence was received from Council regarding its interest or objection to the sale of the site, as such it was sold to the applicant as surplus to requirements. Since that time, the applicant has demonstrated a commitment to working with Council through pre-lodgement meetings and on-going correspondence. It is expected that this collaboration will continue throughout the gateway process and future development application.
22	Our Council efficiently and effectively responds to, and delivers on, the evolving needs of the community	

### ***Towards 2040 Northern Beaches Council Local Strategic Planning Statement***

Towards 2040 is the Council's first Local Strategic Planning Statement (**LSPS**). It outlines the Northern Beaches' direction for housing, employment, transport, recreation, environment and infrastructure over the next 20 years.

Towards 2040 has been prepared in accordance with the requirements of Section 3.9 of the EP&A Act 1979. It will inform the development of Council's new LEP and DCP, broader Council policies and strategies, and the assessment of planning proposals.

Towards 2040 reflects local values and aspirations, building on the 10-year vision set out in the Community Strategic Plan, Shape 2028. It applies to the whole Northern Beaches LGA.

Towards 2040 includes:

- a 20-year vision
- planning priorities that guide local land use planning
- principles that underpin planning priorities and actions
- actions we will take to help achieve the priorities
- measures of success and an implementation program to determine whether priorities have been achieved.

Towards 2040 aligns with the North District Plan and Greater Sydney Region Plan and acts as the bridge between strategic land use planning at the district level and local statutory planning.

As demonstrated in **Table 5**, this Planning Proposal is consistent with the directions, priorities and principles set out in *Towards 2040 Northern Beaches Council LSPS*.

**Table 5 – Consistency with Towards 2040 Local Strategic Planning Statement**

Direction	Priority	Assessment of consistency
<b>Landscape</b>		
1	<b>Healthy and valued coast and waterways</b>	This Planning Proposal is consistent with the Landscape direction as follows: <ul style="list-style-type: none"> <li>– The use of the site for residential purposes will protect the adjacent coastline and waterway as the proposed change to its land use zoning will not result in an intensification of use of the site, as the site has been used for private residential purposes for over 55+ years. Further the proposed change to its land use zoning will not result in the physical development of the site, as development within that area is generally precluded under the current planning controls</li> <li>– The use of the site for residential purposes does will not impact on the coastal environment, or its natural processes as a result of the public path and seawall located 9m to the north of the site, separating the site from the coastline</li> <li>– Any future residential use on the site will not detrimentally impact the scenic and cultural qualities of the coast and waterway:                             <ul style="list-style-type: none"> <li>– As a public walkway separates the site from the coast</li> </ul> </li> <li>– Like the existing and future use of the site, the existing character of the surrounding area is predominantly residential</li> <li>– The site has been used for residential purposes for over 55 years and the Planning Proposal would regularise the zoning with this long standing use.</li> <li>– The use of the site for residential purposes does not restrict public access to the adjoining public recreation areas and its residential occupation does not impact on the public's use and enjoyment of the adjoining beach reserves.</li> </ul>
2	Protected and enhanced bushland and biodiversity	
3	<b>Protected scenic and cultural landscapes</b>	
4	Protected Metropolitan Rural Area	
5	Greener urban environments	
6	<b>High quality open space for recreation</b>	
<b>Efficiency</b>		
7	<b>A low-carbon community, with high energy, water and waste efficiency</b>	This Planning Proposal supports the sustainable development of the site as the site presently has limited utility as stand-alone site. Even if the site was unfenced, the site being a small triangular area does not lead anywhere and offers no public amenity. By consolidating the site with the adjoining property and enabling residential uses, it capitalises on a surplus piece of land and utilises it for residential purposes. Ensuring the site is used in an orderly, energy efficient and sustainable manner for present and future generations.
<b>Resilience</b>		
8	<b>Adapted to the impacts of natural and urban hazards and climate change</b>	This Planning Proposal is consistent with the Resilience direction as follows, as the use of the site for residential purposes: <ul style="list-style-type: none"> <li>– Will not result in the physical development of the site or the intensification of use of the site, as the site is already used for residential purposes and development within that area is generally precluded under the current planning controls</li> <li>– Will not impact on the urban hazards as the site is already a developed residential site, with existing stormwater management practises in place</li> <li>– Will not impact on existing coastal environmental values or natural coastal processes, as there is no physical change proposed to the site as a result of its proposed residential use</li> <li>– Will not impact on the rock platform or marine vegetation seaward of the public pathway and seawall given the distance separating the two (9m+)</li> </ul>

Direction	Priority	Assessment of consistency
		<ul style="list-style-type: none"> <li>– Will not impact or alter existing public access arrangements</li> <li>– Will not interact or impact with the surf zone.</li> </ul>
<b>Infrastructure and collaboration</b>		
9	Infrastructure delivered with employment and housing growth	This Planning Proposal relates to the provision of additional land for residential purposes. Whilst not directly relevant to this direction due to its nature, the Planning Proposal does lend its support to the local economy by providing a residential land use in close proximity and easy access to the centre.
<b>People</b>		
10	World-class education facilities, including a university	This Planning Proposal relates to the provision of additional land for residential purposes. Whilst not directly relevant to this direction due to its nature, the Planning Proposal does lend its support to the local community through supporting an active and safe urban environment in keeping with the local character of the area. The Planning Proposal also supports the local business centre of Manly by providing a residential land use in close proximity and easy access to the centre.
11	Community facilities and services that meet changing community needs	
12	An inclusive, healthy, safe and socially connected community	
13	Strong engagement and cooperation with Aboriginal communities	
14	A community enriched through the arts and connected through creativity	
<b>Housing</b>		
15	<b>Housing supply, choice and affordability in the right locations</b>	This Planning Proposal relates to the provision of additional land for residential purposes. This Planning Proposal contributes to the supply of housing through consolidating the small, isolated site with the adjoining residential lot to create a larger, regular sized lot, consistent with the prevailing street pattern in the area.
16	Access to quality social and affordable housing	At present the small, isolated site, which was considered surplus to requirements by Dol Lands has very limited value or development potential as a stand-alone site. By consolidating the site with the adjoining residential property, it capitalises on a surplus piece of land and utilises it for residential purposes improving housing supply in close proximity and easy access to the centre.
<b>Great places</b>		
17	<b>Centres and neighbourhoods designed to reflect local character, lifestyle and demographic changes</b>	As above this Planning Proposal contributes to the urban renewal of Manly by consolidating the small, isolated site with the adjoining lot to create a larger, regular sized lot. By consolidating the site with the adjoining property, it capitalises on a surplus piece of land and utilises it for residential purposes. Further, the Planning

Direction	Priority	Assessment of consistency
18	<b>Protected, conserved and celebrated heritage</b>	<p>Proposal provides for residential accommodation in close proximity to multiple public places, and recreation areas.</p> <p>The Planning Proposal does not impact or detract from the heritage and cultural significance of the site or the area as the site is not listed as a heritage item nor is it located within a Heritage Conservation Area. There are also no known Aboriginal Land claims registered against the site.</p>
<b>Connectivity</b>		
19	<b>Frequent and efficient regional public transport connections</b>	This Planning Proposal will facilitate a development consistent with the direction of "Connectivity" through the provision of a residential land use in a highly accessible location.
20	<b>Sustainable local transport networks</b>	This Planning Proposal through consolidating the small, isolated site with the adjoining residential lot to create a larger, regular sized lot also improves connectivity by providing access to the site from the street when previously there was no direct road access to the isolated site.
21	<b>Redesigned road space and facilities to match changing community needs</b>	
<b>Jobs and skills</b>		
22	Jobs that match the skills and needs of the community	This Planning Proposal relates to the provision of additional land for residential purposes. Whilst not directly relevant to this direction due to its nature, the Planning Proposal does lend its support to the local economy through supporting an active and safe urban environment in keeping with the local character of the area. The Planning Proposal also supports the local business centre of Manly as a premier seaside destination by providing a residential land use in close proximity and easy access to the centre.
23	Frenchs Forest as a sustainable health and education precinct	
24	Brookvale as an employment and innovation centre	
25	Dee Why as a thriving cosmopolitan centre by the sea	
26	<b>Manly as Sydney's premier seaside destination</b>	
28	Mona Vale as the contemporary, urban heart of the north	
29	Safeguarded employment lands	
30	A diverse night-time economy	

*5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?*

YES

The consistency of the Planning Proposal with applicable SEPPs is outlined in **Table 6**.

**Table 6 – Consistency of Planning Proposal with SEPPs**

State Environmental Planning Policy (SEPP)	Comment
SEPP No 19—Bushland in Urban Areas	Not relevant
SEPP No 21—Caravan Park	Not relevant
SEPP No 33—Hazardous and Offensive Development	Not relevant
SEPP No 44—Koala Habitat Protection	Not relevant
SEPP No 47—Moore Park Showground	Not relevant
SEPP No 50—Canal Estate Development	Not relevant
SEPP No 55—Remediation of Land	Future residential accommodation on the site will be required to consider the provisions of the SEPP No 55. As part of any future DA to change the site's use to residential uses, it is envisaged that a Phase 1 Preliminary Site Contamination Investigation would be undertaken. Further site investigation would be undertaken if required by the Phase 1 assessment during the preparation of the DA.
SEPP No 64—Advertising and Signage	Not relevant
SEPP No 65—Design Quality of Residential Flat Development	Not relevant
SEPP No 70—Affordable Housing (Revised Schemes)	Not relevant
State Environmental Planning Policy (Aboriginal Land) 2019	Not relevant
SEPP (Affordable Rental Housing) 2009	Not relevant
SEPP (Building Sustainability Index: BASIX) 2004	SEPP BASIX is not relevant to the proposed Planning Proposal or subsequent DA to consolidate the site with the adjoining dual occupancy (attached) as no works are proposed or required.
State Environmental Planning Policy (Coastal Management) 2018	SEPP Coastal Management is relevant to the Planning Proposal. A detailed assessment of the Planning Proposal against the relevant provisions of this SEPP are provided in <b>Table 7</b> and the accompanying Coastal Engineering Advice ( <b>Appendix F</b> ).
State Environmental Planning Policy (Concurrences and Consents) 2018	Not relevant
State Environmental Planning Policy (Educational Establishments and Child Care Facilities)	Not relevant
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	Not relevant
State Environmental Planning Policy (Gosford City Centre) 2018	Not relevant



State Environmental Planning Policy (SEPP)	Comment
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	Not relevant
State Environmental Planning Policy (Infrastructure) 2007	Not relevant
State Environmental Planning Policy (Koala Habitat Protection) 2019	Not relevant
State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007	Not relevant
State Environmental Planning Policy (Kurnell Peninsula) 1989	Not relevant
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	Not relevant
State Environmental Planning Policy (Penrith Lakes Scheme) 1989	Not relevant
State Environmental Planning Policy (Primary Production and Rural Development) 2019	Not relevant
State Environmental Planning Policy (State and Regional Development) 2011	Not relevant
State Environmental Planning Policy (State Significant Precincts) 2005	Not relevant
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	Not relevant
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	Not relevant
State Environmental Planning Policy (Three Ports) 2013	Not relevant
State Environmental Planning Policy (Urban Renewal) 2010	Not relevant
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Not relevant
State Environmental Planning Policy (Western Sydney Employment Area) 2009	Not relevant
State Environmental Planning Policy (Western Sydney Parklands) 2009	Not relevant
<b>Relevant deemed SEPPS</b>	
Sydney REP (Sydney Harbour Catchment) 2005	This Planning Proposal does not contradict or hinder application of this REP.

## Coastal Management

As set out in Council's pre-lodgement meeting minutes, Council requested the following information:

*With regard to the location of the land in relation to the Coastal Zone and Coastal Erosion and Inundation mapping, the views of Council's Coastal Risk Team are as follows:*

- *The site is subject to impacts from wave overtopping. Property damage occurred in and around that site as recently as the East Coast Low in June 2016.*
- *Any planning proposal will need to be consistent with the Coastal Management Act 2016 and Clauses 13, 14 and 15 of the Coastal Management SEPP 2018.*

The Planning Proposal is consistent with the relevant provisions of the *Coastal Management Act 2016* and SEPP Coastal Management as detailed below and in the accompanying Coastal Engineering Advice (**Appendix F**) prepared by Peter Horton.

### Wave topping

The Coastal Engineering Advice (**Appendix F**) includes the following summary in relation to wave topping:

*Based on Airborne Laser Scanning data captured in 2018, Marine Parade is at a level of about 2.6m AHD near the seawall and 3.0m AHD adjacent to the property. The crest of the seawall is at about 3.4m AHD. Ground levels increase moving landward to about 3.9m AHD at the dwelling.*

*The seawall can be overtopped by wave action at times of coastal storms with large waves (particularly coming from directions north of east) and elevated ocean water levels, and wave overtopping can enter the property. This does not preclude the proposed lot consolidation, as the impacts of wave overtopping and coastal inundation could be managed through various measures (such as elevated floor levels, setbacks from Marine Parade and/or wave runup 'trip' barriers) in any future redevelopment over the subject lots.*

*It can be assumed that the subject property is not at significant risk of erosion/recession, as it is expected that the Marine Parade seawall would be maintained by Council, and reinstated if damaged, given the public demand for use of the Marine Parade walkway.*

### Coastal Management Act 2016

The *Coastal Management Act 2016* replaces the *Coastal Protection Act 1979* and establishes a strategic framework and objectives for managing coastal issues in NSW. The Act promotes strategic and integrated management, use and development of the coast for the social, cultural and economic wellbeing of the people of NSW.

Its focus is on ecologically sustainable development that:

- Protects and enhances sensitive coastal environments, habitats and natural processes
- Strategically manages risks from coastal hazards
- Maintains and enhances public access to scenic areas, beaches and foreshores
- Supports the objectives for our marine environments under the Marine Estate Management Act 2014
- Protects and enhances the unique character, cultural and built heritage of our coastal areas, including Aboriginal cultural heritage.

The *Coastal Management Act 2016* defines the Coastal Zone as comprising four coastal management areas. Each area has different characteristics and may at times overlap.

The four coastal management areas are:

- **Coastal wetlands and littoral rainforests area:** areas which display the characteristics of coastal wetlands or littoral rainforests that were previously protected by SEPP 14 and SEPP 26
- **Coastal vulnerability area:** areas subject to coastal hazards such as coastal erosion and tidal inundation
- **Coastal environment area:** areas that are characterised by natural coastal features such as beaches, rock platforms, coastal lakes and lagoons and undeveloped headlands. Marine and estuarine waters are also included
- **Coastal use area:** land adjacent to coastal waters, estuaries and coastal lakes and lagoons.

In accordance with the *Coastal Management Act 2016* and the Coastal Management SEPP, the site is located within the following coastal zones:

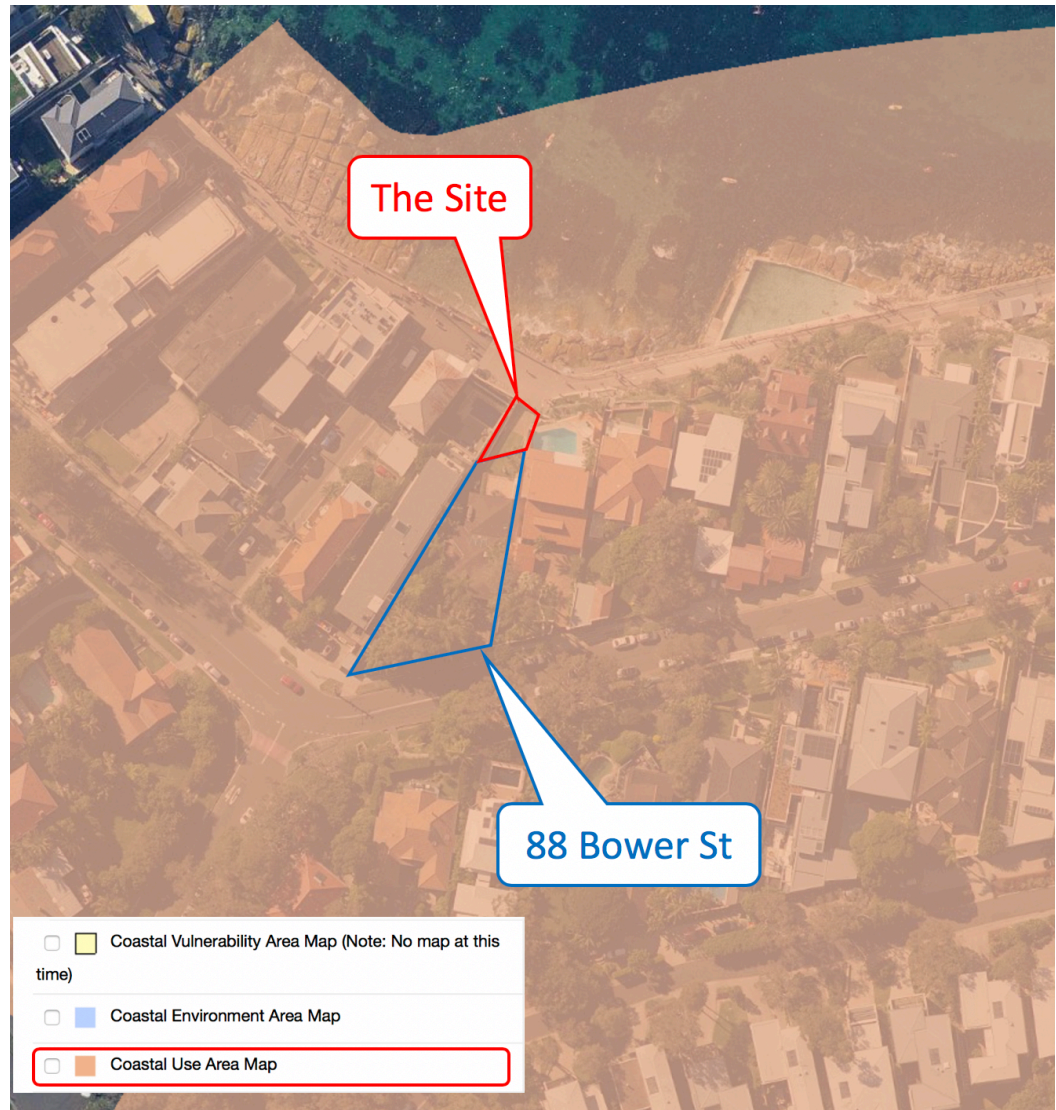
- Coastal environment area (**Figure 8**)
- Coastal use area (**Figure 9**).

Noting that the coastal vulnerability area is yet to be mapped.

As set out in **Table 7**, this Planning Proposal is consistent with the objectives and relevant provisions of the Coastal Management Act.



**Figure 8** – Extract of Coastal Management SEPP Mapping - Coastal Environment Area Map ([http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP\\_CoastalManagement](http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement))



**Figure 9** – Extract of Coastal Management SEPP Mapping - Coastal Use Area Map  
([http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP\\_CoastalManagement](http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement))

**Table 7 – Compliance with the relevant provisions of the Coastal Management Act 2016**

Clause	Comment
<b>Part 1 Preliminary</b>	
<b>3 Objects of this Act</b>	<p>The objects of this Act are to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State, and in particular:</p> <ul style="list-style-type: none"> <li>(a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and</li> <li>(b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and</li> <li>(c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and</li> <li>(d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and</li> <li>(e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and</li> <li>(f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and</li> <li>(g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and</li> <li>(h) to promote integrated and co-ordinated coastal planning, management and reporting, and</li> <li>(i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and</li> <li>(j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and</li> <li>(k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and</li> <li>(l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and</li> <li>(m) to support the objects of the Marine Estate Management Act 2014.</li> </ul>
	<p>√ Consistent with the Objectives of the Act, the Planning Proposal:</p> <ul style="list-style-type: none"> <li>– Will protect the scenic, biological and ecosystem integrity of the site and surrounding area. As the proposed change to its land use zoning will not result in an intensification of use of the site, as the site has been used for private residential purposes for over 55+ years. Further the proposed change to its land use zoning will not result in the physical development of the site, as development within that area is generally precluded under the current planning controls</li> <li>– The use of the site for residential purposes does not restrict public access to the adjoining public recreation areas, and its residential occupation does not impact on the public's use and enjoyment of the adjoining beach reserves</li> <li>– There are no Aboriginal Land Claims registered in relation to the site or within the immediate area</li> <li>– The site was considered surplus to public and government requirements by Crown Lands, and given its small size (being only 56.8m<sup>2</sup>), development of the site as a standalone block is severely constrained, and it is therefore considered to only be of value to the adjoining land holder.</li> </ul>

Clause	Comment
<b>Part 2 Coastal zone and management objectives</b>	
<b>8 Coastal environment area</b>	
<ol style="list-style-type: none"> <li>1. The coastal environment area means the land identified by a SEPP to be the coastal environment area for the purposes of this Act, being land containing coastal features such as the coastal waters of the State, estuaries, coastal lakes, coastal lagoons and land adjoining those features</li> <li>2. The management objectives for the coastal environment area are as follows:                             <ol style="list-style-type: none"> <li>(a) to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,</li> <li>(b) to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,</li> <li>(c) to maintain and improve water quality and estuary health,</li> <li>(d) to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,</li> <li>(e) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,</li> <li>(f) to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>√ The site is located on land within the Coastal Environment Area pursuant to SEPP Coastal Management</li> <li>√ Consistent with the provisions, the Planning Proposal:                             <ul style="list-style-type: none"> <li>– Will not impact on the coastal environment, or its natural processes as a result of the public path and seawall located 9m to the north of the site, separating the site from the coastline</li> <li>– Will not restrict public access to the adjoining public recreation areas, nor will it impact on the public's use and enjoyment of the adjoining beach reserves</li> <li>– Will maintain the presence of beaches and natural features of the foreshore.</li> </ul> </li> </ul>
<b>9 Coastal use area</b>	
<ol style="list-style-type: none"> <li>1. The coastal use area means the land identified by a SEPP to be the coastal use area for the purposes of this Act, being land adjacent to coastal waters, estuaries, coastal lakes and lagoons where development is or may be carried out (at present or in the future).</li> <li>2. The management objectives for the coastal use area are as follows:                             <ol style="list-style-type: none"> <li>(a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:                                     <ol style="list-style-type: none"> <li>(i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and</li> <li>(ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and</li> <li>(iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and</li> <li>(iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and</li> <li>(v) the use of the surf zone is considered,</li> </ol> </li> <li>(b) to accommodate both urbanised and natural stretches of coastline.</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>√ The site is located on land within the Coastal Use Area pursuant to SEPP Coastal Management</li> <li>√ Consistent with the provisions, the Planning Proposal:                             <ul style="list-style-type: none"> <li>– Will not alter the current visual amenity or scenic quality of the coast, as a result of its proposed residential use (open space), and lot consolidation, as it is consistent with the current conditions</li> <li>– Will not restrict public access to the adjoining public recreation areas, and its residential occupation does not impact on the public's use and enjoyment of the adjoining beach reserves.</li> </ul> </li> </ul>

SEPP Coastal Management 2018

The Coastal Management SEPP commenced on 3 April 2018 and gives effect to the objectives of the *Coastal Management Act 2016* from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

Pursuant to the SEPP, the site is located within the Coastal Environment Area and a Coastal Use Area (same as the *Coastal Management Act*).

**Table 8** assess the Planning Proposal against the relevant provisions of the SEPP and should be read in connection with the accompanying Coastal Engineering Advice (**Appendix F**).

**Table 8 – Compliance with the relevant provisions of SEPP Coastal Management**

Clause		Comment
Development on land within the coastal environment area (cl. 13)	<p>Development consent must not be granted unless the consent authority has considered the following:</p> <ul style="list-style-type: none"> <li>(a) the integrity and resilience of the biophysical, hydrological and ecological environment,</li> <li>(b) coastal environmental values and natural coastal processes,</li> <li>(c) the water quality of the marine estate, in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes,</li> <li>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</li> <li>(e) existing public open space and safe access to and along the foreshore, including persons with a disability,</li> <li>(f) Aboriginal cultural heritage, practices and places,</li> <li>(g) the use of the surf zone.</li> </ul> <p>Development consent must not be granted unless the consent authority is satisfied that:</p> <ul style="list-style-type: none"> <li>(a) the development is designed, sited and will be managed to avoid an adverse impact referred to above,</li> <li>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</li> <li>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</li> </ul>	<ul style="list-style-type: none"> <li>✓ The site is located on land within the Coastal Environment Area</li> <li>✓ Consistent with the Coastal Environment Area provisions, the Planning Proposal:                             <ul style="list-style-type: none"> <li>– Will not impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment as a result of the proposed residential uses on site, as the site is already a developed residential site, with existing stormwater management practises in place</li> <li>– Will not impact on existing coastal environmental values or natural coastal processes, as there is no physical change proposed to the site as a result of its proposed residential use, given its existing private residential use</li> <li>– Will not impact on any sensitive coastal lakes as there are none in the vicinity of the site</li> <li>– Will not impact on the rock platform or marine vegetation seaward of the public pathway and seawall given the distance separating the two (9m+)</li> <li>– Will not impact or alter existing public access arrangements</li> <li>– Will not impact on any known aboriginal cultural heritage, practises or places</li> <li>– Will not interact or impact with the surf zone.</li> </ul> </li> </ul>
Development on land within the coastal use area (cl. 14)	<p>The consent authority:</p> <ul style="list-style-type: none"> <li>(a) has considered whether the development is likely to cause an adverse impact on the following:</li> </ul>	<ul style="list-style-type: none"> <li>✓ The site is located on land within the Coastal Use Area</li> <li>✓ Consistent with the Coastal Use Area provisions, the Planning Proposal:</li> </ul>



Clause		Comment
	<p>(i) existing, safe access to and along the foreshore, beach, headland including persons with a disability,</p> <p>(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,</p> <p>(iii) the visual amenity and scenic qualities of the coast,</p> <p>(iv) Aboriginal cultural heritage, practices and places,</p> <p>(v) cultural and built environment heritage, and</p> <p>(b) is satisfied that:</p> <p>(i) the development is designed, sited and managed to avoid an adverse impact</p> <p>(ii) if that impact cannot be reasonably avoided the development is designed, sited and will be managed to minimise that impact, or</p> <p>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</p> <p>(c) has taken into account the coastal and built environment, and the bulk, scale and size of the proposed development.</p>	<ul style="list-style-type: none"> <li>– Is entirely consistent with the current use of the site, and would not affect public foreshore, beach, headland or rock platform access</li> <li>– Will not result in any additional overshadowing, or loss of views to and from the site as a result of its proposed residential use, as the site is already used for private residential uses (open space).</li> <li>– Will not alter the current visual amenity or scenic quality of the coast, as a result of its proposed residential use (open space) (no change)</li> <li>– Will not impact on any known aboriginal cultural heritage, practises or places</li> <li>– Will not detrimentally impact on the two heritage items in the vicinity as a result of the distance separating the two (Heritage Item - Fairy Bower Pool by approximately 40m and the Landscape Item - Ocean Foreshores by approximately 10m), and the intervening public walkway</li> <li>– Is consistent with the residential character of the area.</li> </ul>
<p>Development not to increase risk of coastal hazards (cl. 15)</p>	<p>Development consent must not be granted 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.</p>	<p>√ Consistent with these provisions, the Planning Proposal:</p> <ul style="list-style-type: none"> <li>– Will not likely cause an increased risk of coastal hazards, as the site has been used for residential uses for over 55+ years, and no works are proposed as part of any future DA on the site.</li> </ul>
<p>Development in coastal zone generally (cl. 16)</p>	<p>Development consent must not be granted unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.</p>	<p>√ Refer to Coastal Engineering Advice (<b>Appendix F</b>).</p>

**6. Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

YES

It is considered that the Planning Proposal is consistent with the relevant Directions issued under Section 9.1 the *Environmental Planning and Assessment Act 1979 (EP&A Act)* by the Minister to Councils, as demonstrated in the assessment at **Table 9**.

A more detailed response follows in relation to relevant directions.

**Table 9 – Consistency of Planning Proposal with Ministerial Directions**

Direction	Consistency	Comment
<b>1. Employment and Resources</b>	N/A	
<b>2. Environmental Heritage</b>		
2.1 Environmental Protection	Yes	The site does not contain any threatened/endangered species, populations or ecological community or their habitats. Refer to Planning Certificate ( <b>Appendix G</b> ).
2.2 Coastal Management	Yes	The consistency of the Planning Proposal with this direction is considered above.
2.3 Heritage Conservation	Yes	The consistency of the Planning Proposal with this direction is considered above.
<b>3. Housing, Infrastructure &amp; Urban Development</b>		
3.1 Residential Zones	Yes	The consistency of the Planning Proposal with this direction is considered above.
3.3 Home Occupations	Yes	The consistency of the Planning Proposal with this direction is considered above.
3.4 Integrating Land Use & Transport	Yes	The consistency of the Planning Proposal with this direction is considered above.
<b>4. Hazard and Risk</b>		
4.1 Acid Sulphate Soils	N/A	The site is located land identified as Acid Sulphate Soils Class 5 . The Planning Proposal does not seek to amend this development standard. The proposed future residential use of the site, will not be restricted by this.
4.3 Flood Prone Land	N/A	The site is not identified as Flood Prone Land.
<b>5. Regional Planning</b>	N/A	
<b>6. Local Plan Making</b>		
6.1 Approval and Referral Requirements	Yes	The Planning Proposal does not include any concurrence, consultation or referral provisions nor does it identify any development as designated development.
6.2 Reserving Land for Public Purposes	Yes	The consistency of the Planning Proposal with this direction is considered above.
6.3 Site Specific Provisions	N/A	The Planning Proposal does not include any site specific provisions.
<b>7. Metropolitan Planning</b>		
7.1 Implementation of A Plan for Growing Sydney	Yes	The Planning Proposal is consistent with A Metropolis of Three Cities as discussed above at question 3.

## Environment and Heritage - 2.2 Coastal Management Objective

This directions states:

### **Objectives**

- (1) *The objective of this direction is to protect and manage coastal areas of NSW.*
- (2) *This direction applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by the State Environmental Planning Policy (Coastal Management) 2018.*
- (3) *This direction applies when a planning proposal authority prepares a planning proposal that applies to land identified in (2) above.*
- (4) *A planning proposal must include provisions that give effect to and are consistent with:*
  - (a) *the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;*
  - (b) *the NSW Coastal Management Manual and associated Toolkit;*
  - (c) *NSW Coastal Design Guidelines 2003; and*
  - (d) *any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.*
- (5) *A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:*
  - (a) *within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018; or*
  - (b) *that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:*
    - (i) *by or on behalf of the relevant planning authority and the planning proposal authority, or*
    - (ii) *by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority.*
- (6) *A planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by the State Environmental Planning Policy (Coastal Management) 2018.*
- (7) *A planning proposal for a Local Environmental Plan may propose to amend the following maps, including increasing or decreasing the land within these maps, under the State Environmental Planning Policy (Coastal Management) 2018:*
  - (a) *Coastal wetlands and littoral rainforests area map;*
  - (b) *Coastal vulnerability area map;*
  - (c) *Coastal environment area map; and*
  - (d) *Coastal use area map.*

*Such a planning proposal must be supported by evidence in a relevant Coastal Management Program that has been certified by the Minister, or by a Coastal Zone Management Plan*

*under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.*

*Note: Under section 10(2) of the Coastal Management Act 2016, any provision of an LEP that identifies a coastal management area (or part of such an area) must not be made without the recommendation of the Minister administering the Coastal Management Act 2016.*

### **Consistency**

- (8) *A planning proposal may be inconsistent with the terms of this direction only if the planning proposal authority can satisfy the Secretary of the Department of Planning and Environment (or their nominee) that the provisions of the planning proposal that are inconsistent are:*
- (a) *justified by a study or strategy prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
  - (b) *in accordance with any relevant Regional Strategic Plan or District Strategic Plan, prepared under Division 3.1 of the Environmental Planning and Assessment Act 1979 by the relevant strategic planning authority, which gives consideration to the objective of this direction, or*
  - (c) *of minor significance*

In accordance with Direction 2.2 Section (5), a Planning Proposal must not rezone land which would enable increased development or a more intensive land-use on land within a coastal vulnerable area as identified by *SEPP Coastal Management 2018*, or on land identified by a current or future coastal hazard in a LEP or DCP, or a study or assessment.

As detailed above and within the accompanying Coastal Engineering Advice (**Appendix F**), the site is not identified as land affected by a current or future coastal hazard in *SEPP Coastal Management 2018*, Manly LEP 2013 or Manly DCP 2013. However, studies have been completed for Council in respect of Coastal Inundation (*Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study* completed in 2003) which identifies the site as generally affected by coastal inundation (but not specifically).

Therefore, the proposed change of zoning from Zone RE1 Public Recreation to Zone E4 Environmental Living is somewhat inconsistent to this Direction. However, in accordance with Direction 2.2 Section (8)(c) a Planning Proposal may be inconsistent with the terms of this direction if the matter is of minor significance. For the reasons outlined below, the proposed change of land zoning is considered of minor significance and is therefore consistent with the provisions of Direction 2.2:

- The site is reclaimed foreshore land, the majority of which was originally below the mean high water mark. The site has been reclaimed to a depth of several metres with imported material associated with surrounding residential development, public foreshore improvements and works authorised by the Crown.
- Since 1964, this small parcel of land has been continuously held under a Crown tenure, whereby the site was privately leased for the purpose of private residential occupation, to the various Lessees of the adjoining residential property (88 Bower Street, Manly) in the form of a Permissive Occupancy and Licence (No. 301336) for the purpose of lawn area, footpath, rockery and beautification. Whilst the proposed Zone E4 Environmental Living results in an intensification of permitted uses, there is no real material effect to the rezoning as the site has been used for residential purposes for more than 55 years.

- The site was considered surplus to public and government requirements by Crown Lands, and was disposed of on 28 August 2018, to the Archdiocese Trustees (the applicant and owner).
- Given its small size (being only 56.8m<sup>2</sup>), development of the site as a standalone block is severely constrained, and it is therefore considered to only be of value to the adjoining land holder (being the Archdiocese Trustees, the applicant).
- The use of the site for residential purposes does not restrict public access to the adjoining public recreation areas, and its residential occupation does not impact on the public's use and enjoyment of the adjoining beach reserves.
- The site is separated from the coast (Cabbage Tree Bay) by Manly Scenic Walkway, Crown Land held in tenure by Council. This piece of public infrastructure which includes a sea wall that is approximately 9m north of the site, which provides access to the foreshore and provides pedestrian access between Manly Beach and Shelly Beach. The site is therefore separated from the shoreline by a piece of public infrastructure and it is therefore in Councils' interest that this is suitably maintained and preserved. It also means that the site is not directly exposed to coastal inundation, due to the sea wall and current setbacks.
- The site is not identified by Manly LEP 2013 cl. 6.10 as Limited Development in the Foreshore Area. Accordingly, Council does not consider it necessary to limit or restrict certain types of development on the site even though it is close to the coast.
- The future residential use and lot consolidation does not necessitate any physical work. The Planning Proposal therefore does not result in any physical intensification of the site, as it is already appropriately improved and serviced to support its proposed (and current) residential use.
- No change to site access arrangements is proposed, with the primary street address and frontage to remain from Bower Street. The future lot consolidation will improve access to the site, which at present is isolated and can only be accessed from the walkway and not a public road.
- Any future DA to redevelop the amalgamated lot could be designed to have an acceptably low risk of being damaged by coastal processes and hazards over an acceptably long life, considering projected sea level rise, satisfying the aim of Manly LEP 2013 (as detailed within the Coastal Engineering Advice, **Appendix F**).
- Any future DA would be required to address with Manly LEP 2013 cl. 6.9 Foreshore Scenic Protection Area, which seeks to protect the visual aesthetic of the area and views to and from the foreshore.
- Any future DA would be required to comply with the current planning controls, in particular the Manly DCP 2013 rear setback control of 9m, which effectively precludes the site from being physically developed, meaning it will likely continue to only ever be used as private open space.
- Any future DA on the site would be required to address impacts associated with coastal inundation and management measures such as elevated floor levels, and/or wave runup 'trip' barriers could be adopted if deemed necessary.

Given the above, the Planning Proposal satisfies Direction 2.2(8) as the provisions of the planning proposal that are inconsistent are of minor significance.

## Environment and Heritage - 2.3 Heritage Conservation

This direction states:

### **Objective**

- (1) *The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. Where this direction applies*
- (2) *This direction applies to all relevant planning authorities. When this direction applies*
- (3) *This direction applies when a relevant planning authority prepares a planning proposal. What a relevant planning authority must do if this direction applies*
- (4) *A planning proposal must contain provisions that facilitate the conservation of:*
  - (a) *items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
  - (b) *Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and*
  - (c) *Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

### **Consistency**

- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:*
  - (a) *the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or*
  - (b) *the provisions of the planning proposal that are inconsistent are of minor significance. The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.*

The site is not identified as a heritage item and it is not located within a heritage conservation area. The following heritage items are in the vicinity of the site:

- Heritage Item No. I167 (Fairy Bower Pool)
- Landscape Item No. I168 (Ocean Foreshores).

The Planning Proposal is consistent with Direction 2.3 as follows:

- Any future residential use on the site will not detrimentally impact the scenic qualities of these two items for the following reasons:
  - A considerable distance separates the site from the items (Heritage Item - Fairy Bower Pool by approximately 40m and the Landscape Item - Ocean Foreshores by approximately 10m)
  - A public walkway separates the site from the items

- Like the existing and future use of the site, the existing character of the surrounding area is predominantly residential
- The site has been used for residential purposes for over 55 years and the Planning Proposal would regularise the zoning with this long standing use.

### Housing, Infrastructure and Urban Development - 3.1 Residential Zones

This direction states:

#### **Objectives**

- (1) *The objectives of this direction are:*
  - (a) *to encourage a variety and choice of housing types to provide for existing and future housing needs,*
  - (b) *to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
  - (c) *to minimise the impact of residential development on the environment and resource lands.*
- (2) *This direction applies to all relevant planning authorities.*
- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:*
  - (a) *an existing or proposed residential zone (including the alteration of any existing residential zone boundary),*
  - (b) *any other zone in which significant residential development is permitted or proposed to be permitted.*
- (4) *A planning proposal must include provisions that encourage the provision of housing that will:*
  - (a) *broaden the choice of building types and locations available in the housing market, and*
  - (b) *make more efficient use of existing infrastructure and services, and*
  - (c) *reduce the consumption of land for housing and associated urban development on the urban fringe, and*
  - (d) *be of good design.*
- (5) *A planning proposal must, in relation to land to which this direction applies:*
  - (a) *contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
  - (b) *not contain provisions which will reduce the permissible residential density of land.*

#### **Consistency**

- (6) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
  - (a) *justified by a strategy which:*
    - (i) *gives consideration to the objective of this direction, and*

- (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
- (iii) is approved by the Director-General of the Department of Planning, or*
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
- (c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
- (d) of minor significance.*

The Planning Proposal is consistent with Direction 3.1 as it:

- Supports a housing types on the amalgamated site
- Makes efficient use of the land, as the small site has little to utility as a standalone property
- Makes efficient use of existing infrastructure and services
- Provides for residential accommodation in an accessible location.

### **Housing, Infrastructure and Urban Development - 3.3 Home Occupations**

This directions states:

#### **Objective**

- (1) The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.*
- (2) This direction applies to all relevant planning authorities.*
- (3) This direction applies when a relevant planning authority prepares a planning proposal.*
- (4) Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.*

#### **Consistency**

- (5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.*

The Planning Proposal is consistent with Direction 3.3 as the proposed Zone E4 - Environmental Living permits home occupation without development consent.



### Housing, Infrastructure and Urban Development - 3.4 Integrating Land Use and Transport

This direction states:

#### **Objective**

- (1) *The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:*
  - (a) *improving access to housing, jobs and services by walking, cycling and public transport, and*
  - (b) *increasing the choice of available transport and reducing dependence on cars, and*
  - (c) *reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and*
  - (d) *supporting the efficient and viable operation of public transport services, and*
  - (e) *providing for the efficient movement of freight.*

#### **Where this direction applies**

- (2) *This direction applies to all relevant planning authorities.*

#### **When this direction applies**

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. What a relevant planning authority must do if this direction applies*
- (4) *A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:*
  - (a) *Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and*
  - (b) *The Right Place for Business and Services – Planning Policy (DUAP 2001).*

....

The Planning Proposal is consistent with Direction 3.4 and the aims, objectives and principles of *Improving Transport Choice – Guidelines for planning and development (DUAP 2001)* and *The Right Place for Business and Services – Planning Policy (DUAP 2001)* as it will facilitate:

- A residential use that is within 1km walk of an existing mass transit node (Manly Wharf), providing efficient access to jobs, health services etc
- A residential use within a walkable catchment to a Town Centre (Manly) (500m), reducing car dependence.

## Local Plan Making - 6.2 Reserving Land for Public Purposes

This directions states:

### **Objectives**

- (1) *The objectives of this direction are:*
  - (a) *to facilitate the provision of public services and facilities by reserving land for public purposes, and*
  - (b) *to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.*
- (2) *This direction applies to all relevant planning authorities.*
- (3) *This direction applies when a relevant planning authority prepares a planning proposal.*
- (4) *A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).*
- (5) *When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must:*
  - (a) *reserve the land in accordance with the request, and*
  - (b) *include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and*
  - (c) *identify the relevant acquiring authority for the land.*
- (6) *When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must:*
  - (a) *include the requested provisions, or*
  - (b) *take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired.*
- (7) *When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.*

### **Consistency**

- (8) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:*
  - (a) *with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or*
  - (b) *the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.*

The Planning Proposal is consistent with Direction 6.2 as:

- The site was considered surplus to public and government requirements
- Correspondence was forwarded to Council (Manly Council) advising of the proposed future sale of the Crown Land. No correspondence was received from Council regarding its interest or objection to the sale of the site
- There are no Aboriginal Land Claims registered
- The use of the site for residential purposes will not restrict public access to the remainder of the crown land contained within Reserve 31732 for Public Recreation and Reserve 1028748 for surfing recreation. Even if ungated the site, being a small triangular area does not lead anywhere and offers no public amenity
- The site has been occupied by private persons since 1964 as a backyard, lawn, garden area. As such it is unlikely to be perceived as a public land use due to the long term occupation
- The use of the site for residential purposes does not impact on the public's use and enjoyment of the adjoining reserves
- The potential for multiple uses of the site if any ever existed, ceased with the enclosure of the site in 1964 as a backyard area for the adjoining property (88 Bower Street, Manly)
- The site is not required for access to the waterway, recreation areas, or for scenic protection, re-vegetation or soil conservation purposes.

#### Metropolitan Planning - 7.1 Implementation of A Plan for Growing Sydney

This directions states:

##### **Objective**

- (1) *The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.*

##### **Where this direction applies**

*This direction applies to land comprising of the following local government areas:*

*...Manly....*

##### **When this direction applies**

- (3) *This direction applies when a Relevant Planning Authority prepares a planning proposal. What a Relevant Planning Authority must do if this direction applies*
- (4) *Planning proposals shall be consistent with:*
- (a) *the NSW Government's A Plan for Growing Sydney published in December 2014.*

As detailed above in response to question 3, the Planning Proposal is consistent with the relevant goals, directions, actions and priorities for *A Metropolis of Three Cities and Shape 2028 Northern Beaches SCP 2017 - 2028*.

### C. Environmental, social and economic impact

*7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

NO.

The small site is urbanised (containing lawn, path, rockery and fencing) and does not accommodate any threatened flora or fauna species or threatened species habitat.

Refer to Planning Certificate (**Appendix G**) which states the following:

9A. *Biodiversity certified land*

*The land is not biodiversity certified land under Part 8 of the Biodiversity Conservation Act 2016 (includes land certified under Part 7AA of the repealed Threatened Species Conservation Act 1995).*

10. *Biodiversity Stewardship Sites*

*The Council has not been notified by the Chief Executive of the Office of Environment and Heritage that the land is a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the Biodiversity Conservation Act 2016 (includes land to which a biobanking agreement under Part 7A of the repealed Threatened Species Conservation Act 1995 relates).*

10A. *Native vegetation clearing set asides*

*Council has not been notified by Local Land Services of the existence of a set aside area under section 60ZC of the Local Land Services Act 2013.*

The site is however identified in Manly LEP 2013 as containing "Terrestrial Biodiversity", with the entire North Head mapped as an area of environmental significance.

In accordance with Manly DCP 2013, an assessment of significance (also known as a 7-part test) is to be undertaken in accordance with Section 1.7 of the EP&A Act if a future DA is likely to impact the Long Nose Bandicoot or Little Penguin colonies in the area.

Given the site's existing residential use, its exposed location, small size and form (comprising lawn, path, rockery); the site is not expected to provide a suitable habitat for the Long-nosed Bandicoot or Little Penguin. The species are unlikely to utilise the site for breeding or nesting habitat as the vegetation present lacks vegetation that could provide adequate cover and refuge. Individuals may utilise the site periodically as part of a larger foraging range, but no individuals are likely to be dependent on the site for their long-term survival in the locality.

Therefore, the future residential use and amalgamation (the same as the present conditions) are unlikely to have a significant impact on the two populations and a Species Impact Statement is not considered necessary.

*8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?*

Heritage and Coastal Management have been considered above.

The following item is yet to be considered:

Traffic

The adjoining land at 88 Bower Street currently accommodates four (4) on site car spaces to service the *dual occupancy (attached)* on its site. The Planning Proposal and subsequent lot consolidation will not trigger the need for any additional parking on the combined site.

Further, the Planning Proposal and subsequent lot consolidation will facilitate direct road access to the site to Bower Street, where currently there is none.

*9. Has the planning proposal adequacy addressed any social and economic effects?*

YES.

The purpose of the Planning Proposal is to enable the orderly use of the site for residential purposes in connection with the adjoining residential property at 88 Bower Street Manly, as a result of its recent disposal from Crown Lands.

Given the site's small size (being only 56.8m<sup>2</sup>), its development as a standalone block is severely constrained, and it is therefore considered to only be of value to the adjoining land holder (being the Archdiocese Trustees, the applicant).

*10. Is there adequate public infrastructure for the planning proposal?*

YES.

The site is serviced by water, electricity, sewer, telecommunications and stormwater.

The Planning Proposal and future DA will not require any new or additional services to support the site and proposal.

*11. What are the views of state and Commonwealth authorities consulted in accordance with the Gateway determination?*

Details of any required state and Commonwealth consultation will be set out in the Gateway Determination.

#### **PART 4 – MAPPING**

This section contains the mapping for this Planning Proposal in accordance with the DPIE's guidelines on LEPs and Planning Proposals. In summary, the Planning Proposal Mapping proposes the following changes:

- Land use zoning map (LZN\_006): Amend the zoning of the site from Zone RE1 Public Recreation to Zone E4 Environmental Living (**Figures 10 and 11**)
- Minimum lot size map (LSZ\_006): Introduce a 500m<sup>2</sup> minimum lot size standard for the site (no existing lot size standard applies to the site) (**Figures 14 and 15**)
- Height of building map (HOB\_006): Introduce an 8.5m height standard for the site (no existing height standard applies to the site) (**Figures 12 and 13**)
- Floor space ratio map (FSR\_006): Introduce an 0.45:1 floor space ratio standard for the site (no existing FSR standard applies to the site) (**Figures 16 and 17**)

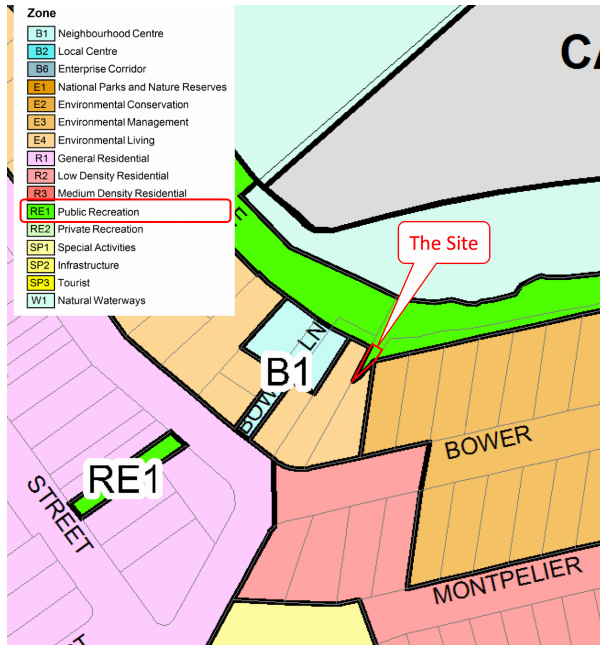


Figure 10 – Extract of Manly LEP 2013 Land Use Zoning Map (LZN\_006) Zone - RE1 Public Recreation

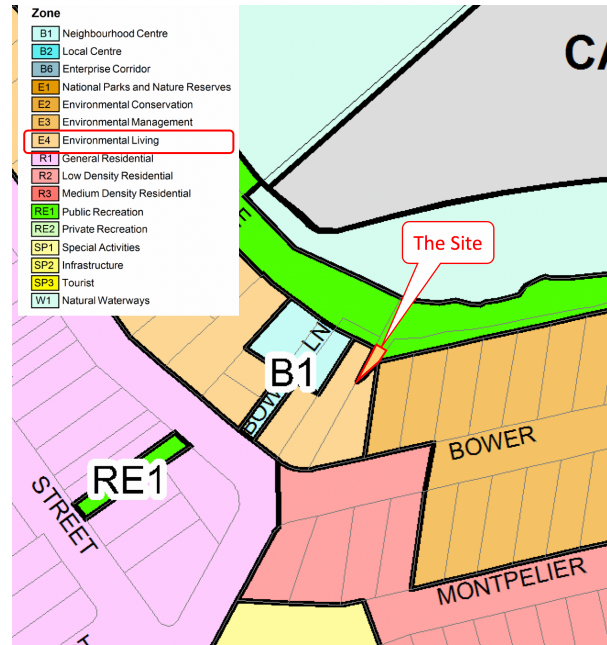


Figure 11 – Proposed Manly LEP 2013 Land Use Zoning Map (LZN\_006) Zone - E4 Environmental Living

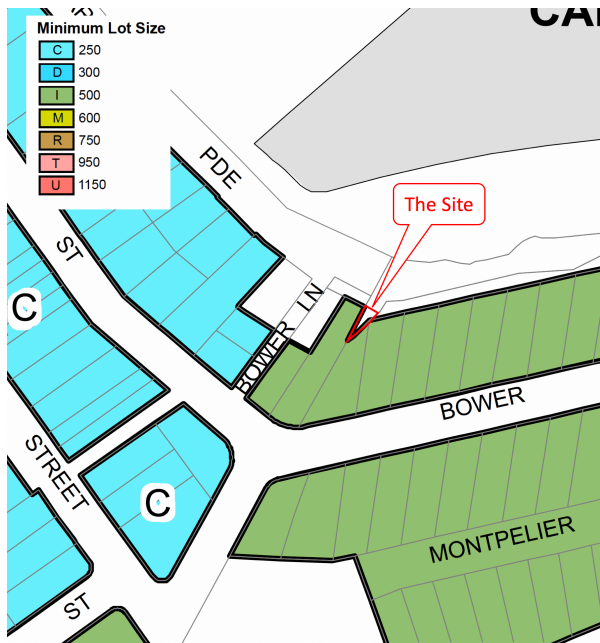


Figure 12 – Extract of Manly LEP 2013 Minimum Lot Size Map (LSZ\_006) - No Minimum Lot Size

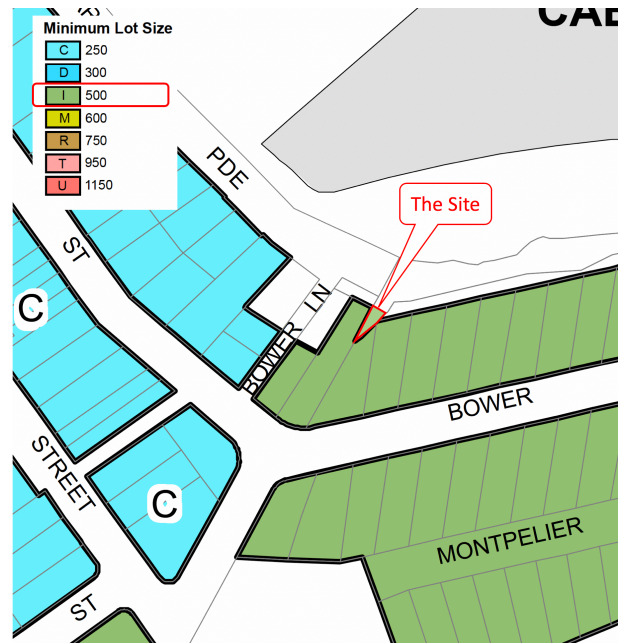


Figure 13 – Proposed Manly LEP 2013 Minimum Lot Size Map (LSZ\_006) - 500m<sup>2</sup> Minimum Lot Size

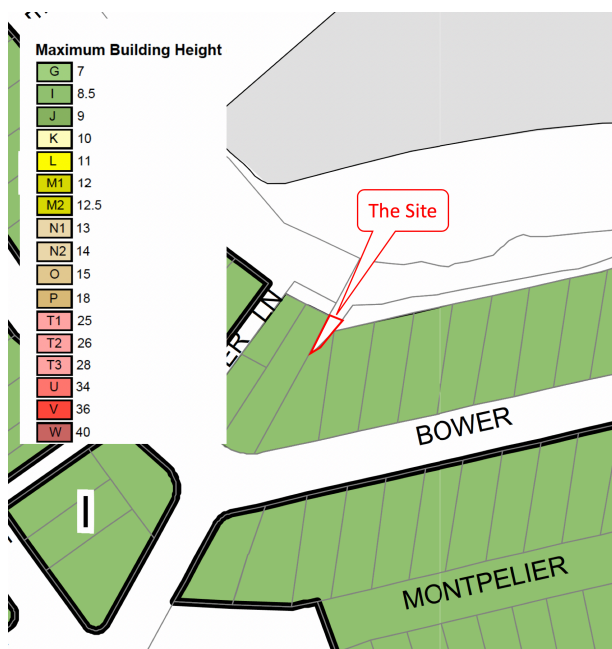


Figure 14 – Extract of Manly LEP 2013 Height of Building Map (HOB\_006) - No Maximum Building Height

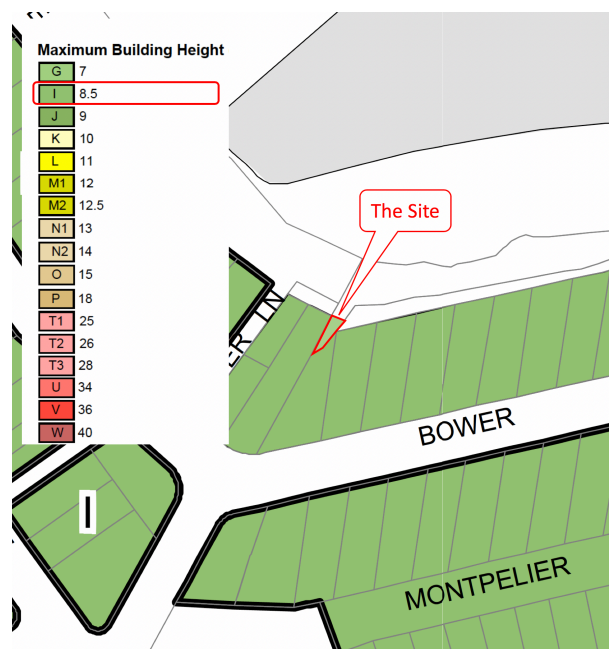


Figure 15 – Proposed Manly LEP 2013 Height of Building Map (HOB\_006) - 8.5m Maximum Building Height

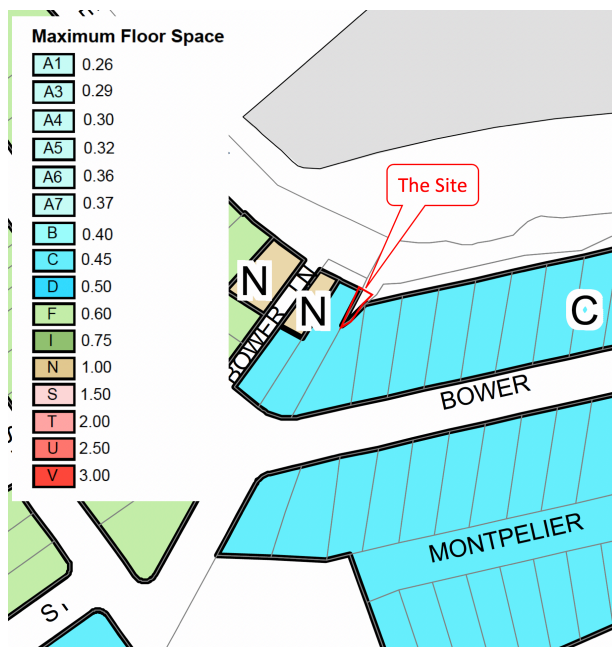


Figure 16 – Extract of Manly LEP 2013 Floor Space Ratio Map (FSR\_006) - No FSR

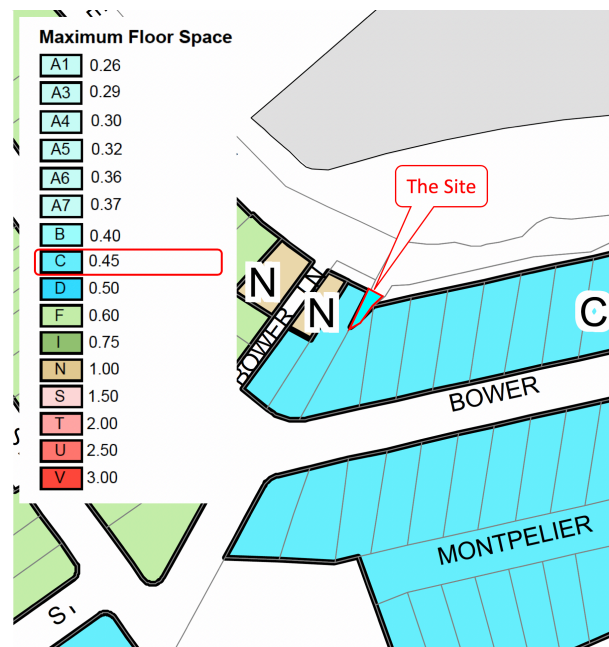


Figure 17 – Proposed Manly LEP 2013 Height of Building Map (FSR\_006) - 0.45:1 FSR



## PART 5 – COMMUNITY CONSULTATION

Exact details of the required community consultation will be specified in the Gateway Determination. It is, however, expected that the Planning Proposal will be exhibited for a period of 14 days in accordance with section 5.5.2 of *A guide to preparing local environmental plans*.

At this stage, public exhibition of the Planning Proposal is likely to be undertaken in the following manner:

- Notification in a newspaper that circulates in the area affected by the Planning Proposal
- Notification on Council’s website
- Display of exhibited material at Council’s Administration Building
- Notification in writing to affected and adjoining landowners.

## PART 6 – PROJECT TIMELINE

An indicative timeline for the Planning Proposal is set out below at **Table 10**, suggesting that the instrument could be made within 12 months:

**Table 10 – Planning Proposal timeline**

Stage	Estimated date
Submission of Planning Proposal to Council	August 2020
Estimated referral to Minister for review of Gateway determination	November 2020
Estimated Gateway Determination	December 2020
Estimated Completion of Required Studies (if any required)	January 2021
Estimated pre exhibition Government Agency Consultation	February 2021
Estimated commencement of Public Exhibition Period	March 2021
Estimated completion of Public Exhibition Period	May 2021
Estimated timeframe for consideration of submissions	June 2021
Estimated timeframe for consideration of proposal post exhibition report to Council	July 2021
Submission to the Department to finalise the LEP	August 2021
Notification of instrument	August 2021

#### 4.0 Conclusion

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The site, which is small in size (56.8m<sup>2</sup>) with an odd shape, is ideally situated to accommodate residential uses in connection with the adjoining residential property at 88 Bower Street. As the site is in private ownership, and enveloped by residential land.

Accordingly, the following maps to Manly LEP 2013 are proposed to be amended:

- Land use zoning map (LZN\_006): Amend the zoning of the site from Zone RE1 Public Recreation to Zone E4 Environmental Living
- Minimum lot size map (LSZ\_006): Introduce a 500m<sup>2</sup> minimum lot size standard for the site (no existing lot size standard applies to the site)
- Height of building map (HOB\_006): Introduce an 8.5m height standard for the site (no existing height standard applies to the site)
- Floor space ratio map (FSR\_006): Introduce an 0.45:1 floor space ratio standard for the site (no existing FSR standard applies to the site).

Given the merit of the Planning Proposal, it is commended to Council for endorsement and forwarding to the DPIE for a gateway determination.