

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0080
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<b>Responsible Officer:</b>	Danielle Deegan
<b>Land to be developed (Address):</b>	Lot 21A DP 350345, 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned E3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Luke Anthony Randell Carol Ann Randwell
<b>Applicant:</b>	Chrofi

<b>Application lodged:</b>	01/02/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	05/02/2019 to 21/02/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 2,225,000.00
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### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

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

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

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 21A DP 350345 , 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the eastern side of Beatty Street.</p> <p>The site is irregular in shape with a frontage of 12.725m along Beatty Street and a depth of 52.2m (northern boundary) and 51.36m (southern boundary).</p> <p>The site has a surveyed area of 789m<sup>2</sup>.</p> <p>The site is located within the E3 Environmental Management zone and accommodates a two storey dwelling house of brick construction with a metal roof, located toward the eastern (harbour) end of the allotment. There is a two storey garage/studio structure at the street frontage. An inclinometer runs along the southern boundary from street level to the rear of the dwelling. There are also stairs from street level to the garden area below.</p> <p>The site slopes steeply from Beatty Street down to Forty Baskets Reserve, with the majority of the change in level occurring on the western portion of the site whilst the eastern portion, containing the existing dwelling house, is relatively flat. The total fall is approximately 15.8m.</p> <p>The site is heavily vegetated between the garage and the dwelling house, primarily with exotic tree species.</p>

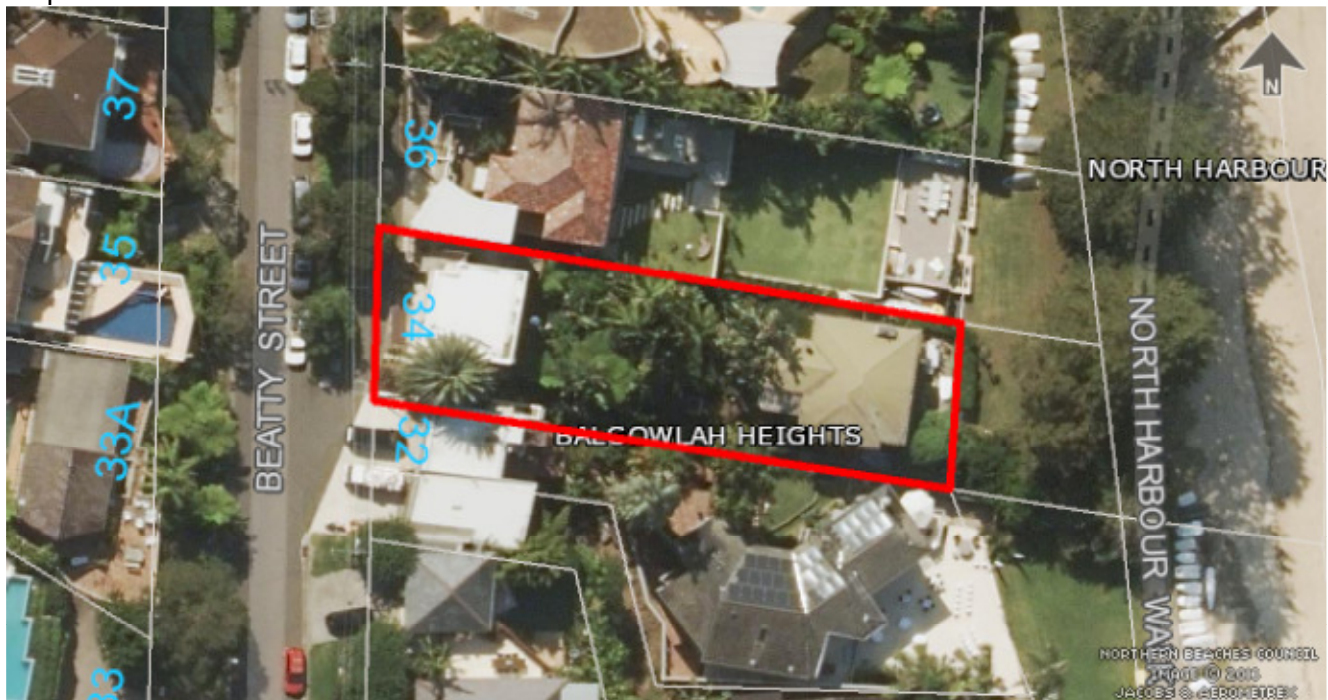
The property has an easement for services and a drainage easement running along the southern boundary. There is also a sewer pipe traversing the site.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining the site to the east is Forty Baskets Reserve, beach and swimming baths.

The surrounding area is characterised by large multi-level dwellings in landscaped settings. Sydney Harbour National Park is situated 200m to the south of the site and Welling Reserve is situated 120m to the north of the site, with both areas of public open space containing bushland.

Map:



## **SITE HISTORY**

### **Pre-lodgement Meeting (PLM2018/0224)**

On 15 November 2018, the development was the subject of a Pre-lodgement meeting. Issues discussed include; non-compliant FSR, inadequate side setbacks, flooding and the stormwater easement traversing the site. It was advised that the proposal presented was not acceptable and required redesign prior to submission, particularly to include a greater side setback to the north as well as further analysis of potential amenity impact and response to this if required.

### **Relevant Applications:**

On 24 July 2011, Development Application No. 10.2011.189.1 for alterations and additions to an existing dwelling including ground and first floor extension, front second floor addition, swimming pool, cabana and landscaping was approved.

On 15 March 2016, Modification Application No. 10.2011.189.2 to modify approved development (changes to windows and doors, new first floor side terrace, pool level, terrace size, roof pitch, inclusion of rear detached outbuilding and modification to roof) was approved.

The above DA has been activated. A Construction Certificate (CC) was issued for demolition and a shed was demolished in accordance with the CC.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal is for substantial alterations and additions to a dwelling-house including a new swimming pool.

In detail, the proposal comprises of:

- Demolition works including the removal of internal walls within the dwelling house, removal of the western wall and western wing, removal of the inclinator
- Excavation (for lift corridor and rear of dwelling) toward the western end of the site and fill toward the eastern end of site, adjacent to reserve
- Construction of a lift-shaft adjacent to the existing garage
- Additions to the dwelling house resulting in the following:
  - (i) Ground floor: living area, kitchen, central courtyard, bathroom, lift-well, subterranean carport
  - (ii) First floor: master bedroom suite, 3 x bedrooms, 4 bathrooms
  - (iii) Second floor: living area with east-facing balcony
- Construction of a swimming pool, located to the rear of the dwelling house
- A boat storage area with gate access to the adjoining reserve
- Sandstone/steel palisade fencing to the adjoining reserve
- Landscaping works

The existing garage/studio structure, front gates, pedestrian entry, landing and external stairs at street level will all be retained.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any development control plan	None applicable.

Section 4.15 Matters for Consideration'	Comments
any planning agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have an acceptable social impact in the locality considering the character of the proposal.</p>



Section 4.15 Matters for Consideration'	Comments
	<p>(iii) <b>Economic Impact</b></p> <p>The proposed development will have an acceptable economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

A Bushfire Report was submitted with the application which confirms the proposal will comply with the provisions of Planning for Bushfire Protection and does not require referral to the NSW RFS.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Wanda Szychowska	258 Sydney Road BALGOWLAH NSW 2093
Lockrey Planning And Development Solutions Pty Ltd	

The following issues were raised in the submissions:

- **Documentation inconsistencies / inadequate information**
- **Excessive height, bulk and scale**
- **Vegetation retention/removal**
- **Visual privacy impacts**
- **Acoustic impacts**
- **Construction impacts**
- **Stormwater management**

The matters raised within the submissions are addressed as follows:

- **Consistencies/accuracy of documentation with regards to total open space, landscaped area and solar screen**

Comment:

There were some minor inconsistencies/inaccuracies identified between the Statement of Environmental Effects and the landscape plan. The applicant has submitted revised calculations which demonstrate that the proposal complies with the MDCP requirements for total open space and landscaped area. In addition, a floor space ratio calculation diagram has been submitted which verifies that the FSR has been calculated correctly.

The solar screen on the first floor level is set back 8.1 metres from the northern boundary, which will mitigate any potential impacts arising from this structure. The screen is a requirement of the BASIX Certificate.

- **Excessive height, bulk and scale resulting in unacceptable visual impacts**

Comment:

In the context of the surrounding development, as well as the previously approved DA for the site which allows a greater height and FSR than that proposed, the proposed height, bulk and scale are reasonable and acceptable. The non-complying building height and FSR are addressed in the Clause 4.6 section in this report.

Relevantly, it is noted that 36 Beatty Street has an approved height of 12.54m and floor space ratio of 0.54:1 (as per Council's assessment report), both of which exceed the subject proposal which has a height of 9.14m and floor space ratio of 0.53:1. This property also displays non-compliances with regards to wall height and side boundary setbacks.

A comparison of levels demonstrates that the height of the proposed additions is not excessive. The proposed upper level rumpus room floor (RL9.81) is 1.06 metres lower than the ground floor of 36 Beatty Street (RL 10.87). The rumpus room roof (RL 12.898 ridge) is below the level of the top of the ground floor windows of 36 Beatty Street (RL 13.0) which will ensure that all existing views from the two uppermost levels of 36 Beatty Street are retained over the top of the building. It is noted that there have been no view loss objections made.

The proposal is assessed as having an acceptable visual impact and is sympathetic to immediately adjoining property and the character of the area. The proposal maintains the character of the area by retaining the existing dwelling house and its low pitched roof with wide eaves and proposing a complementary pavilion style extension with a similar character.

- **Concerns regarding retention of vegetation given major site disturbance**

Comment:

Council's Landscape Designer has reviewed the landscape plans and Arboricultural Assessment and is supportive of the proposal. Recommended conditions of consent will require the retention

of Tree 1 and will ensure appropriate tree protection measures during construction.

- **Visual privacy concerns regarding northern elevation**

Comment:

Adequate levels of privacy are maintained between the dwellings.

- **Request that all mechanical plant be located within acoustically attenuated structures**

Comment:

A recommended condition of consent will require all mechanical plant be located within acoustically attenuated structures.

- **Request for a dilapidation report due to substantial excavation**

Comment: A recommended condition of consent will require the preparation of a dilapidation report for both adjoining properties.

- **Request for a construction management plan**

Comment:

The preparation of a construction management plan is not assessed as necessary for this proposed development.

- **Concerns raised regarding Asbestos removal and demolition impacts**

Comment:

Recommended conditions of consent will require compliance with Australian Standards for demolition and asbestos disposal.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping.</p>





Internal Referral Body	Comments
	<p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment is provided with the application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>Twenty one (21) trees and/or palms are assessed within the site under this development proposal which consist of seventeen (17) non-prescribed exempt species.</p> <p>Non-prescribed species being undesirable trees, palms or trees less than 5m in height are identified as trees T1, 2, 3, 4, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 &amp; 20, with several small trees and shrubs scattered throughout the rear yard. Exempt species are permitted to be managed (pruned, removed or relocated) without Council consent. One (1) exempt species, identified as T1 - Canary Island Palm, is considered to provide landscape amenity and shall be conditioned to the retained and protected.</p> <p>The remaining prescribed trees, identified as T5 - Tree Fern, T6 - Tree Fern, T8 - Frangipani, and T21 - Strawberry Tree, are impacted by the proposal as assessed in the arboricultural assessment &amp; development impact report, and shall be removed and replaced with suitable native tree planting.</p>
NECC (Bushland and Biodiversity)	The proposed development has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The subject site is previously modified with limited remnant native vegetation and wildlife habitat. It is considered that, subject to conditions of consent including those recommended by Council's Senior Landscape Architect, the proposal is consistent with the objectives of the clause.
NECC (Coast and Catchments)	<p>The application has been assessed for impacts to the Coastal Environment and impacts from the Coastal Environment. The following documents have been considered; the Sydney Harbour Regional Environment Plan 2005, Manly LEP and Manly DCP and Identification of Coastal Hazard Risk Areas to Projected Sea Level Rise for the Manly Local Government Area (WRL, 2012)</p> <p>It has been determined the proposed development will not have a significant impact subject to conditions being applied.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is designed generally in alignment with Council's DCP and LEP. The proposal is recommended to approval subject to conditions.
Parks, reserves, beaches, foreshore	Approval subject to conditions.

External Referral Body	Comments
DA2019/0080	

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A336749, dated 11 January 2019). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

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

The subject property is located within the Foreshores and Waterways Area, therefore the provisions of this plan apply to the development.

An assessment of the proposal against the following clauses has been undertaken:

- Clause 2(2) (aims of the SREP)
- Clause 14 (nominated planning principles)
- Clause 22 (relating to public access to and use of foreshores and waterways)
- Clause 23 (relating to maintenance of a working harbour)
- Clause 24 (relating to interrelationship of waterway and foreshore uses)
- Clause 25 (relating to foreshore and waterways scenic quality)
- Clause 26 (relating to maintenance, protection and enhancement of views)
- Clause 27 (relating to boat storage facilities)

The proposal is considered to be consistent with the above provisions of the SREP.

**SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

**13 Development on land within the coastal environment area**

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

- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposal will not result in adverse impacts on the issues identified in (a) to (g)

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

Comment:

The proposal is consistent with this Clause.

#### **14 Development on land within the coastal use area**

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

Comment:

The proposal will not unreasonably impact the coastal use area.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

#### **15 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the

consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal is unlikely to cause increased risk of coastal hazards. The application has been referred to Council's Coastal Officer who raises no objections to the proposal.

### Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.14m	7.5%	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.53:1	32.5%	No

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	N/A
6.12 Essential services	Yes

### Detailed Assessment

#### 4.3 Height of buildings

The majority of the building complies with the building height control in clause 4.3(2) of MLEP 2013. However, a small part of the south-eastern corner of the roof over the rumpus room exceeds the height control. The maximum building height is 9.14 metres, measured from the south-western corner of the roof (RL12.338) over a spot level of RL3.20 shown on the survey. The variation to the building height development standard is therefore calculated at 7.5%.

A written request to vary the building height development standard under Clause 4.6 of the MLEP 2013 has been submitted with the application. This request is addressed below.

#### 4.4 Floor space ratio

The building has a floor space ratio (FSR) of 0.53:1, which exceeds the maximum FSR of 0.4:1 permitted under clause 4.4(2) of MLEP 2013. The variation to the FSR development standard is calculated at 32.5%.

A written request to vary the building height development standard under Clause 4.6 of the MLEP 2013 has been submitted with the application. This request is addressed in below.

#### 4.6 Exceptions to development standards

##### Description of Non-compliances:

Development standard:	<b>Height of Buildings</b>
Requirement:	8.5m
Proposed:	9.14m
Percentage variation to requirement:	7.5%
Development standard:	<b>Floor Space Ratio</b>
Requirement:	0.4:1
Proposed:	0.53:1
Percentage variation to the requirement:	32.5%

##### Assessment of request to vary a Development Standard

The following assessment of the variations to Height of Buildings and Clause 4.4 - Floor space ratio development standards, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

##### Clause 4.6 Exceptions to Development Standards

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

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

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

##### Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards are not expressly excluded from the operation of this clause.



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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

#### **Clause 4.6 (4)(a)(i) (Justification) Assessment**

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

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

##### Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standards are achieved, notwithstanding the non-compliance with the development standards.

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

***(b) that there are sufficient environmental planning grounds to justify contravening the development standards***

##### Comment:

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

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the*

s 1.3 of the EPA Act reads as follows:

#### **1.3 Objects of Act(cf previous s 5)**

*The objects of this Act are as follows:*

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

### **Applicants Written Request**

The applicants written request argues, in part:

- The variation to the development standards does not reduce the amenity of other dwellings in the vicinity of the site or the public domain but results in significantly enhanced amenity for the proposed dwelling house in terms of the spaciousness of the living areas.
- The variation to the development standards does not result in unreasonable overshadowing.
- The variation to the development standards does not result in additional impacts on the streetscape as the existing streetscape presentation is maintained.
- The form of the development, its appearance and its size is entirely consistent with the existing character of the area which comprises of large dwelling houses in landscaped settings orientated towards the views of the adjacent waterway.

The reasons provided by the applicant are supported. The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the development standards.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment**

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

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings and Floor space ratio development standards and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

#### **Objectives of Development Standards**

##### **(i) CLAUSE 4.3 - HEIGHT OF BUILDINGS**

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

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

#### Comment:

The maximum building height of the proposed dwelling house is less than that of its neighbours. No 36 Beatty Street has a building height of 12.54 metres (refer to the Assessment Report for DA 315/2015) and 32 Beatty Street has a building height of approximately 11m (roof ridge RL 11.48 over ground level of approximately RL3.48). This can be compared with the proposed building height of 9.14m, which is 1.8 - 3.4 metres less than its neighbours.

The proposed roof form is consistent with the locality which includes a variety of roof forms e.g. flat roofs, pitched roofs and hipped roofs.

The proposal follows the topography of the land, stepping up the site from east to west.

There is no impact on the streetscape as the existing garage and front entrance are maintained.

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

#### Comment:

The majority of the proposal is compliant with the building height control, with the variation sought for a small corner of the proposed rumpus room.

The proposed development demonstrates high architectural merit, incorporating

façade articulation and fenestration to break up the bulk and reduce the perceived scale of the building. Furthermore, the building is composed of a number of separate elements; the existing house, the new western wing and the garage/studio. These distinct building elements assist in reducing the bulk and scale of the building.

*c) to minimise disruption to the following:*

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

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

*(iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed development will have an acceptable visual impact when viewed from the harbour and surrounding foreshore areas. The proposed development will result in the reasonable view sharing of views. In particular, the proposal provides for a more considerate and equitable outcome than that which was previously approved by Council (DA 189/2011).

The proposal does not result in any disruption to views between public spaces.

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

Comment:

The proposal retains solar access to neighbouring properties in excess of the requirements of the MDCP 2013. The proposal does not result in any additional overshadowing of the adjoining reserve.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The proposal retains the majority of the existing vegetation on site. The four prescribed trees that are proposed to be removed have been assessed in the Arboricultural Impact Assessment (prepared by RainTree Consulting). Council's Landscape Officer requires that one exempt tree, T1 - Canary Island Date Palm, provides landscape amenity and is to be retained. The proposal includes additional landscaping which will soften its appearance. The proposal does not result in any conflicts with bushland or surrounding land uses.

## (ii) CLAUSE 4.4 - FLOOR SPACE RATIO

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The proposal has minimal impact on the streetscape character of the area. The presentation to the street is largely unchanged with the exception of the lift-shaft and entry.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

The density of the development complies with the relevant controls in the MDCP 2013. As discussed above, the bulk is consistent with that envisaged by the built form controls applying to the land. The proposal will not obscure any significant landscape or townscape features.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

As discussed above, the proposal has a building height that is lower than that of its immediate neighbours. The proposal is compatible with surrounding development.

The character of development in Beatty Street in the vicinity of the site comprises of large dwelling houses. Council recently approved the demolition of all existing structures and the construction of a new dwelling house at 38 Beatty Street with a greater floor space ratio than that which is proposed (0.54:1, DA 2017/1218). The proposal includes additional landscaping to ensure that an appropriate relationship is maintained with the landscaped setting.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

The proposed development will have minimal adverse environmental impacts on adjoining land and the public domain.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

This objective is not relevant to the proposed development.

## **Objectives of the Zone**

The underlying objectives of the E3 Environmental Management zone are addressed below:

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

Comment:

The proposal includes measures to address stormwater run-off and potential erosion and sedimentation. It is connected to reticulated sewerage to manage pollution impacts. Impacts on existing trees are assessed in the Arboricultural Impact Assessment by RainTree Consulting.

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

Comment:

Dwelling houses are a permissible type of development in the E3 zone. The proposed development will be managed in accordance with the documentation submitted with the development application and conditions of consent in order to achieve this objective.

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

Comment:

Dwelling houses are a permissible type of development in the E3 zone. A dwelling house by its nature is a residential use which has low impact.  
The proposal will enhance the tree canopy in accordance with the landscape plan.

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

Comment:

Subject to recommended conditions of consent requiring appropriate site management during construction, the proposal will have no impact on nearby foreshore areas. Vegetation loss is minimal (4 prescribed trees) and offset by additional planting. The Geotechnical Report by White Geotechnical Group demonstrates that impacts on geological features can be managed appropriately.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The site will have no impact on the nearby foreshore subject to appropriate construction management controls. Measures are proposed to control stormwater runoff.

-

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

Comment:



As discussed above, the height and bulk of the building are considered to be appropriate for the site in the context of neighbouring development of a similar or greater bulk and scale.

#### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

#### **Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment**

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings and Floor space ratio Development Standards is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

#### **6.4 Stormwater management**

The site is not a flood control lot. The site is identified in the Draft Manly to Seaforth Flood Study as being subject to flooding. A Flood Risk Management Report has been prepared by NB Consulting Engineers and forms part of the development proposal, demonstrating compliance with the requirements of clause 6.3(3) of MLEP 2013. The report concludes:

*"The proposed development is not envisaged to have an adverse effect on surrounding proper information have been adopted for this assessment. The proposed development generally meets*

Stormwater will be disposed of in accordance with the plans and details prepared by NB Consulting Engineers. These plans will form part of the approval documents.

#### **6.5 Terrestrial biodiversity**

The site is identified as being affected on the Terrestrial Biodiversity Map. The impact of the proposal on local flora and fauna is assessed in the Terrestrial Biodiversity Impact Assessment report by GIS Environmental Consultants. This report concludes:

*"The proposal will not have a significant impact to terrestrial biodiversity and meets the requirement of clause 6.5 of the MLEP 2013.*

*We recommend that ameliorative conditions and management recommendations in this report be followed to reduce disturbance during construction and to improve ecological outcomes."*

#### **Manly Development Control Plan**

#### Built Form Controls

<b>Built Form Controls - Site Area: 789m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 1/1150m <sup>2</sup> per dwellings	1/798m <sup>2</sup> per dwelling	N/A	Yes
4.1.2.1 Wall Height	7.2m (north)	7.5m (north)	N/A	<b>No</b>
	7.5m (south)	6.1m (south)	N/A	Yes
4.1.2.2 Number of Storeys	2	part 2/part 3	N/A	<b>No</b>
4.1.2.3 Roof Height	Height: 2.5m	700mm	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line/6.0m	Nil (existing garage)	N/A	N/A
		21.1m (proposed dwelling)	N/A	Yes
4.1.4.2 Side Setbacks (dwelling)	1.7m - 2.5m (north) 1.1m - 2.0m (south)	1m - 2.2m (north) 1.525m - 3.22m (south)	N/A	<b>No</b> Yes
4.1.4.2 Side Setbacks (lift shaft)	2.4m (south)	1.5m	N/A	<b>No</b>
4.1.4.4 Rear Setback	8.0m	4.5m - 5.3m	N/A	Existing
4.1.5.1 Total Open Space Requirements: OS4	Open space 60% of site area	73.4%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 24% of open space	24%	N/A	Yes
	3 native trees	15 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	> 18sqm	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	at finished ground level	N/A	Yes
	1m curtilage/1.5m water side setback	1m north side	N/A	No
Schedule 3 Parking and Access	2 spaces	2 spaces	N/A	Yes

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

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

### **Wall Height**

The southern façade of the dwelling house fully complies with the wall height control. The majority of the northern facade of the dwelling house also complies with a small area of localised breach on the northern façade of the building. The proposal exceeds the northern wall height requirement by a maximum of 0.3m.

The proposed lift-shaft also exceeds the wall height control on its southern and eastern elevations. Given the location of this element immediately adjacent the existing garage, the non-compliance is acceptable as it will be visually consistent with the adjoining structure.

The variation to the wall height control is acceptable for the development as the variation is minimal and the proposal will detract from the amenity of the adjoining neighbours.

### **Number of Storeys**

The proposed development will be primarily two storeys in height with a small section of three storeys where the upper level rumpus room overlaps the covered outdoor space. The upper level has a generous 16.5m setback from the reserve boundary and therefore will have minimal visual impact.

The dwelling is generally consistent with the local area with several dwellings having a three storey design due to the slope of the properties along Beatty Street.

Therefore, the three storey component is supported.

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

##### **Side Boundary Setback - Description of Non-compliance**

The proposal generally complies with the side setback requirements. However, a portion of the proposed dwelling is located on a 1.0m setback to the northern boundary where a 1.7m setback is required and the lift shaft is setback 1.5m from the southern boundary where a 2.4m setback is required.

##### **Merit consideration**

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

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

##### **Comment:**

The areas of non-compliance will have minimal impacts to the streetscape.

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

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between*

- *buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The area where the 1.0m setback is proposed is adjacent to a raised terrace on the adjoining property. In this regard, the ground level and finished floor level on the subject site is RL3.9 whilst the level of the adjacent property is RL7.4. The wall height relative to the neighbour's site for this portion of the northern façade is 2.86m (parapet RL10.26) and the 1.0m side setback complies with the 1/3 wall height control when using the levels on the neighbour's site.

It can therefore be seen that the proposal achieves the underlying objectives of the control by providing separation between buildings and maintaining a reasonable bulk and scale when viewed from the neighbouring property.

The variation required for the lift shaft is reasonable considering the nature of the adjoining development – it adjoins a garage and covered pedestrian passageway at 32 Beatty Street, the roof of which (RL 22.21) is at approximately the same level as the proposed lift shaft (RL 22.33) and which is located without any side boundary setback whereas the lift shaft has a 1.5m setback.

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

Comment:

The proposal incorporates varied setbacks in response to site opportunities and constraints.

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

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

Comment:

The proposal will not have any detrimental impacts on natural features of the site.

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

Comment:

N/A

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

**Rear Boundary Setback - Description of Non-compliance**

The proposal retains the existing dwelling house which is setback 4.5m - 5.3m from the rear boundary. Whilst not complying with the rear setback control, no new impacts will arise.

#### **4.4.5 Earthworks (Excavation and Filling)**

The proposal involves cut and fill to provide for level building platforms, the swimming pool, the lift shaft and lift corridor.

Whilst the extent of the cut and fill is generally less than 1.0m, the new pool and new section of dwelling requires excavation of up to 4.4m. The lift-shaft requires excavation up to 12.0m in depth for a width of 1.5m. A geotechnical report has been prepared by White Geotechnical Group and contains recommendations for construction. If approval is granted, it is recommended that this report forms part of the approval documents.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

##### **Manly Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this application.

#### **CONCLUSION**

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

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

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

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

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



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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0080 for Alterations and additions to a dwelling house including swimming pool on land at Lot 21A DP 350345, 34 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-000A Schedule of Finishes	01.02.2019	Chrofi
DA-001A Survey	01.02.2019	Chrofi
DA-002A Site Plan	01.02.2019	Chrofi
DA-004A Ground Floor Demolition Plan	01.02.2019	Chrofi
DA-005A First Floor Demolition Plan	01.02.2019	Chrofi
DA-006A Roof Level Demolition Plan	01.02.2019	Chrofi
DA-008A Cut and Fill Plan	01.02.2019	Chrofi
DA-101A Ground Floor Plan	01.02.2019	Chrofi
DA-102A First Floor Plan	01.02.2019	Chrofi
DA-103A Second Floor Plan	01.02.2019	Chrofi
DA-104A Roof Plan	01.02.2019	Chrofi
DA-201A Elevations (North and South)	01.02.2019	Chrofi
DA-202A Elevations (East and West)	01.02.2019	Chrofi
DA-301A Sections	01.02.2019	Chrofi
DA-302A Sections	01.02.2019	Chrofi

Engineering Plans		
Drawing No.	Dated	Prepared By
180599 D01B	15.01.2019	NB Consulting Engineers
180599 D02A	07.01.2019	NB Consulting Engineers
180599 D03B	15.01.2019	NB Consulting Engineers
180599 D04A	07.01.2019	NB Consulting Engineers

180599 D05B	15.01.2019	NB Consulting Engineers
180599 D06A	07.01.2019	NB Consulting Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Statement of Environmental Effects	January 2019	Symonds Goodyer
BASIX Certificate A336749	11 January 2019	ECOMODE Design
Geotechnical Investigation	24 January 2019	White Geotechnical Group
Arboricultural Management Report	15 January 2019	Rain Tree Consulting
Terrestrial Biodiversity Report	January 2019	GIS Environmental Consultants
Bushfire Risk Assessment	9 October 2019	Bushfire Planning Services
Flood Risk Management Report	23 January 2019	NB Consulting Engineers
Waste Management Plan	25 October 2016	Chrofi Architects

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
BT1 Landscape Site Plan	17.01.2019	Libby Birley
BT2 Landscape Elevation and Pool Detail	17.01.2019	Libby Birley
BT3 Planting Plan	17.01.2019	Libby Birley

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-007 Waste Management Plan	01.02.2019	Chrofi

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

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

## 2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

### 3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment)

is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

### 5. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site. (DACHPCPCC1)

### 6. Native tree planting

Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013.

Details of new planting are to include appropriate siting and pot size (minimum of 75 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection.

Details are to be submitted with the Construction Certificate to the satisfaction of the Certifying Authority.

Reason: to ensure the planting of endemic trees back onto the site.

### 7. Flooding

In order to protect property and occupants from flood risk the following is required:

#### Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering

Committee (2006).

#### Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 3.7m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

#### Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

#### Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

#### Flood Emergency Response – E2

Appropriate access to a shelter in place refuge above the Probable Maximum Flood Level should be available from all areas of the new development.

#### Floor Levels – F1

New floor levels within the development shall be set at or above the Flood Planning Level of 3.7m AHD.

#### Floor Levels – F8

New first floor levels within the development shall be set at or above the relevant Probable Maximum Flood Level for the specific locations.

#### Fencing – H1

Fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open for passage of flood waters - All new fencing on the property must be design with a minimum of 50% open area between the 1% flood level and natural ground level, to allow flood waters to pass through.

#### Recommendations

The development must comply with all recommendations outlined in:

- The Flood Management Report prepared by Northern Beaches Consulting Engineers dated 23 January 2019.

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

**Reason:** To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.



8. **Compliance with Standards**

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

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

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

9. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

10. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

11. **Dilapidation Report**

The applicant shall supply Council with a dilapidation report for the adjoining properties at 32 Beatty St and 36 Beatty St which documents and photographs the condition of the buildings and improvements on those properties. The dilapidation report shall be submitted as a PDF in Adobe format or in A4 format. A copy of the report must be provided to Council, any other owners of public infrastructure and the owner of nominated properties. Council shall be provided with a list of owners to whom a copy of the report has been provided. (DACPLCPCC1)

12. **Excavation, Backfilling and Support for Neighbouring Buildings**

Excavation works shall not commence prior to the issue of the Construction Certificate or the issue of any relevant notices to adjoining owners, the Principal Certifying Authority or Council as required by other conditions of this consent. (DACPLCPCC2)

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

13. **Reserves Vehicular Access Permit**

A Reserves Vehicular Access Permit is required for vehicular access over land under Council  
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care, control and management for the delivery and or removal of materials, waste or equipment where there is no other reasonable route of access and activities are carried out without direct Council supervision. Applications can be obtained from Council's website or Parks and Recreation business unit.

Reason: Public Safety and the protection of Council infrastructure. (DACHPDPC2)

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

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

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

15. **Approval of Works in Public Beach Reserve**

No works are to be carried out from or within the public beach reserve without the written approval of Council.

Reason: To ensure no damage is done to the public beach reserve

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Tree and vegetation protection**

A) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site identified for retention in the Arboricultural Assessment & Development Impact report, prepared by RainTree Consulting, being T1,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,
- iv) all foreshore reserve trees and vegetation.

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arboricultural Assessment & Development Impact report,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
- viii) no existing ground levels around trees and vegetation are permitted to be altered, without consultation with a AQF Level 5 Arborist,
- ix) should either or all of v), vi), vii) and viii) occur during site establishment and construction

works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009, xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

17. **Project Arborist**

Any work on Council's foreshore reserve must be supervised by a AQF Level 5 Project Arborist, qualified in Horticulture, to supervise and certify tree protection works in accordance with AS4970- 2009 Protection of Trees on Development Sites, noting that a request for vehicular access over land under the management and care of Council is subject to Council approval and may not necessarily be granted by Council.

Any approved vehicular access must protect the existing foreshore trees and comply with the recommended tree management requirement listed under section 2.2.1 (1) of the Arboricultural Assessment & Development Impact report, including tree trunk and ground protection measures, as prepared by RainTree Consulting.

Details shall be submitted to the Certifying Authority prior to the Occupation Certificate.

Reason: to ensure tree protection is provided and maintained.

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

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

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

19. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

20. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

21. **Demolition**

All demolition work must be carried out in accordance with the provisions of Australian Standard 2601: The Demolition of Structures. (DACPLEDW1)

22. **Asbestos Material**

Where asbestos material is removed or disturbed as a result of any proposed demolition, alteration or addition, all work must be carried out by a person licensed under the Work Health and Safety Regulation 2017 and undertaken in accordance with the requirements of the Protection of the Environment Operations (Waste) Regulation 2014. All asbestos to be removed must be disposed of at a tip recommended by the NSW Environment Protection Authority and under no circumstances shall be re-used or sold. (DACPLEDW2)

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

24. **Landscape maintenance**

All landscape components are to be maintained for the life of the development.

A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan.

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

25. **Environmental and priority weed control**

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

Reason: preservation of environmental amenity.

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

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

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