

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2024/0568
<b>Responsible Officer:</b>	Claire Ryan
<b>Land to be developed (Address):</b>	Lot 28 DP 8075, 32 Bower Street MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools
<b>Zoning:</b>	Manly LEP2013 - Land zoned C3 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>Applicant:</b>	Mark Andrew Kenneth Davies
<b>Application Lodged:</b>	17/10/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	26/11/2024 to 10/12/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: Max. 26.82%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This modification application seeks consent for modification of Development Consent DA2019/0916, which was granted for demolition works and construction of a dwelling house including swimming pools. The application involves minor internal and external modifications to, and reconfiguration of, approved elements of the development.

The application is referred to the Development Determination Panel (DDP) given the proposed modifications involve works above the height of building development standard of 8.5 metres, but do not result in additional height or increased non-compliance. The maximum non-compliant height of 10.78 metres is retained, being a 26.82% variation to the height of buildings development standard set out in Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

No submissions were received in relation to this application.

Detailed consideration is given in this report to the retained non-compliant building height, and the proposed alteration to the southern pool area (which is set partially above ground).

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

### PROPOSED DEVELOPMENT IN DETAIL

This application seeks to modify Development Consent DA2019/0916 (as modified by Mod2023/0211), as follows:

Dwelling:

- Level 1:
  - Slab to plantroom to house rainwater tanks and other plant.
  - Stairs to upper level.
- Level 2:
  - Stairs to upper level.
- Level 3 (North):
  - Relocation of approved stairs and insertion of new lift core.
  - Relocation of living room glazing and minor adjustments to internal walls.
  - Operable batten privacy screens to glazing.
  - Adjustment to southern glazing position.
  - Minor change to eastern window surrounds.

- Level 3 (South):
  - Minor increase in width of the courtyard swimming pool and reduction in depth for enlarged shallow end (small children's wading area). No closer to boundary.
  - Relocating of front door (southwards) and new porch.
  - Relocation of approved stairs and lift core.
  - Internal walls relocated.
- Level 4 (South):
  - Reconfigure Master Bedroom Level within Southern Pavilion.
  - Internal reconfiguration to wall layout, including the removal of a bedroom suite from this Level 4 and minor adjustment of external windows to relate to new layout.
  - Approved lift position adjusted within internal footprint.
  - Modification to entry space including new glazing with privacy screen and fixed plate metal awning, and reconfigured stair.
- Roofs:
  - Reduce extent of cantilevered roof over Living Level terrace on the northern pavilion. Structural reasons have driven minor changes to the main living area with the relocation of a structural member and the reduction of a cantilevered awning over the terrace by more than 1.1 metres.
  - Skylight/opening in balcony awning roof reshaped and repositioned (northern end).
  - New upturn to northern balcony awning roof inboard by 665/840 from edge.
  - Northern balcony awning roof reduced by 1120mm.
  - Adjusted position of structural roof upturn over Level 4 North.
  - Reduction of green roof over living room.
  - Relocate approved solar panels to Gym/Guest Pavilion, and on southern pavilion roof over Master Bedroom suite installed level with roof, not angled.
  - Modified and repositioned skylights with one less skylight now proposed over Master Bedroom.

#### Studio:

- Level 3 (Guest Bedroom):
  - New wall to allow Bedroom 3 (former plant room)
- Level 4 (Gym):
  - Northern window added to bathroom.
  - Northern glazing relocated.
- Roof
  - New extended location of Photo Voltaic array.
  - New flat plate fixed metal awning to match those on east and west windows, level with ceiling, projecting 460mm.

#### External Works:

- ◦ Revised landscape forms to suit the revised entry porch, (excluding the driveway turning area and stairs), adjustment to courtyard pool, extension of pedestrian path to gate in front setback, landscaping in the northern garden and to the new front boundary wall at the southern end of the site.
- Relocate driveway wall on eastern side to feature existing exposed rock face.

Following a preliminary assessment of the application, Council raised concerns regarding landscaping works in the two frontages. In response, the Applicant submitted an amended landscape plan satisfying the concerns on 11 December 2024.

A site visit to the subject site on 10 January 2025 revealed that some of the works proposed under this modification application had been carried out. In accordance with recent caselaw via the NSW Land and Environment Court (*Kuring-gai v Buyozo Pty Ltd [2021] NSWCA177*), a modification application cannot be used to provide retrospective approval for works. Accordingly, the Applicant submitted an amended set of plans on 3 February 2025 identifying all works that had been constructed and are therefore not part of this application, and all works that are not yet constructed and are therefore proposed under this application. The above list of works is in accordance with the latest set of plans.

In accordance with the Community Participation Plan, re-notification of the application was not required in either instance of amended plans, as Council was satisfied that there was no increased environmental impact.

### ASSESSMENT INTRODUCTION

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

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

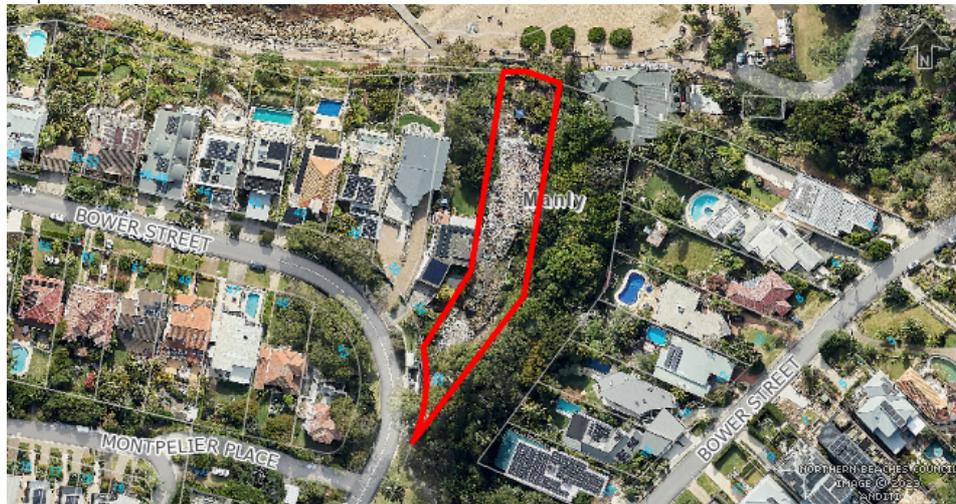
**SUMMARY OF ASSESSMENT ISSUES**

- Manly Local Environmental Plan 2013 - Zone C3 Environmental Management
- Manly Local Environmental Plan 2013 - 4.3 Height of buildings
- Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
- Manly Local Environmental Plan 2013 - 5.21 Flood planning
- Manly Local Environmental Plan 2013 - 6.2 Earthworks
- Manly Local Environmental Plan 2013 - 6.4 Stormwater management
- Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
- Manly Local Environmental Plan 2013 - 6.8 Landslide risk
- Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
- Manly Local Environmental Plan 2013 - 6.12 Essential services
- Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 28 DP 8075 , 32 Bower Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the northern (low) side of Bower Street.</p> <p>The site is dogleg in shape with a curved frontage of 30.645 metres along Bower Street, a rear boundary of 18.58 metres facing Shelley Beach and a surveyed area of 1,859m<sup>2</sup>. The site has an approximate width of between 17 and 18 metres at the locations of the proposed buildings.</p> <p>The site is located within the C3 Environmental Management zone pursuant to the Manly Local Environmental Plan 2013 and has been predominantly cleared for the purpose of the works approved under DA2019/0916 (the consent proposed to be amended by this application), as modified by Mod2023/0211.</p> <p>The site slopes downward from the front boundary (south) to the rear boundary(north) by approximately of 22.5 metres. The site also has a crossfall which slopes downward from the western boundary to the eastern boundary by approximately 4.5 metres. The site is underlain by Hawkesbury Sandstone bedrock below variable soil.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by dwellings of varying age and style with a predominant two and three storey scale. Bower Reserve abuts the site to the east and extends down from Bower Street to Marine Parade. Marine Parade is situated immediately to the north of the site and extends to the east and west to form a pedestrian promenade. The Boathouse Shelley Beach cafe is located to the north-east of the site.</p>

Map:



**SITE HISTORY**

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

- DA0146/2016 for demolition of existing structures, three (3) lot Torrens Title Subdivision, construction of a dwelling house on each lot, swimming pools, and landscaping works. The application was approved by the former Northern Beaches Independent Assessment panel (NBIAP) on 16 March 2017.
- Pre-lodgement meeting PLM2018/0299 was held on 13 December 2018 to discuss construction of a dwelling house.
- DA2019/0916 for demolition works and construction of a dwelling house including swimming pools was approved by the Development Determination Panel on 26 February 2020. This is the parent application for the current modification application.
- Mod2024/0211 for modification of Development Consent DA2019/0916 was approved by the Development Determination Panel on 31 October 2023.

Demolition and construction for the purpose of DA2019/0916 (as modified by Mod2023/0211) has commenced. A site visit to the subject site on 10 January 2025 revealed that some of the works proposed under this modification application had been carried out. In accordance with recent caselaw via the NSW Land and Environment Court (*Kuring-gai v Buyozo Pty Ltd [2021] NSWCA177*), a modification application cannot be used to provide retrospective approval for works. Accordingly, the Applicant submitted an amended set of plans on 3 February 2025 identifying all works that had been constructed and are therefore not part of this application, and all works that are not yet constructed and are therefore proposed under this application.

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

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0916 (as modified by Mod2023/0211), in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact, as the modifications amount to reconfiguration of approved elements.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/0916 (as modified by Mod2023/0211), given the works are modification of approved elements, and the resultant development retains similar compliance and the approved use as a dwelling house.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	

#### Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to landscaping. Sufficient information was received on 11 December 2024.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <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 not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bushfire Hazard Solutions, dated 22 August 2024) stating that the modifications conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 26/11/2024 to 10/12/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>Supported, subject to conditions</b></p> <p>The application is for modification to development consent DA2019/0916.</p> <p>An additional pedestrian entry to Bower Street is shown on the Landscape Plan which encroaches into the road reserve. Encroachment into the road reserve includes retaining walls, planting, a gate, fencing and a path connection (it is noted this pedestrian entrance was annotated on the plans in MOD2023/0211, however, no physical works were shown to service this entrance). While concerns are not raised with these works, landscape referral will only assess the proposed works within the legal property boundaries thus the aforementioned encroachments in the road reserve shall be applied for under the correct pathway (minor encroachment application and/or S138 application etc.). Any future application must ensure the retaining wall that is proposed adjacent to tree 2 is located atop the existing approved concrete footing under application S138A2022/0041 (approximately 1.8m from the trunk) and as annotated on drawing Landscape Plan - Masterplan dated 06/12/24 revision C.</p> <p>Condition 41 Landscape works will be amended as part of this modification application. All other conditions remain.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported, subject to conditions</b></p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• Biodiversity Conservation Act 2016</li> <li>• Biosecurity Act 2015</li> <li>• SEPP (Resilience and Hazards) 2021 - Coastal environment area</li> <li>• Manly LEP - Clause 6.5 Terrestrial Biodiversity</li> <li>• Manly DCP - Clause 5.4.2 Threatened Species and Critical Habitat Lands</li> </ul> <p>The proposed modifications would take place within the previously approved footprint. The subject site is known habitat for the endangered population of Long-nosed Bandicoots and therefore, an updated Terrestrial Biodiversity Report has been submitted with the application and concluded that the proposed modifications will not represent a significant impact to the endangered population of Long-nosed bandicoots of North Head.</p> <p>However, a range of measures to Avoid and Minimise impacts to the natural environment have been recommended and are supported. These measures were conditioned as part of the original consent and the reviewed recommendations will need to be adhered to.</p> <p>Furthermore, an updated Landscape planting schedule has been provided and is found to be compliant with applicable DCP controls and includes a range of species suitable for bandicoot habitat as well as tree species to provide habitat for other fauna present in the area.</p>

Internal Referral Body	Comments
	<p>The development will be managed to avoid any significant adverse environmental impact.</p> <p><u>Assessing Officer Comment:</u> Some of the conditions in this referral have not been added in this instance, as they have already been applied under DA2019/0916 or Mod2023/0211.</p>
NECC (Coast and Catchments)	<p><b>Supported without additional conditions</b></p> <p>The proposal seeks for Modification of Development Consent DA2019/0916 granted for demolition works and construction of a dwelling house and swimming pools. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience &amp; Hazards) 2021 and has also been assessed against requirements of the Manly LEP 2013 and Manly DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.11 and 2.12 of the CM (R &amp; H) apply for this DA modification.</p> <p><b>Manly LEP 2013 and Manly DCP</b></p> <p><u>Manly Land Zoning</u> The subject site is shown to be within the C3 Environmental Management Zone in the Manly LEP. The objectives of the zone specified in the Land Use Table of the Manly LEP therefore apply to proposed DA modification at this site.</p> <p><u>Foreshores Scenic Protection Area Management</u> The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p><b>Conclusion</b> The proposed modification remains consistent with the design intent of the original proposal. As such, it is considered that the application remains generally consistent with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 and with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.</p> <p>The proposed modifications of Development Consent DA 2019/0916 are recommended for approval with no additional conditions.</p>
NECC (Development Engineering)	<p><b>Supported without additional conditions</b></p> <p>The Statement of Modification and associated documents have been reviewed. Development engineering raises no objections to the proposed modification, subject to the retention of the existing engineering conditions of consent imposed under consent DA2019/0916 and MOD2023/0211.</p>
Parks, reserves, beaches, foreshore	<p><b>Supported without additional conditions</b></p> <p>The application proposes modification to development consent DA2019/0916.</p> <p>Parks, Reserves and Foreshores raise no concerns. All conditions imposed in DA2019/0916 remain.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, subject to conditions</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p><b>Supported, subject to conditions</b></p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>

External Referral Body	Comments
	Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

#### Housing and Productivity Contribution

The Housing and Productivity Contribution is not payable for this development.

#### SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 999238S\_06 dated 26 July 2024). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

#### SEPP (Transport and Infrastructure) 2021

##### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

##### Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

#### SEPP (Biodiversity and Conservation) 2021

#### Chapter 6 – Water catchments

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

#### Part 6.3 Foreshores and Waterways Area

##### Division 1 Preliminary

##### 6.25 Consent authority

- (1) *The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—*
- (a) *development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,*
  - (b) *development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,*
  - (c) *development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—*

*Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways*

(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—

(a) development carried out partly above and partly below the mean high water mark,

(b) development carried out below the mean high water mark for the purposes of one or more of the following—

Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls

(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—

Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities  
(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:

Clause 6.25(2) provides that the Minister for Planning is the consent authority for development in the Foreshores and Waterways Area, per subclauses (a)-(c) inclusive.

Clause 6.25(2)(a) refers to development carried out partly above and partly below the mean high water mark (as defined by the SEPP). This subclause is not relevant to this application, as the works wholly above MWHM.

Clause 6.25(2)(b) refers to certain development types carried out below the MWHM. This subclause is not relevant to this application, as the works wholly above MWHM.

Clause 6.25(2)(c) of the SEPP refers to certain development types carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark. This subclause does not apply to this application, as it is not located within the zoned waterway.

As such, the application is not the consent authority for this application.

## **Division 2 Zoning of Foreshores and Waterways Area**

(3) This section does not affect the zoning, under another environmental planning instrument, of land in the Foreshores and Waterways Area if the land is not included in a zone under this section.

Comment:

Not applicable. The subject site is zoned C3 Environmental Conservation pursuant to the Manly Local Environmental Plan 2013, and is not within the zoned waterway pursuant to the SEPP.

## **Division 3 Development in Foreshores and Waterways Area**

### **6.28 General**

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

(a) whether the development is consistent with the following principles—

(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,

(ii) the public good has precedence over the private good,

(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,

(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,

(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,

(d) whether the development promotes water-dependent land uses over other land uses,

(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,

(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,

(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,

(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.

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

(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,

(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,

(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,

(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,

(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—

(i) the Foreshores and Waterways Area, and

(ii) public places, landmarks and heritage items.

Comment:

With respect to clause (1), the proposed development is wholly on private land, so is acceptable with respect to the matters above at (a) to (h) inclusive.

With respect to clause (2), the proposed development is wholly on private land, does not impact the working harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. The development does not involve commercial maritime purposes. The proposed development retains suitable pedestrian access around the entirety of the site. As such, the development is satisfactory with respect to the matters above at (a) to (e) inclusive.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

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

#### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

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

**Comment:**

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

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

**Comment:**

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

#### **Division 4 Coastal use area**

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

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public,*
    - ii) *including persons with a disability,*
    - iii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - iv) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - v) *Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
  - b) *is satisfied that:*
    - i) *the development is designed, sited and will be managed to avoid an 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 proposed modifications to the approved development do not impact on the matters above beyond that of the approved development. As such, the modifications are designed, sited, and will be managed to avoid adverse impact. The proposed bulk and scale of the development has been considered throughout this assessment, as detailed in this assessment report.

#### **Division 5 General**

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

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

Comment:

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

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	Max. 8.5m	Building 1: Max. 9.7m (RL 29.80)	New works above 8.5m  Maximum heights unchanged	14.12%	No
		Buildings 2 & 3 (conjoined): Max. 10.78m (RL 26.68)		26.82%	
		Building 4: Max. 9.4m (RL 23.32)		8.23%	
Floor Space Ratio	0.45:1 (836.55m <sup>2</sup> )	0.415:1 (772.2m <sup>2</sup> )	0.436:1 (810m <sup>2</sup> )	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

**Zone C3 Environmental Management**

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

#### **4.3 Height of buildings**

With regard to the modified works above the 8.5 metre height limit, the underlying objectives of Clause 4.3 Height of Buildings are addressed as follows:

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

Comment:

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

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

Comment:

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

*(c) to minimise disruption to the following—*

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

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

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

Comment:

The proposed modifications retain adequate view sharing, consistent with the requirements of Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The proposed modified development is designed and sited so as to retain adequate privacy and solar access for the subject site and the adjoining residential site to the west.

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

Comment:

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

#### **4.6 Exceptions to development standards**

Whilst the modification application will retain in a building height that contravenes the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

## 5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The site is partially mapped as low flood risk. The proposed works are designed and sited so as to be compatible with the flood function and behaviour on the land. The works will not adversely affect flood behaviour, the safe occupation and efficient evacuation of people, or exceed the capacity of existing evacuation routes for the surrounding area. The development will allow for suitable measures to manage risk to life in the event of a flood. The development will not adversely affect the environment or cause avoidable erosion, siltation, or destruction of land.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The matters at (a) to (d) have been considered with respect to the development. The development is low-risk and satisfactory in this regard.

## 6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

- (f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

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

Comment:

Conditions were included in the recommendation of the original report that will minimise the impacts of the development.

#### **6.4 Stormwater management**

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

#### **6.5 Terrestrial biodiversity**

The objective of this clause is to maintain terrestrial biodiversity by:

*(a) protecting native fauna and flora, and*

*(b) protecting the ecological processes necessary for their continued existence, and*

*(c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

*(a) whether the development is likely to have:*

*(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

*(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

*(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

*(iv) any adverse impact on the habitat elements providing connectivity on the land, and*

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

Comment:

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

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

*(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

*(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

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

Comment:

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

#### **6.8 Landslide risk**

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

*(a) matches the underlying geotechnical conditions of the land, and*

*(b) is restricted on unsuitable land, and*

*(c) does not endanger life or property.*

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

*(a) site layout, including access,*

*(b) the development's design and construction methods,*

*(c) the amount of cut and fill that will be required for the development,*

- (d) waste water management, stormwater and drainage across the land,  
 (e) the geotechnical constraints of the site,  
 (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

**Comment:**

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

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

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or  
 (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or  
 (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.

**Comment:**

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

**6.9 Foreshore scenic protection area**

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

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,  
 (b) measures to protect and improve scenic qualities of the coastline,  
 (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,  
 (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

**Comment:**

The subject site is within the foreshore scenic protection area and adjoins foreshore land. The modified development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- is not closely visible from the coastline, so does not impact upon its scenic quality,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

**6.12 Essential services**

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

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

**Comment:**

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

**Manly Development Control Plan**

**Built Form Controls**

Built Form Controls - Site Area: 1,859m <sup>2</sup>	Requirement	Approved	Proposed	Complies	
4.1.1.1 Residential Density and Dwelling Size	Density: 500m <sup>2</sup> per dwelling	1 dwelling on 1,859m <sup>2</sup> site	Unchanged	Yes	
	Size: Min. 90m <sup>2</sup>	772.2m <sup>2</sup>	810m <sup>2</sup>	Yes	
4.1.2.1 Wall Height (based on gradient)	Building 1	E: Max. 8m	Max. 8.75m	Unchanged	As approved
		W: Max. 7.5m	Max. 6.15m	Unchanged	Yes

	Buildings 2 & 3	E: Max. 7.2m	Max. 10.15m	Unchanged	As approved
		W: Max. 7.1m	Max. 6.75m	Unchanged	Yes
	Building 4	E: Max. 7.4m	Max. 9.2m	Unchanged	As approved
		W: Max. 7.8m	Max. 6.8m	Unchanged	Yes
4.1.2.2 Number of Storeys	Max. 2		Max. 3	Unchanged	As approved
4.1.2.3 Roof Height	Height: Max. 2.5m		Flat	Unchanged	Yes
4.1.4.1 Street Front Setbacks	Min. 6m		Min. 3.99m	Unchanged	As approved
4.1.4.2 Side Setbacks (based on wall height)	Building 1	W: Min. 2.05m	Min. 1.815m	Unchanged	As approved
	Buildings 2 & 3	W: Min. 2.25m	Min. 1.5m	Unchanged	As approved
	Building 4	W: Min. 2.27m	Min. 1.5m	Unchanged	As approved
	Windows: Min. 3m		E: Min. 3.5m	Unchanged	Yes
			W: Min. 1.5m	Unchanged	As approved
4.1.4.4 Rear Setbacks	Min. 8m		Min. 9.5m	Min. 11.1m	Yes
4.1.4.6 Setback to RE1	Building 1	Min. 6m (East)	Min. 6m	Unchanged	Yes
	Buildings 2 & 3		Min. 3.5m		
	Building 4		Min. 3.5m		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of site (1,022.45m <sup>2</sup> )		59.8% (1,112m <sup>2</sup> )	60.63% (1,127.2m <sup>2</sup> )	Yes
	Above Ground: Max. 25% of TOS		12.77% (142m <sup>2</sup> )	7.2% (81.6m <sup>2</sup> )	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS		48.85% (543.2m <sup>2</sup> )	47.1% (531m <sup>2</sup> )	Yes
	3 Native Trees		>3 trees	Unchanged	Yes
4.1.5.3 Private Open Space	Min. 18m <sup>2</sup> per dwelling		>18m <sup>2</sup>	>18m <sup>2</sup>	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m		Garage does not present to street	Unchanged	Yes
4.1.9 Swimming Pools, Spas and Water Features	Pool 1 (South)	Max. 1m Above Ground	Max. 1.6m	Max. 2.1m	No
		Setback to Coping: Min. 1m	1.5m	Unchanged	Yes
		Setback to Water: Min. 1.5m	1.6m		
	Pool 2 (North)	Max. 1m Above Ground	Max. 3m	Unchanged	As approved
		Setback to Coping: Min. 1m	E: Min. 1.9m		
			N: Min. 7.2m		
		Setback to Water: Min. 1.5m	E: Min. 2m		
N: Min. 7.3m					
Schedule 3 Parking and Access	Min. 2 spaces		2 spaces	Unchanged	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

#### **4.1.9 Swimming Pools, Spas and Water Features**

The modified development alters the approved southern pool to be 2.1 metres above ground, where the maximum allowable under this control is 1 metre. The pool was approved at 1.6 metres above ground under the most recent modification application before this application. The modified development is considered against the objectives of the control as follows:

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

Comment:

The modified pool is designed and sited such that it does not result in any unreasonable impact to the privacy of the subject site or adjoining sites. The modification of the southern-most pool retains its logical central location on the site, being next to dense vegetation on the adjoining residential site to the west, rather than adjacent to the neighbouring dwelling. The location and nuisance of the pool filter is controlled by way of condition of consent.

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

Comment:

The pool is located such that it will not be perceived from the street level or the Marine Parade foreshore.

*Objective 3) To integrate landscaping; and*

Comment:

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

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

Comment:

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

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2024**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

## **PLANNING CONCLUSION**

This modification application sought consent for modification of Development Consent DA2019/0916, which was granted for demolition works and construction of a dwelling house including swimming pools. The application consisted of minor internal and external modifications to, and reconfiguration of, approved elements of the development.

The application was referred to the Development Determination Panel (DDP) given the proposed modifications involve works above the height of building development standard of 8.5 metres, but do not result in additional height or increased non-compliance. The maximum non-compliant height of 10.78 metres is retained, being a 26.82% variation to the height of buildings development standard set out in Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

No submissions were received in relation to this application.

Detailed consideration was given to the retained non-compliant building height, and the proposed alteration to the southern pool area (which is set partially above ground).

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

## **REASON FOR DETERMINATION**

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0568 for Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075,32 Bower Street, MANLY, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-476019 Mod2024/0568	The date of this notice of determination	<p>Internal and external alterations and landscaping changes.</p> <p>Additional Conditions:</p> <ul style="list-style-type: none"> <li>Condition 1B Modification of Consent - Approved Plans and Supporting Documentation</li> <li>Condition 1C No Consent for Constructed Works</li> <li>Condition 2A Compliance with Other Department, Authority or Service Requirements</li> <li>Condition 20H No Clearing of Vegetation</li> <li>Condition 40E Aboriginal Heritage</li> <li>Condition 56 Compliance with Ecologist's Recommendations – Ongoing</li> <li>Condition 57 Protection of Habitat Features</li> </ul> <p>Amended Conditions:</p> <ul style="list-style-type: none"> <li>Condition 24 Compliance with Ecologist's Recommendations – During Construction</li> <li>Condition 41 Landscape Completion</li> <li>Condition 44 Compliance with Ecologist's Recommendations – Post Construction</li> </ul>
PAN-323728 Mod2023/0211	31 October 2023	<p>Reconfiguration of the approved pavilions, driveway, pools, and landscaping.</p> <p>Additional Conditions:</p> <ul style="list-style-type: none"> <li>Condition 1A Modification of Consent - Approved Plans and Supporting Documentation</li> </ul> <p>Amended Conditions:</p> <ul style="list-style-type: none"> <li>Condition 2 Compliance with Other Department, Authority or Service Requirements</li> <li>Condition 22 Tree Removal Within the Property</li> <li>Condition 34 Project Arborist</li> <li>Condition 35 Tree and Vegetation Protection</li> <li>Condition 41 Landscape Works</li> </ul> <p>Deleted Conditions:</p> <ul style="list-style-type: none"> <li>Condition 11 Amended Landscape Plan</li> </ul>

### Modified Conditions

#### A. Add Condition 1B Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.01.01-B	B	General Arrangement / Site Plan	Eaton Molina Architects	31 January 2025
A.02.01-B	B	General Arrangement / Levels 1 + 2 + 3	Eaton Molina Architects	31 January 2025
A.02.02-B	B	General Arrangement / Level 4 + Roof Plans	Eaton Molina Architects	31 January 2025

A.03.01-B	B	General Arrangement / East + West Elevations	Eaton Molina Architects	31 January 2025
A.03.02-A	A	General Arrangement / North + Elevations	Eaton Molina Architects	22 July 2024
A.03.03-A	A	General Arrangement / Section A-A & Height Blanket Perspective	Eaton Molina Architects	22 July 2024
L-S4.55-04	C	Landscape Plan - Masterplan	360 Degrees Landscape Architects	6 December 2024
L-S4.55-05	C	Landscape Plan - Level 1	360 Degrees Landscape Architects	6 December 2024
SW(S4.55) 1.1	1	General Notes and Specifications	Partridge Hydraulics	August 2024
SW(S4.55) 1.3	1	Erosion & Sediment Control Plan and Details	Partridge Hydraulics	August 2024
SW(S4.55) 1.4	1	Site Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.5	1	Stormwater Drainage Plan Site & Studio Ground Floor Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.6	1	Stormwater Drainage Plan Level 1 Building Floor Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.7	1	Stormwater Drainage Plan Level 2 Building Floor Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.8	1	Stormwater Drainage Plan Level 3 Building Floor Plan	Partridge Hydraulics	20 August 2024
SW(S4.55) 1.9	1	Stormwater Drainage Plan Level 4 & Roof	Partridge Hydraulics	August 2024
SW(S4.55) 1.10	1	Details Sheet	Partridge Hydraulics	August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 999238S_06	-	Eco Certificates Pty Ltd	26 July 2024
Bushfire Assessment Report Addendum	230316B	Building Code & Bushfire Hazard Solutions	22 August 2024
Geotechnical Assessment	2015-241.1	Crozier Geotechnical Consultants	31 July 2024
NatHERS Certificate HR-MOTBUK-04	-	Eco Certificates Pty Ltd	26 July 2024
Terrestrial Biodiversity Report	2	GIS Environmental Consultants	12 August 2024

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

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

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

**B. Add Condition 1C No Consent for Constructed Works, to read as follows:**

No consent is granted for the already-constructed works marked on the approved plans as "subject to separate application for B.I.C.".

Reason: To ensure consistency with this consent.

**C. Add Condition 2A Compliance with Other Department, Authority or Service Requirements to read as follows:**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	12 November 2024

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

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

**D. Add Condition 20H No Clearing of Vegetation to read as follows:**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

**E. Modify Condition 24 Compliance with Ecologist's Recommendations – During Construction to read as follows:**

All impact mitigation measures specified in the approved Terrestrial Biodiversity Report (GIS Environmental Consultants, August 2024) are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

**F. Add Condition 40E Aboriginal Heritage to read as follows:**

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

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

Reason: Aboriginal Heritage Protection.

**G. Modify Condition 41 Landscape Completion to read as follows:**

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

- i) Landscape works are to be contained within the legal property boundaries,
- ii) Planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
- iii) At minimum two (2) *Glochidion ferdinandi* shall be installed within the property boundary, one in the rear setback and one in the front setback; three (3) *Livistona australis* and one (1) *Ficus rubiginosa* shall be installed within the property boundaries,
- iv) All native tree planting shall be a minimum pre-ordered planting size of 100 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- v) Mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- vi) The area in the rear setback (adjacent to Marine Parade) shown as existing garden to be retained shall be mass planted in accordance with Condition 20E Amendment of Landscape Plans,
- vii) Where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- viii) Where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019; the trees specified in ii) shall take priority for installation should APZ requirements limit proposed tree planting.

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

Reason: Environmental amenity.

**H. Modify Condition 44 Compliance with Ecologist's Recommendations – Post Construction to read as follows:**

All impact mitigation measures specified in the approved Terrestrial Biodiversity Report (August 2024) are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

**I. Add Condition 56 Compliance with Ecologist's Recommendations – Ongoing to read as follows:**

All impact mitigation measures specified in the approved Terrestrial Biodiversity Report (GIS Environmental Consultants, August 2024) are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

**J. Add Condition 57 Protection of Habitat Features to read as follows:**

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

Reason: To protect wildlife habitat.