



## Pre-lodgement Meeting Notes

**Application No:** PLM2023/0041  
**Meeting Date:** 20 April 2023  
**Property Address:** 55 Bower Street MANLY  
**Proposal:** Demolition and construction of a dwelling and swimming pool  
**Attendees for Council:** Daniel Milliken (Manager, Development Advisory Services)

---

### General Comments/Limitations of these Notes

These notes have been prepared by Council's Development Advisory Services Team on the basis of information provided by the applicant and a consultation meeting with Council staff. Council provides this service for guidance purposes only.

These notes are an account of the advice on the specific issues nominated by the Applicant and the discussions and conclusions reached at the meeting.

These notes are not a complete set of planning and related comments for the proposed development. Matters discussed and comments offered by Council will in no way fetter Council's discretion as the Consent Authority.

A determination can only be made following the lodgement and full assessment of the application.

In addition to the comments made within these Notes, it is a requirement of the applicant to address the relevant areas of legislation, including (but not limited to) any State Environmental Planning Policy (SEPP) and any applicable sections of the Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013, within the supporting documentation including a Statement of Environmental Effects, Modification Report or Review of Determination Report.

You are advised to carefully review these notes and if specific concern have been raised or non-compliances that cannot be supported, you are strongly advised to review your proposal and consider amendments to the design of your development prior to the lodgement of any development application.



## SPECIFIC ISSUES RAISED BY APPLICANT FOR DISCUSSION

### Response to Matters Raised by the Applicant

The below matters were raised by the Applicant and are discussed in detail in the Notes below:

1. Excavation
2. Side setback
3. Floor space ratio
4. Building height

## MANLY LOCAL ENVIRONMENTAL PLAN 2013 (MLEP 2013)

MLEP 2013 can be viewed at

<https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2013-0140>

### Part 2 - Zoning and Permissibility

**Definition of proposed development:**  
(ref. MLEP 2013 Dictionary)

***dwelling house*** means a building containing only one dwelling.

**Zone:**

C3 Environmental Management

**Permitted with Consent or Prohibited:**

Permitted with Consent

## Clause 4.6 - Exceptions to Development Standards

Clause 4.6 enables the applicant to request a variation to the applicable Development Standards listed under Part 4 of the LEP pursuant to the objectives of the relevant Standard and zone and in accordance with the principles established by the NSW Land and Environment Court.

A request to vary a development Standard is not a guarantee that the variation would be supported as this needs to be considered by Council in terms of context, impact and public interest and whether the request demonstrates sufficient environmental planning grounds for the variation.

### Part 4 - Principal Development Standards

Standard	Permitted	Proposed	Compliance
<b>4.3 Height of buildings</b>	8.5m	8.7m	No (2.3% variation)

A Clause 4.6 Variation Statement demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard must be submitted for further consideration of any variation to the development standard.



If the proposed development varies a development standard under the MLEP 2013, the consent authority must also be satisfied that 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.

The proposed development does not achieve consistency with the objectives of Clause 4.3 of MLEP 2013, specifically those listed below:

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

Given the height breach is minor it is recommended that the height breach be designed out. This will also minimise any view impacts caused by non-compliances.

**Note:** *A development application for a Class 1 building with a variation of 10% or greater to a quantitative development standard requires determination by the Northern Beaches Development Determination Panel.*

<b>4.4 Floor space ratio</b>	0.45:1	0.5:1	No
<p>For the purposes of Clause 4.4, the Floor Space Ratio (FSR) of 0.45:1 is based upon the lot area of 695.5m<sup>2</sup>. Therefore, any breach of the development standard is to be appropriately requested under the provisions of Clause 4.6 of the MLEP 2013.</p> <p>While it is always recommended that compliance be achieved, the documents accompanying the prelodgement meeting indicate that an FSR of 0.5 is relatively consistent with surrounding development. This level of FSR could be supported provided the breach to the building height can be designed out and the basement excavation is reduced. Any design changes to reduce the bulk of the dwelling above ground would also greatly assist a non-compliant FSR.</p>			

## MANLY DEVELOPMENT CONTROL PLAN 2013 (MDCP 2013)

MDCP 2013 can be viewed at  
<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Pages/Plan/Book.aspx?exhibit=MDCP>

The following notes the identified non-compliant areas of the proposal only.

Part 3 General Principles of Development		
Control	Permitted	Proposed
<b>3.4.2 Privacy and Security</b>		



Any future development application is to ensure any overlooking between windows and towards private open space areas is minimised through appropriate window treatment or screening. An articulated design will also assist in minimising impacts on the amenity of adjoining properties.

### 3.4.3 Maintenance of Views

Documentation provided with the pre-lodgement has provided a detailed view loss assessment which addresses potential view loss from adjoining properties.

To ensure view sharing is achieved, the applicant is required to provide this comprehensive view analysis to demonstrate consistency with Clause 3.4 of MDCP 2013.

The view analysis is to address the views against the planning principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah [2004] NSWLEC 140*. The principles can be accessed here:

<https://www.caselaw.nsw.gov.au/decision/549f893b3004262463ad0cc6>

## Part 4 Development Controls and Development Types

Control	Permitted	Proposed
<b>4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)</b>	<p>Wall Height – based on slope of site</p> <p>Number of Storeys – two (2)</p>	Elevations were not provided with the proposal. The slope of the site would allow a maximum wall height of 7.3m along the eastern elevation and 7.2m along the western elevation.
<b>4.1.4 - Setbacks</b>	<p><b>Front</b> 6.0m or prevailing</p> <p><b>Side</b> East: Insufficient detail West: Insufficient detail</p>	<p><b>Front</b> Dwelling – 7.6m Raised planters – Nil – 4.7m</p> <p><b>Side (North)</b> Side setbacks are provided however without elevations to calculate the wall height, an assessment of side setbacks cannot be undertaken. Retaining walls are proposed along both the eastern and western side boundaries. These walls, close to the boundaries, are not supported. All structures need to be set back from the sides and the natural ground level maintained wherever possible along the boundaries.</p>

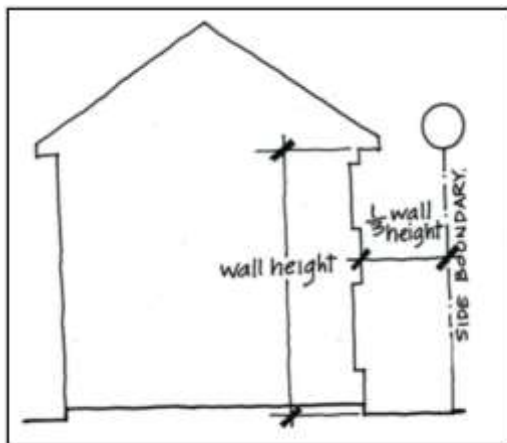


### Front Setback

A variation to the front setback could be supported for the raised planter boxes provided the outcomes of the control are achieved. The planter boxes provide visual interest towards the development and would be in keeping with similar landscape treatments along the southern side of Bower Street. Directly opposite the site are many examples of carport and garage structures built to the front boundary. The wide road reserve also provides sufficient separation between the property boundary and Bower Street which will reduce the visual impact of any built structures located within the front setback.

### Side Setback

The side setback control under the MDCP, relates directly to the height of the building and the slope of the land. This control associated with the floor space ratio development standard guides the bulk and scale of development. Minimum side setbacks must not be less than one third of the height of the adjacent external wall of the proposed building. Refer to *Figure 31 – Side Setback Diagram* for more information.



*Figure 31 - Side Setback Diagram*

The side setbacks proposed for the dwelling appear to provide a dwelling which is articulated and is sensitive to the slope and site constraints of the site. Given the level of detail and information provided, Council cannot determine the minimum numerical controls, however it is evident that the side setbacks proposed will not meet the requirements of the MDCP. As no elevations have been submitted for review, Council is unable to ascertain the extent of non-compliances. Nonetheless, the applicant is advised that the side setbacks should be maximised, by stepping the upper levels back to ensure articulation and modulated wall planes.

The proposed side setbacks should ensure any unreasonable view loss is minimised. As discussed in these Notes, the Applicant is to reduce the height of the development to ensure the dwelling is compliant and does not exceed 8.5m in height.

### Rear Setback

Under the MDCP, an 8m rear setback applies to the subject site. The proposal appears to comply with this control. The inground swimming pool is proposed within the rear



setback however appears to comply with the setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1m, with the water line being at least 1.5m from the boundary.		
<b>4.1.5 – Open Space Area ‘OS3’</b>	<u>55% site area</u> 383m <sup>2</sup>	420m <sup>2</sup> - complies
<b>Site Area – 696.5m<sup>2</sup></b>	<b>Landscaped Area</b> <u>35% TOS</u> 134m <sup>2</sup>  <b>Above Ground</b> Lot 1: 25% TOS (75m <sup>2</sup> )	150m <sup>2</sup> – complies
<b>4.4.5 Earthworks (Excavation and Filling)</b>		
<p>The development proposes excessive excavation in the basement level at the (southern side) rear of the double garage. There is also potentially floor space within the basement that needs to be included in the floor space ratio calculation. Whilst storage may be supported within the basement level, the Applicant is encouraged to locate the basement garage and storage area further forward towards the front building line. Council acknowledges the limited amount of on-street parking along Bower Street and therefore could support some informal visitor parking on site, however, this should not be at the expense of excessive excavation. Currently, that balance has not been hit. Also as mentioned above, the proposal is to ensure minimal excavation along the side boundaries which would reduce the requirement for retaining walls.</p>		

<b>Specialist Advice</b>
<p><b><u>Landscape Comments</u></b></p> <p>The Statement of Environmental Effects shall include commentary of relevant landscape clauses of the DCP, and in this instance the following:</p> <ul style="list-style-type: none"> <li>▪ 3.3.1 Landscape Design <ul style="list-style-type: none"> <li>- Describe in reports and illustrate on Plans how this is achieved.</li> </ul> </li> <li>▪ 3.3.2 Preservation of Trees or Bushland Vegetation <ul style="list-style-type: none"> <li>- Any tree removal proposal requires an Arborist Report (see below)</li> </ul> </li> <li>▪ 4.1.5 Open Space and Landscaping <ul style="list-style-type: none"> <li>- Calculations to be illustrated on Plans</li> </ul> </li> <li>▪ 4.1.5.2 Landscaped Area including c) Minimum Tree Planting <ul style="list-style-type: none"> <li>- Existing trees retained and proposed trees to be shown on Plans</li> </ul> </li> </ul>



### Specialist Advice

A **Landscape Plan** prepared by a qualified Landscape Architect or Landscape Designer is required to demonstrate that the proposed development satisfies the DCP clauses, including:

#### 3.3.1 Landscape Design

- provide native tree planting to satisfy 4.1.5.2
- landscaping to provide adequate private open space amenity
- retain landscape features such as rock outcrops
- design consideration should be given in tree planting locations to minimise loss of sunlight, privacy, views, and noise for neighbouring properties

#### 3.3.2 Preservation of Trees or Bushland Vegetation

- promote retention of prescribed (protected) trees over 5 metres in height.

#### 4.1.5 Open Space and Landscaping

- maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

#### 4.1.5.2 Landscaped Area

- (b) i) soil depth of at least 1m for all landscaped areas either in ground or above ground in raised planter beds
- (c) minimum number of native trees to be supported within the site in a deep soil zone
- 3 trees

Landscape design consideration shall be given to the following:

- Retention of existing trees within the site and within the road verge
- Tree planting shall be provided to the front and rear setback within deep soil to soften the development, to satisfy 3.3.1, and 4.1.5.2, including internal areas where deep soil is available.
- Provision of shrub screen planting for private open space areas, to satisfy 3.4.

The SoEE shall include discussion on the trees and vegetation within the site and within adjoining properties. Should all trees and vegetation be 5 metres or less in height ie. Exempt Species, no Arboricultural Impact Assessment is required, and this is to be reported in the SoEE.

For prescribed (protected) trees under the DCP, ie. 5 metres and over, excluding Exempt Species, An **Arboricultural Impact Assessment** is required to provide clarification on which trees are to be retained, including tree protection measures, and which trees are to be removed.

The Arboricultural Impact Assessment report shall indicate the impact of development upon the existing trees within the site, and for any existing tree on adjoining properties located 5 metres from the site (building and associated excavation or fill zones). The report shall be prepared by a qualified Arborist AQF Level 5 and shall cover assessment of excavation and construction impacts upon the SRZ and TPZ, tree protection requirements, and recommendations. Recommendations shall include the setback



### **Specialist Advice**

distance from each tree where no construction impact is to occur to ensure the long term retention of the tree.

### **Coast and Catchment Comments**

Coastal comments in regard to PLM2023/0041 – 55 Bower Street, Manly, are as follows:

#### **Relevant Legislation, Policies and Planning Instruments**

- Coastal Management Act 2016;
- SEPP (Resilience and Hazards) 2021; and
- Manly LEP 2013 and Manly DCP 2013.

#### **Coastal Management Act 2016**

The subject site is located in the Coastal Zone of NSW and the provisions of the Coastal Management Act 2016 will apply to any proposed development of the site. The objects of the Act will need to be addressed in the Statement of Environmental Effects (SEE).

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

The subject land is included on the Coastal Use Area map under SEPP (Resilience and Hazards). Accordingly Divisions 4 and 5 of the SEPP is applicable to the subject development proposal and must be addressed in the SEE.

#### **Manly LEP 2013 and Manly DCP 2013**

The site is also shown on the Manly Foreshores Scenic Protection Area Map and is therefore subject to the provisions of ‘Manly Foreshores Scenic Protection Area’ in Manly LEP 2013. As such, Clause 6.9 of Manly LEP 2013 and Part 5, Section 5.4.1 of Manly DCP 2013 will apply to any proposed development of the site. The relevant provisions of the Manly LEP and DCP must be addressed in the SEE.

### **Development Engineering Comments**

1. The proposed development will require on-site stormwater detention (OSD) in accordance with Council’s Water Management for Development Policy.
2. The stormwater connection is to be to the kerb in Bower St.
3. The proposed driveway crossing is to be limited to 3 metres to maximise the on-street parking.
4. The driveway profile is to be in accordance with Council’s Normal High Profile. Sections from the kerb to the garage must be provided with the application.
5. The existing driveway crossing must be reinstated to kerb and turf with details shown on the plans.
6. The proposed access path from the driveway crossing to the pedestrian entry is to be assessed by Road Assets.





### Documentation to accompany the Development Application

- Lodge Application via NSW Planning Portal
- Statement of Environmental Effects
- Scaled and dimensioned plans:
  - Site Plan;
  - Floor Plans;
  - Elevations; and
  - Sections.
- Certified Shadow Diagrams (depicting shadows cast at 9am, Noon and 3pm on 21 June).
- Cost of works estimate/ Quote
- Survey Plan (Boundary Identification Survey)
- Site Analysis Plan
- Demolition Plan
- Excavation and fill Plan
- Waste Management Plan (Construction & Demolition)
- Driveway Design Plan (if any change is proposed to the driveway)
- Erosion and Sediment Control Plan / Soil and Water Management Plan
- Stormwater Management Plan / Stormwater Plans and On-site Stormwater Detention (OSD) Checklist
- View Loss Analysis
- Geotechnical Report
- Arboricultural Impact Assessment (may be required, see Landscape comments)

### IMPORTANT NOTE FOR DA LODGEMENT

Please refer to the Development Application Lodgement Requirements on Council's website (link details below) for further detail on the above list of plans, reports, survey and certificates.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/development-application-da-modification-or-review-determination/2060-da-modification-lodgement-requirements-mar21.pdf>

The lodgement requirements will be used by Council in the review of the application after it is lodged through the NSW Planning Portal to verify that all requirements have been met for the type of application/development.

### Concluding Comments

These notes are in response to a pre-lodgement meeting held on 30 April 2023 to discuss the demolition and construction of a dwelling house and swimming pool at 55 Bower Street, Manly. The notes reference the plans prepared by Squillace Architects and are not dated.

Issues raised by Council include:



### **Concluding Comments**

- Non-compliance with the front setback control for the raised planters fronting Bower Street.
- Potential non-compliance with the wall height and storey control for the three storey portion of the development to the eastern and western side boundary and for the dwelling fronting Bower Street
- Non-compliance with the Height of Buildings development standard.
- The level of FSR breaches.
- Significant level of excavation to accommodate the basement level.
- Size of the basement level incorporating the plant room and storage room(s).  
Council will not support excessive and unnecessary excavation.

It is recommended that the height breach be designed out, the excavation be reduced, all structures (including retaining walls) be set back off the side boundaries and the FSR calculation be carefully done and demonstrated.

A compliant building height will also ensure any view loss (albeit minor) is more likely to be supported by Council.

### **Question on these Notes?**

Should you have any questions or wish to seek clarification of any matters raised in these Notes, please contact the member of the Development Advisory Services Team at Council referred to on the front page of these Notes.