

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1639
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 55 DP 8075, 39 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	David Rowan Thompson

Application Lodged:	13/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/01/2025 to 27/01/2025
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 17.1% 4.4 Floor space ratio: 7.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 396,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Concerns raised in the objections predominantly relate to acoustic and visual privacy impacts, non-compliance with development standards and perceived bulk and scale.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, as well as variations to the following Manly Development Control Plan built from controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.9 Swimming Pools, Spas and Water Features

The 4.6 request for the non-compliance with the building height standard arises from the proposed construction of alterations and additions at Level 3 of the existing dwelling house, which as existing is partially above the 8.5m height standard. Proposed additions to this level will exhibit a building height of 9.95m, representing a 17.1% variation to the standard. It is noted that the breach partially results from existing excavation of the site. The proposed development does not increase the overall ridge height or add additional levels to the existing building. This area of Manly is characterised by large three and four storey dwelling houses and the dwelling house will remain of a size and scale that will not be out of character within this environment.

The 4.6 request for the non-compliance with the FSR standard arises from a 18.1sqm increase in floorspace. The existing building has an existing FSR of 0.46 (323.7sqm), which is already in excess of the FSR development standard of 0.45:1 (317.43sqm). The proposed development would increase this to 0.48:1 (341.8sqm), representing a 7.7% (24.37sqm) variation to the standard. The proposed additional floorspace is all located within the footprint of the existing dwelling. Design choices, such as the relocation of the lift shaft further within the building, have attempted to minimise additional GFA, whilst achieving the goals of the proposed works, including providing lift access to the uppermost Level 3. The additional GFA is considered to be minor and will only negligibly impact the perceived overall bulk and scale as compared to the existing dwelling house. It is also noted that this area of Manly is characterised by large three and four storey dwelling houses, many with recently approved FSR variations. The proposed development will not be out of character within this environment.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a dwelling house including a swimming pool. Specifically, the following is proposed:

Ground Floor Plan – Alterations and Additions

- Proposed new lift location within building footprint
- Existing lift to be removed with shaft retained as void area

Level 1 Plan – Alterations and Additions

- Proposed new lift location
- Existing wall to be demolished to accommodate new lift
- New bathroom configuration and window to be reduced
- Existing lift shaft to be retained as void area
- Close of existing door to cabana area

- Addition of swimming pool and equipment (as per approved CDC plans – pool was not constructed)

Level 2 Plan – Alterations

- New french doors to replace existing windows to rear bedrooms
- New window to bathroom
- Existing window to be enlarged
- New layout, internal walls to be demolished shown dashed in red
- Proposed new stairs to level 3
- Portion of slab to be removed for a void
- Existing lift shaft to be close off as a void area
- New lift location

Level 3 Plan – Alterations and Additions

- Existing stairs from Level 2 to be removed
- Existing roof to be removed
- Proposed new lift
- Proposed new stairs
- Replace existing windows with doors to access new elevated deck
- New elevated deck with planter – existing roofing to be retained under deck

Roof Plan

- New skylight
- New raised metal roof, finished to match existing height
- New roof to new lift and stair area

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 R2 Low Density Residential

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 55 DP 8075 , 39 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Bower Street. The site is irregular in shape with a frontage of 13.710m along Bower Street and a maximum depth along the southern side boundary of 41.505m. The site has a secondary frontage at the rear of 24.375m to a pedestrianised section of Montpelier Place. The site has a surveyed area of 705.4sqm. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site slopes from the secondary frontage (west) down to the primary frontage (east), with a fall across the site of approximately 8m. The site contains lawn areas, garden beds, trees and vegetation. The site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low residential development, primarily dwelling houses.

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:

Complying Development Certificate No. 109/2025 for "Demolition Of Existing Dwelling" was issued by Certified Building Specialists on 3 July 2015.

Complying Development Certificate No. 138/2015 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 7 August 2015.

Complying Development Certificate No. 23/2016 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 11 January 2016.

Complying Development Certificate No. 51/2016 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 1 April 2016.

Complying Development Certificate No. 77/2016 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 3 August 2016.

Development Application No. 186/2016 for "Alterations and additions to the existing dwelling including internal alterations" was approved by Council on 10 August 2016.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact

Section 4.15 Matters for Consideration	Comments
	in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 14 November 2024) stating that the development 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 13/01/2025 to 27/01/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Christopher John Mitchell	1 / 41 Bower Street MANLY NSW 2095
Mr David Norman Miles	2 / 41 Bower Street MANLY NSW 2095
Mr Michael Richard Burns	26 Montpelier Place MANLY NSW 2095
Ms Rytia Anne Burns	26 Montpelier Place MANLY NSW 2095

The following issues were raised in the submissions:

- **Acoustic Privacy / Noise**

The submissions raised concerns regarding potential noise impacts of the proposed development. Specifically, concern was raised regarding pool / spa filter noise and noise potentially emanating from the use of the proposed Level 3 deck / terrace.

Comment:

Regarding pump / filter noise, a standard condition of consent has been included in the recommendations of this report requiring that the swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Regarding concerns relating to the generation of noise from the use of outdoor areas, it is noted that there are general regulations in place relating to residential noise. The *Protection of the Environment Operations Act 1997* provides generic regulatory instruments that can be applied to any context where 'offensive noise' is generated, allowing action to be taken by council or police officers. It is generic regulation such as this that would cover instances such as loud usage of outdoor spaces at late night hours, should this occur.

Subject to recommended conditions of consent and generic noise protection offered by the *Protection of the Environment Operations Act 1997* the proposed development is not expected to create an unreasonable acoustic impact on adjoining properties outside that expected within a low density residential environment.

- **Visual Privacy**

The submissions raised concerns regarding potential visual privacy impacts of the proposed development. Specifically, concern was raised about the potential for overlooking from the proposed Level 3 deck / terrace to windows and the rear yard of the adjoining property to the north (41 Bower Street). Concern was also raised about the potential of privacy impacts on 26 Montpelier Place, a property located approximately 50m to the south of the subject site.

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for detailed assessment of potential privacy impacts. In summary, it has been considered appropriate to recommend a condition of consent which requires amendments to the approved plans for the purposes of a privacy screen along the northern elevation of the proposed Level 3 deck / terrace. Subject to this recommended condition of consent, the visual privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

- **Notification process**

The submissions raised concerns regarding the notification process. Specifically, a submission from 26 Montpelier Place raised that notification of the proposed development had not been received.

Comment:

The application was notified in accordance with the Northern Beaches Community Participation

Plan (NBCPP). This included sending exhibition letters to adjoining property owners / occupiers and the placement of a notification sign on the main frontage of the development site, in addition to online display and electronic alerts sent to any person or group that has registered to receive information on the exhibition of development applications. The notification period extended from 13 January 2025 to 27 January 2025, in accordance with the mandatory minimum exhibition timeframe for this type of Development Application as per the NBCPP. Regarding exhibition letters, these are only sent to adjoining properties and properties across a street or road from the subject site. 26 Montpelier Place does not adjoin the subject site and is not opposite any street frontage of the subject site. Overall, the notification was correctly carried out in accordance with the NBCPP.

- **Non-compliance with development standards**

The submissions raised concerns regarding the proposed exacerbation of non-compliances with building height and floor space ratio development standards.

Comment:

The proposed development included a request to vary the height of buildings and floor space ratio development standard established by the MLEP 2013. Council is satisfied that the Applicant's written requests under Clause 4.6 of the Manly Local Environmental Plan 2013, seeking to justify variation of the development standards contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

As such, this report concludes with a recommendation that flexibility be applied and that Council vary the development standard. Please refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for full assessment of these matters.

- **Bulk and scale**

The submissions raised concerns regarding perceived bulk and scale of the development.

Comment:

Consideration has been given to building bulk and scale throughout this assessment. It is noted that this area of Manly is characterised by large three and four storey dwelling houses. The proposed development will not be out of character within this environment. Furthermore, it is not considered that the proposed alterations and additions will significantly contribute to additional perceived bulk and scale as compared to the existing dwelling house and the existing character of the area.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions.</i> The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, a

Internal Referral Body	Comments
	threatened species 'test of significance' is required to be undertaken in accordance with Section 7.3 of NSW Biodiversity Conservation Act 2016. This assessment has been undertaken and concludes that the proposal will not result in a significant impact to the endangered population, given that proposed works are largely within the existing development footprint.
NECC (Coast and Catchments)	<i>Supported, subject to conditions.</i> The application has been assessed in consideration of the - Coastal Management Act 2016 - State Environmental Planning Policy (Resilience & Hazards) 2021 - Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 - Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. - Manly LEP and DCP. Proposed works • Ground Floor Plan – Alterations and Additions - Proposed new lift location within building footprint - Existing lift to be removed with shaft retained as void area Level 1 Plan – Alterations and Additions • Proposed new lift location • Existing wall to be demolished to accommodate new lift • New bathroom configuration and window to be reduced • Existing lift shaft to be retained as void area • Close of existing door to cabana area • Addition of swimming pool and equipment (as per approved CDC plans – note pool was not constructed) Level 2 Plan – Alterations • New French doors to replace existing windows to rear bedrooms • New window to bathroom • Existing window to be enlarged • New layout, internal walls to be demolished shown dashed in red • Proposed new stairs to level 3 • Portion of slab to be removed for a void • Existing lift shaft to be close off as a void area • New lift location Level 3 Plan – Alterations and Additions • Existing stairs from Level 2 to be removed • Existing roof to be removed • Proposed new lift • Proposed new stairs • Replace existing windows with doors to access new elevated deck • New elevated deck with planter – existing roofing to be retained under deck Roof Plan

Internal Referral Body	Comments
	- New skylight - New raised metal roof, finished to match existing height - New roof to new lift and stair area SUPPORTED: WITH CONDITIONS The application has been assessed in consideration of the Coastal Management Act 2016 and State Environmental Planning Policy (Resilience & Hazards) 2021. It has also been assessed against requirements of the Manly LEP and DCP. Coastal Management Act 2016 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. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Four Towns Planning dated 26 November 2024 satisfies the requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment, but not the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 does not apply in assessing this DA. Manly LEP 2013 and Manly DCP

Internal Referral Body	Comments					
	No coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.					
Strategic and Place Planning (Heritage Officer)	Supported, without conditions. <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td> This proposal has been referred to Heritage as the site is located within the vicinity of two Heritage Items. SHR 01724 St Patrick's Estate - 151 Darley Road Manly 1191 2 Moreton Bay Fig Trees (Ficus Macrophylla) - Bower Street Manly </td></tr><tr><td>Details of heritage items affected</td></tr><tr><td> St Patrick's Estate SHR 01724 <u>Statement of Significance</u> St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The College and the Archbishop's Residence have historical significance as important physical manifestations of Cardinal Moran's concepts and plans for the development of Catholicism in Australasia. The buildings have historical significance also for the associated people involved in the development of the College and Australia's priesthood. The St Patrick's Estate has a significant relationship with the natural environment of North Head. Although isolated from the remainder of North Head by the construction of the sandstone boundary walls and the substantial clearing of the indigenous vegetation on the Estate, the St Patrick's Estate still maintains its historical and visual relationship with North Head. <u>Physical Description</u> St. Patrick's Seminary (1885-9) was designed by Sheerin and Hennessy and built by W.H. Jennings between 1885 and 1889. The stone building is four storeys high with a six level central bell tower and a slate roof. A two storeyed colonnade flanks the central entrance. The building is splendidly sited, of high quality construction in the perpendicular Gothic style and impressive in scale. 2 Moreton Bay Fig Trees 1191 <u>Statement of Significance</u> Good example of specimen trees. Shade. Listed for its aesthetic importance. <u>Physical Description</u> </td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	This proposal has been referred to Heritage as the site is located within the vicinity of two Heritage Items. SHR 01724 St Patrick's Estate - 151 Darley Road Manly 1191 2 Moreton Bay Fig Trees (Ficus Macrophylla) - Bower Street Manly	Details of heritage items affected	St Patrick's Estate SHR 01724 <u>Statement of Significance</u> St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The College and the Archbishop's Residence have historical significance as important physical manifestations of Cardinal Moran's concepts and plans for the development of Catholicism in Australasia. The buildings have historical significance also for the associated people involved in the development of the College and Australia's priesthood. The St Patrick's Estate has a significant relationship with the natural environment of North Head. Although isolated from the remainder of North Head by the construction of the sandstone boundary walls and the substantial clearing of the indigenous vegetation on the Estate, the St Patrick's Estate still maintains its historical and visual relationship with North Head. <u>Physical Description</u> St. Patrick's Seminary (1885-9) was designed by Sheerin and Hennessy and built by W.H. Jennings between 1885 and 1889. The stone building is four storeys high with a six level central bell tower and a slate roof. A two storeyed colonnade flanks the central entrance. The building is splendidly sited, of high quality construction in the perpendicular Gothic style and impressive in scale. 2 Moreton Bay Fig Trees 1191 <u>Statement of Significance</u> Good example of specimen trees. Shade. Listed for its aesthetic importance. <u>Physical Description</u>
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Internal Referral Body	Comments		
	Two Moreton Bay Fig Trees (Ficus Macrophylla) planted in Reserve.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	St Patrick's Estate SHR #01724
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal seeks consent for alterations and additions to the existing dwelling including the construction of a new swimming pool and associated landscape works. The proposed works are mostly contained to the internal areas of the dwelling and rear of the property and include changes to the internal layout, replacement of existing windows and a proposed new lift. The two Moreton Bay Fig Trees are located to the east of the site and St Patrick's Estate is located to the south of the site. Due to nature of the proposed works, which are mostly contained to the internal areas of the dwelling and to the rear of the property, the proposal is not considered to impact upon the two heritage items within the vicinity nor impact their significance. Therefore, Heritage raises no objections to the proposal and requires no conditions. Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? Has a CMP been provided? Is a Heritage Impact Statement required? Has a Heritage Impact Statement been provided?		

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions.</i> 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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1773656, issued 19 November 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 raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and 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 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.7 Aquatic ecology

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - (i) a controlled activity approval under the Water Management Act 2000, or*
 - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
 - (i) the erosion of land abutting a natural waterbody, or*
 - (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the surrounding natural environment (subject to conditions).

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*

(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:

The proposed development is wholly located on private land and does not impact upon recreation or public access along the foreshore.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the surrounding natural environment (subject to conditions). Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such, consultation with adjoining local government areas was not undertaken in this instance.

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—

- (a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and*
- (b) conflicts between land uses are minimised.*

Comment:

The proposed works will meet these requirements.

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.

On 21 November 2024, the Department of Planning, Housing and Infrastructure delegated the Minister's consent authority functions back to Council for certain development types and Transport for NSW for other development types. The instrument of delegation specifies that:

- The Minister delegates his consent authority functions to Council for everything under Clause 6.25(2)(a) of the SEPP, except some specified land uses, which are instead to go to Transport for NSW for determination, and
- The Minister delegates his consent authority functions to Council for everything under Clauses 6.25(2)(b) and (c) of the SEPP.

Per the second dot-point above, which refers to Clause 6.25(c), being relevant to this application, Council is the consent authority.

In this instance, Council as the consent authority refers the application to the Northern Beaches Development Determination Panel for determination.

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 working elements of the harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. The development is satisfactory with respect to the matters above at (a) to (e) inclusive.

6.32 Rocky foreshores and significant seagrasses

(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—

(a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and

(b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and

(c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and

(d) will not cause physical damage to aquatic ecology.

Comment:

The proposal has been reviewed by Council's Coastal Officer who raised no objection to the works. The works are satisfactory with respect to the matters above at (a)-(d).

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 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

There is currently no adopted Coastal Vulnerability Area Map. Nonetheless, the proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

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 proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

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	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.95m	17.1%	No

Floor Space Ratio	FSR: 0.45:1 (317.43sqm)	FSR: 0.48:1 (341.8sqm)	7.7% (24.37sqm)	No
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Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone:

- To provide for the housing needs of the community within a low density residential environment.

Comment:

The proposed development is for alterations and additions to an existing dwelling house, which will allow for the alteration / adaptation of existing low density housing stock to serve the changing housing needs of owners / occupiers within the community.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

N/A - the proposed development is for residential purposes within this residential area. Nonetheless, the proposed development will not impede on other such land uses.

Overall, the proposed development complies with the underlying objectives of the R2 Low Density Residential zone.

4.6 Exceptions to development standards

MLEP 2013 Clause 4.3 Height of Buildings

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 9.95m

Percentage of variation: 17.1%

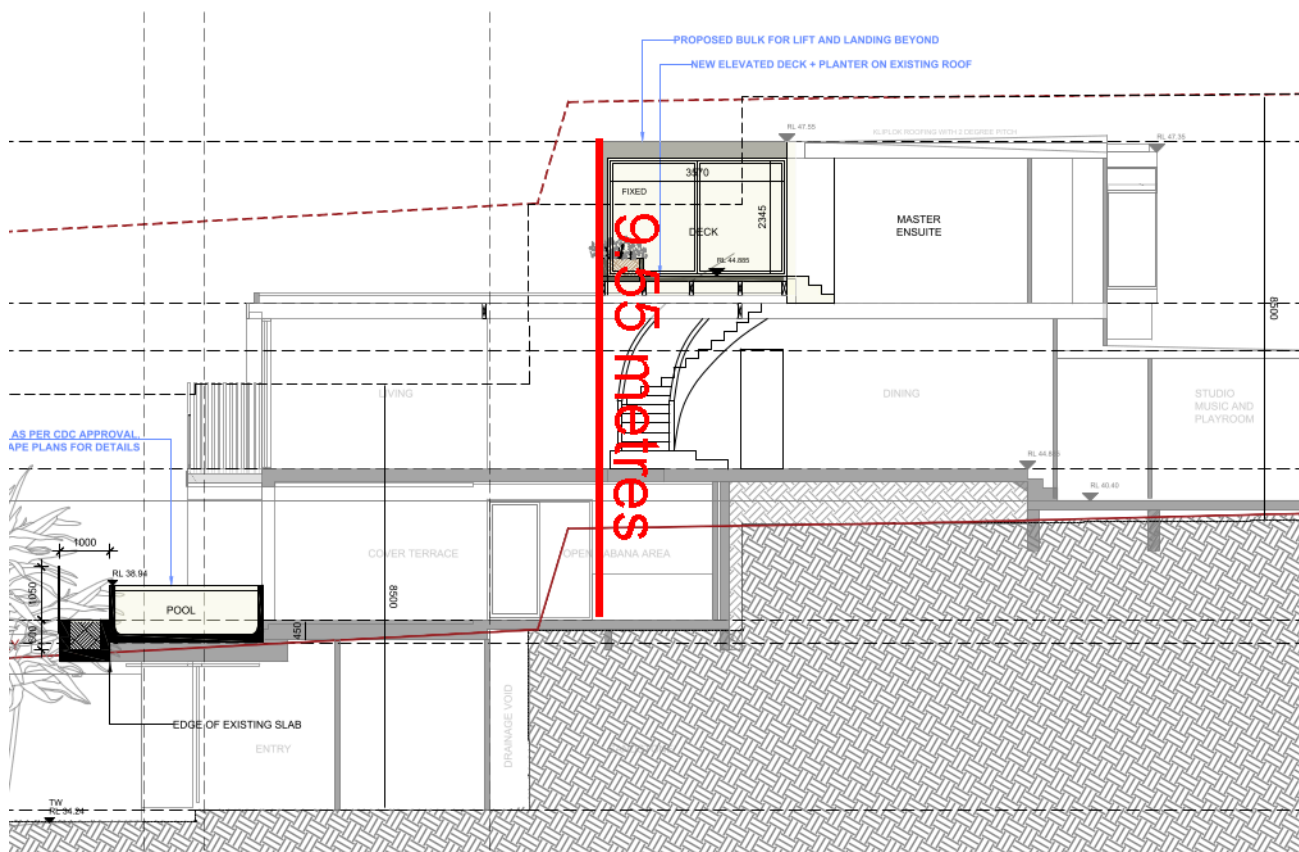


Figure 1 - Extract from Section AA depicting building height.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the*

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The Applicant's written request seeks to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The objectives of the development standard are addressed within the 4.6 request as follows:

(a) 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,

Response from the Applicant:

"This objective relates to streetscape character and in this regard the proposed dwelling has been designed to be consistent with the bulk and scale of Bower Street. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct noting the topography of the area. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality."

"The variation is due to the existing bulk and scale of the dwelling which is already over the building height as a result of the natural topography and existing man-made changes which hinders the development when assessed with the ground level (existing) definition. If the merits of the 'Bettar' Court Case are utilised, the natural ground level enables a variation with that consistent with other developments. The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the non-compliant building height elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height."

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

Response from the Applicant:

"The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architects have worked tirelessly to design an accessible dwelling where all levels are linked through one lift as alterations and additions that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the existing three-four storey bulk and scale along Bower Street) while accommodating a bulk and scale that is complementary to the natural environment. The proposed additions relating to the lift and new practical stairs to level 3 have been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the streetscape. It is acknowledged that the clients are prepared to spend more money to relocate the lift rather than extending the existing lift, which would have an impact to the bulk and scale of the front of the dwelling due to its location. As assessed within objective (a) the proposal is consistent with the streetscape of Bower Street, which therefore dictates the bulk and scale for the locality."

(c) to minimise disruption to the following:

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

Response from the Applicant:

"Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height."

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

Response from the Applicant:

"Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, view impacts have been minimised and a view sharing outcome is achieved. The proposal is consistent with this objective notwithstanding the proposed building height variation."

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

Response from the Applicant:

"The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height."

(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,

Response from the Applicant:

"The application is accompanied by shadow diagrams which depict the impact of shadowing on the neighbouring properties. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June. The proposal is consistent with this objective notwithstanding the building height breaching elements proposed."

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

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

Response from the Applicant:

"Not applicable – the site is not located within a recreation or environmental protection zone."

The arguments provided by the Applicant in response to the objectives are generally concurred with. Importantly, it is noted that the breach partially results from existing excavation of the site. Building height is measured in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which takes existing excavation as existing ground level. The site has been built upon and excavated for this purpose, so building height is measured to the finished floor level rather than site levels prior to excavation. Furthermore, the proposed development does not increase the overall ridge height or add additional levels to the existing building, with only alterations and additions to the existing Level 3 in breach of the development standard. It is also noted that this area of Manly is characterised by large three and four storey dwelling houses. The proposed development will not be out of character within this environment. It is considered that the objectives of the standard are achieved despite the non-compliance with the standard.

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 *at* [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The Clause 4.6 Request argues, in part:

- *"The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control."*
- *"The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Bower Street. It is noted that the proposed works do not protrude higher than that existing with the highest roof line to be maintained."*
- *"The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and the immediate properties are all three to four storeys in height."*
- *"The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access,*

privacy impacts are suitably minimised, and views are reasonably maintained."

- *"The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Bower Street."*
- *"The proposal is consistent with the stance Council has taken on developments along Bower Street and surrounding streets noting numerous approvals granted for variations to the building height control."*

The arguments provided by the Applicant are general concurred with. It is noted that as alterations and additions, the proposal is designed to adapt and add to an existing structure. Flexibility in the application of the development standard will allow for adaptation and reuse of existing built form to suit the changing needs of owners and occupants and promote ecologically sustainable development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings for the following reasons:

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

MLEP 2013 Clause 4.4 Floor Space Ratio

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.45:1 (317.43sqm)

Proposed: 0.48:1 (341.8sqm)

Percentage of variation: 7.7%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the

Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The Applicant's written request seeks to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The Applicant has also stated that they are attempting to establish the second and forth ways in *Wehbe*, however, it is not considered that the written request has adequately done so. Nonetheless, only one way must be demonstrated to show that compliance with the development standard is unreasonable or unnecessary. As such, in relation to the first way, the objectives of the development standard are addressed within the 4.6 request as follows:

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

Response from the Applicant:

"The development proposes alterations and additions to create a functional dwelling for the new occupants of the dwelling through design changes and the provision for a lift to access all levels. The proposal also includes other minor additions to the ground and Level 1 which when viewed would not be noticeable or impact the streetscape or public domain. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape. The surrounding area varies in size, bulk and scale, ranging from two to four storeys in height and varying setbacks. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing bulk and scale and the future streetscape of the locality."

"Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Bower Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character."

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

Response from the Applicant:

"The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation."

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

Response from the Applicant:

"The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain relatively unchanged, as proposed works are located within the existing building footprint. I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area."

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

Response from the Applicant:

"The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained."

"Privacy - Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas for the site, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective."

"Solar access - The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing north facing living room and open space area of the adjoining property at 37 Bower Street,

with compliant levels of solar access maintained."

"Visual amenity/ building bulk and scale - As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes."

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

Response from the Applicant:

Not applicable – the site is located within a residential zone.

The arguments provided by the Applicant in response to the objectives are generally concurred with. Only an additional 18.1sqm of GFA is proposed under this application, all within the footprint of the existing dwelling. Design choices, such as the relocation of the lift shaft further within the building, have attempted to minimise additional GFA, whilst achieving the goals of the proposed works, including providing lift access to the uppermost Level 3. The additional GFA is considered to be minor and will only negligibly impact the perceived overall bulk and scale of the dwelling house as compared to existing. It is also noted that this area of Manly is characterised by large three and four storey dwelling houses, many with recently approved FSR variations. The proposed development will not be out of character within this environment. It is considered that the objectives of the standard are achieved despite the non-compliance with the standard.

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 *at* [26]. *The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

The Clause 4.6 Request argues, in part:

- *"Context and Established Precedence - The area surrounding the subject site is characterised by 2 to 4 storey residential dwellings, stepped to accommodate the sloping topography of the area. The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices. The proposal has been designed as alterations and additions with the main addition relating to the change to the lift location and provision of the lift through one central location to all levels on the site, which increases GFA. The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d)."*

- *"Future Development - The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for the provision of the lift through one central location to all levels on the site. This represents an efficient use of an existing developed site, with all services readily available. The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality. The proposed works will not hinder any future development of the lot. The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g)."*
- *"Consistent with Zone Objectives - The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled."*
- *"Natural Environment - The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land. The natural environment is unaffected by the departure to the development standard as the works relates to alterations and additions within the existing building footprint, therefore it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied."*
- *"Social and Economic Welfare - The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying CI1.3(b)."*
- *"Appropriate Environmental Planning Outcome - The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report."*

The arguments provided by the Applicant are general concurred with. It is noted that as alterations and additions, the proposal is designed to adapt and add to an existing structure. Flexibility in the application of the development standard will allow for adaptation and reuse of existing built form for the changing needs of owners and occupants and promote ecologically sustainable development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 Floor Space Ratio for the following reasons:

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 705.4sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 129sqm (5 bedrooms, 4 bathrooms)	341.8sqm	-	Yes
4.1.2.1 Wall Height	North: 7.3m (based on gradient 1:7.5)	7.6m	4.1%	No
	South: 6.9m (based on gradient 1:15)	9.8m	42%	No
4.1.2.2 Number of Storeys	2	4	N/A	No but existing and unchanged
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.3m	-	Yes
4.1.4.1 Street Front Setbacks	Primary Frontage (Bower Street): Prevailing building line / 6m	Level 3 Forward Extension, 18.4m, behind / consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: GF: N/A - all works internal or to existing walls L1: N/A - all works internal or to existing walls and pool subject to separate control L2: N/A - all works internal or to existing walls L3: 2.5m (based on 7.6m wall height)	N/A N/A N/A 5.5m	N/A N/A N/A -	N/A N/A N/A Yes
	South: GF: N/A - all works internal or to existing walls L1: N/A - all works internal or to existing walls and pool subject to separate control L2: N/A - all works internal or to existing walls L3: 3.3m (based on 9.8m wall height)	N/A N/A N/A 3.7m	N/A N/A N/A -	N/A N/A N/A Yes

	No new / altered windows within 3m of a side boundary	2 windows at L2 added / altered on existing wall within 3m of southern side boundary	N/A	No
	Secondary Frontage (Montpelier Place): Prevailing setback	No change to existing setbacks, consistent with prevailing setback	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (387.97sqm)	59.1% (416.7sqm)	-	Yes
	No more than 25% of open space above ground (104.175sqm)	27.4% (114.1sqm)	9.5% (9.925sqm)	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (145.845sqm)	39.1% (162.9sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	4.7m	370%	No
	1m curtilage side/rear setback	North Side: 0.7m	30%	No
	1.5m waterline side/rear setback	North Side: 2m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	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
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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	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

3.4.2 Privacy and Security

Submissions on this application have been received which raise privacy concerns. These submissions came from the adjoining property to the north (41 Bower Street, which contains two occupancies / dwellings) and 26 Montpelier Place, a property located approximately 50m to the south of the subject site.

The assessment of potential privacy impacts of a proposal requires consideration of the requirements and objectives of this Clause, as well as Planning Principles established within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, which hold that when applying judgment to assess privacy impacts, consideration should be given to density, separation, use and design. *Super Studio v Waverley [2004] NSWLEC 91* is also a relevant case which has created Planning Principles concerning the use of landscaping to protect privacy.

This Clause requires the following:

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

The proposal is considered as follows:

Proposed Windows

The proposal includes alterations to existing windows, the creation of new windows within existing walls, and the creation of new windows on the proposed Level 3 addition. All windows are either setback from side boundaries, orientated to benefit visual privacy, or incorporate privacy solutions in design (e.g. high-sill design). Concerning the northern elevation, the only window on this side is setback 10.5m from the side boundary and is located behind a proposed deck / terrace (disused below). As such, no privacy issues are raised with this proposed window, or any other proposed windows or window changes.

Specifically addressing the concerns from 26 Montpelier Place, it is noted that this property is located approximately 50m to the south of the subject site. This is a significant distance, enough to consider that separation is sufficient to achieve reasonable privacy within this low density residential area.

Proposed Level 3 Deck / Terrace

The proposed development includes the addition of a Level 3 deck / terrace off a master bedroom. Due to the proposed extension of Level 3, this deck is recessed and shielded by built form to the south and west. To the east is the primary street frontage, where terraces / balconies / decks are best oriented to reduce privacy impacts. To the north is an adjoining property which has raised privacy concerns in submissions.

The northern side of the Level 3 terrace / deck is setback 5.5m from the side boundary. The adjoining property at 41 Bower Street is setback approximately 5.5m from this shared boundary, creating approximately 11m of distance between the Level 3 terrace / deck and the neighbouring building. However, there are areas of private open space at the ground level of 41 Bower Street which may be vulnerable to overlooking from the proposed terrace / deck within this 11m distance. The terrace / deck is located off of what is categorised as a low waking use room (a bedroom) and will not be a main area of outdoor open space akin to an entertaining area, as these are provided at lower levels. However, the proposed terrace / deck is sizable and located at the upper most level of a building which also breaches the MLEP 2013 high of buildings development standard. Therefore, the risk of privacy impacts on the adjoining northern neighbour from overlooking are significant.

Trees and vegetation currently exist between the subject site and 41 Bower Street. However, the following Planning Principal from *Super Studio v Waverley* [2004] NSWLEC 91 is noted:

"Where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens."

As such, this landscaping should not be relied upon as the primary safeguard to prevent overlooking from this proposed Level 3 terrace / deck. Given the risk of overlooking, height, distance and orientation of the terrace / deck, and reliance on landscaping to maintain privacy, it is considered appropriate to recommend a condition of consent requiring amendments to the endorsed plans so that a privacy screen is required along the northern elevation of the Level 3 terrace / deck. Subject to this condition, the proposal is considered to meet the requirements of this Clause and to result in reasonable visual privacy outcomes.

Proposed Level 1 Pool / Spa

The proposed Level 1 pool and spa are located on / within an existing outdoor terrace area. The pool will be set within an existing recess, and given people using a pool would be seeing from water level, it is not anticipated that these alterations will create additional significant privacy impacts. As existing, there is physical fencing / screening at Level 1 between the subject site and the adjoining northern neighbour, in addition to vegetation. In this regard, the proposal is considered to meet the requirements of this Clause and to result in reasonable visual privacy outcomes.

Acoustic Privacy / Noise

Regarding pump / filter noise, a standard condition of consent has been included in the recommendations of this report requiring that the swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. Subject to recommended conditions of consent and generic noise protection offered by the *Protection of the Environment Operations Act 1997* the proposed development is not expected to create an unreasonable acoustic impact on adjoining properties outside that expected within a low density residential environment.

Conclusion

Subject to conditions, the proposed development is considered to meet the requirements of this Clause. The visual and acoustic privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

For the benefit of a full assessment, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:

As described above, the proposed development, as conditioned, adequately minimises loss of privacy to adjacent and nearby development.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

As described above, the proposed development, as conditioned, adequately minimises loss of privacy to adjacent and nearby development. Therefore, an adequate balance has been met.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise neighbourhood security or casual surveillance of the street frontage.

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

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed the following heights:

- North: 7.3m (based on gradient 1:7.5).
- South: 6.9m (based on gradient 1:15).

The following wall heights are proposed to the Level 3 addition:

- North: 7.6m, representing a 4.1% non-compliance.
- South: 9.8m, representing a 42% non-compliance.

The control also requires that buildings must not exceed two (2) storeys. The proposed dwelling contains a maximum of four (4) storeys. However, it is noted that this is an existing feature of the dwelling house and the number of storeys will be unchanged by the proposed development.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the underlying objectives for the Height of Buildings development standard at Clause 4.3 in the MLEP 2013. The proposal has been assessed against these objectives in the section of this report on MLEP 2013 Clause 4.6. In summary, the proposal is considered to be consistent with the underlying objectives of the Height of Buildings development standard.

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

4.1.3 Floor Space Ratio (FSR)

The provision of this Clause relating to FSR and undersized allotments is not relevant to this assessment, as the subject site is not an undersized allotment. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for assessment of the FSR development standard non-compliance.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity. The proposed alterations and additions do not extend the building footprint any closer to the front boundary, with all works proposed with the existing building footprint. Therefore, the proposed development does not reduce the existing front setback. Furthermore, the existing setback to the secondary / rear frontage is maintained for the same reason. As such, prevailing building lines at both the primary front and secondary rear frontages are maintained and the proposal is compliant with this Clause.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. All proposed works on the ground Floor, Level 1, and Level 2 are internal or to existing walls, meaning they do not change the existing setback of those walls. The Level 3 addition will exhibit side setbacks in compliance with this control. As such, the proposal is compliant with this Clause where applicable.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposed development includes two (2) new or altered windows within 3m of a side boundary, both on the southern elevation at Level 2. It should be noted that these windows are not considered to create any unreasonable privacy impacts, considering their design and location off two low-use rooms (a bedroom and bathroom, both rooms where less waking time is spent). Nonetheless, these windows represent the only proposed technical non-compliance with this Clause.

Merit consideration

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

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

Comment:

The side setbacks of the alterations and additions maintain established side building lines, with proposed additions respecting these established setbacks. Additions to Level 3 are compliant with all setback controls. Non-compliances only relate to the proximity of new / altered windows to the southern side boundary, which will not adversely impact the the existing streetscape, including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- providing privacy;
- providing equitable access to light, sunshine and air movement; and

- facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.
- defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and
- facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

Comment:

The proposed development is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. This includes privacy, which is assessed in detail within the section of this report on MDCP Clause 3.4.2 Privacy and Security. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not detrimentally impact on traffic conditions.

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

Comment:

Flexibility is required in the siting of alterations and additions to existing structures as the proposal must contend with existing non-compliances. By allowing the adaption and alteration of existing structures to suit the changing needs of owners and occupants, sustainability is encouraged. The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and it has demonstrated it meets the underlying objectives of controls where non-compliance arise. As such, flexibility is warranted in this instance.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal is compliant with the landscaped area provisions of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 14 November 2024) stating that the development 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.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (387.97sqm) of the site to be open space. In addition, at least 35% (145.845sqm) of the proposed total open space is to be landscaped area and no more than 25% (104.175sqm) of total open space can be provided above ground level.

The proposal has a compliant level of total open space of 59.1% (416.7sqm). The proposal also achieves compliance with landscaped area, exhibiting a total of 39.1% (162.9sqm).

However, the subject site exhibits 27.4% (114.1sqm) of total open space above ground level, representing a 9.5% (9.925sqm) variation to the 25% limit.

This Clause also requires sites with a site area of between 500sqm and 800sqm to have 3 native tree of a prescribed type and height. As existing, the site does contain examples of trees and vegetation of a sufficient height, however, may not contain trees of the prescribed species. However, it is noted that the proposal does not greatly effect landscaped / outdoor areas of the subject site, instead proposing additions within the building footprint. This leaves little scope for the inclusion of such trees within the context of this application

Merit consideration

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposed alterations and additions are located entirely within the footprint of the existing building. The proposal will only increase total open space and landscaped area through the addition of a Level 3 deck / terrace with planter box. Whilst total open space above ground level is non-compliant, this does not impact landscaped features or vegetation.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal maintains landscaped area with dimensions capable of accommodating for any future plantings. The non-compliance with the open space above ground level control is created by an additional terrace located over an existing roof. As such, it will not impact on soft landscaped areas or vegetation.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The proposed development is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. This includes privacy, which is assessed in detail within the section of this report on MDCP Clause 3.4.2 Privacy and Security. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristics.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposed works are not expected to significantly affect wildlife habitat. Council's Bushland and Biodiversity team has assessed the proposed development and concluded that the proposal will not result in a significant impact to the endangered population, given that proposed works are largely within the existing development footprint. This team has supported the proposal, subject to conditions.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.1 Height above ground requires that swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. The proposed swimming pool and spa would have a water line 4.7m above ground level, as they are proposed within an existing elevated balcony.

Clause 4.1.9.2 Location and Setbacks requires that the outer edge of any pool/spa curtilage must be setback from the side or rear boundaries by at least 1m, and the water line must be setback at least 1.5m from the boundaries. The proposed swimming pool exhibits a 0.7m curtilage setback to the northern side boundary (a 70% variation to the control) and a 2m waterline setback to the east side boundary (compliant).

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying 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:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for detailed assessment of potential privacy impacts. In this section, it is noted that the proposed Level 1 pool and spa are located on / within an existing outdoor terrace / balcony area. The pool will be set within an existing recess, and given people using a pool would be seeing from water level, it is not anticipated that these alterations will create additional significant privacy impacts. As existing, there is physical fencing / screening at Level 1 between the subject site and the adjoining northern neighbour, in addition to vegetation. Furthermore, a condition of consent concerning Swimming Pool/Spa Motor Noise is recommended to ensure the acoustic privacy of adjoining and surrounding dwellings is maintained. Considering the existing nature of the deck, existing screening to the northern neighbour, and recommended condition of consent concerning pump noise, the visual and acoustic privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

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

Comment:

The proposed swimming pool has been sited within a portion of the front deck that has a recess that was originally intended for a swimming pool. The pool was not built as part of the original dwelling house Complying Development Certificate. From the lower street angle and with a front setback of at minimum 8m, the pool will not significantly stand out any differently from the existing deck and dwelling house, with the additional impact on streetscape considered to be negligible. The proposal is consistent with the established character of the locality and similar swimming pools / spas within the locality.

Objective 3) To integrate landscaping.

Comment:

The proposal meets landscaped area requirements of the MDCP. As such, the pool is not considered to diminish the quality of the proposed landscaped solution for the site.

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

Comment:

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 14 November 2024) stating that the development 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. The pool may also be used as an emergency water resource if necessary.

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

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

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$3,960 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$396,000.

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

Council is also satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a swimming pool, has been referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

The concerns raised in the objections have been sufficiently addressed, including through the imposition of conditions of consent relating to privacy screening and pool filter noise.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, as well as variations to the following Manly Development Control Plan built from controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.9 Swimming Pools, Spas and Water Features

Overall, the development 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 Northern Beaches Council, as the consent authority, vary the development standards contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, because the Applicant's written requests have adequately

addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1639 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 55 DP 8075, 39 Bower Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
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
A1000	A	Ground Floor Plan	Platform Architects	20 November 2024
A1001	A	Level 1 Plan	Platform Architects	20 November 2024
A1002	A	Level 2 Plan	Platform Architects	20 November 2024
A1003	A	Level 3 Plan	Platform Architects	20 November 2024
A1004	A	Roof Plan	Platform Architects	20 November 2024
A2001	A	Elevation North	Platform Architects	20 November 2024
A2002	A	Elevation South	Platform Architects	20 November 2024
A2003	A	Elevation East	Platform Architects	20 November 2024
A2004	A	Elevation West	Platform Architects	20 November 2024
A3000	A	Section A-A	Platform Architects	20 November 2024
A3001	A	Section B-B	Platform Architects	20 November 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1773656	-	ECO CERTIFICATES PTY LTD	19 November 2024
Bushfire Risk Assessment	-	Bushfire Planning Services	14 November 2024
Preliminary Geotechnical Assessment	Ref: AG 24365	Ascent Geotechnical Consulting	11 September 2024
Waste Management Plan - 39 Bower Street, Manly	-	-	-

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

In the event of any inconsistency between 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.

2. Compliance with Other Department, Authority or Service Requirements

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	Referral - Ausgrid	Undated

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working

hours, and

- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$3,960.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$396,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or

demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- A 1.65 metre high privacy screen (measured from finished floor level of the Level 3 Deck) is to be erected for the length of the outermost northern edge of the deck located off the Level 3 Master Bedroom as shown on the approved plans. The screen must extend along this northern deck edge from the dwelling wall to the start of the planner box, a length of 2.9m. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development and to ensure visual privacy between properties is maintained.

9. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Compliance with Standards**

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

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

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

11. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and

- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),
- Location of site access, proposed roads and other impervious areas (e.g. parking area and site facilities),
- Existing and proposed drainage patterns with stormwater discharge points,
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

DURING BUILDING WORK

13. **Wildlife Protection**

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

Reason: To protect native wildlife.

14. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

15. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

16. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

18. **Maintenance of Sediment and Erosion Controls**

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

19. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

20. Stockpiling materials

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

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. No Weeds Imported On To The Site

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

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

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

22. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

23. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

24. Geotechnical Recommendations

Any ongoing recommendations (if any) of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

25. Swimming Pool/Spa Motor Noise

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.