

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0668
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 81 DP 8076, 95 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney Ikuyo Feldman
Applicant:	Your Beautiful Home Pty Ltd

Application Lodged:	31/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/06/2021 to 18/06/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 11%
Recommendation:	Approval

Estimated Cost of Works:	\$ 3,171,026.50
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EXECUTIVE SUMMARY

The application seeks consent for alterations and additions, including the construction of a new upper floor over an existing one and two storey dwelling.

In response to the notification of the application, five (5) submissions were received in objection to the development, raising concern with regard to view loss, privacy and the potential heritage significance of the existing dwelling. In response to these concerns, and those raised by Council during the assessment process, the application has been amended such that the proposal will not result in any unreasonable impacts upon views or privacy, and a considerable portion of the original features of the non-heritage listed dwelling will be retained. Overall, the consent authority can be satisfied that the matters raised by the community have been reasonably resolved.

The proposal involves a minor exceedance of the maximum building height development standard. The non-compliant element, being the gable roof over the front balcony, does not attribute to any unreasonable impacts upon the surrounding environment and has been designed specifically to respond to the architectural style of the existing dwelling. The application is supported by a request to vary the maximum building height development standard and the consent authority can be satisfied that all matters prescribed by clause 4.6 of MLEP 2013 have been satisfactorily addressed.

As the cost of works of the development exceeds \$1 million and as more than 3 submissions were received, and as the development involves a variation to a numerical development standard that is greater than 10%, the application is referred to the DDP for determination, with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling. The resultant dwelling will comprise:

Lower Ground Floor: double garage and storage,

Ground Floor: three bedrooms, three bathrooms, laundry, entrance porch & lobby, living room, piano room and covered deck,

Upper Floor: main bedroom, WIR, ensuite, kitchen, butlers pantry, living, dining, bathroom and covered decks.

Stairwells and a lift are proposed to provide access between the three levels.

The application also proposes tree removal, landscaping, widened access driveway and new fencing.

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 R1 General Residential
Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

SITE DESCRIPTION

Property Description:	Lot 81 DP 8076 , 95 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site is identified as 95 Bower Street, Manly (Lot 81, DP 8076). The site is an irregularly-shaped corner allotment; the primary (northeast) road frontage adjoins Bower Street, and the southeast frontage adjoins College Street. The northwest side and southwest rear boundaries adjoin residential allotments. The total area of the site is 799.7m² (survey). The site is moderately sloped, with a maximum southwest-to-northeast (i.e. rear-to-front) downhill slope of approximately 5.8 metres. The site is located within the R1 General Residential zone under MLEP 2013; the northeast, southeast and southwest boundaries all adjoin R1-zoned sites/areas, while the northwest boundary adjoins an RE1 Public Recreation zone. The site is mapped as being affected by class 5 acid sulfate soils and biodiversity considerations and is within the Manly Foreshore Scenic Protection Area; the eastern-most parts of the site are also mapped as being flood affected (low and medium risk areas). The subject site is also mapped by the DCP as being within an Assessment of Significance Area (Bandicoot). The subject site does not contain a heritage item and is not within a Heritage Conservation Area. The northeast boundary however adjoins a mapped heritage item (Item no. I90, 'Street trees (<i>Acaucaria heterophylla</i>)'); the site is also in proximity to a number of other mapped heritage items, the two closest of which are as follows: • Item no. I2, 'All stone kerbs', approximately 7.5 metres northeast subject site, and • Item no. I131 , 'St Patrick's Estate'), approximately 22 metres southwest of the subject site. Development on the site consists of a single storey dwelling with a garage beneath. The dwelling is located within the centre/northwest part of the site, and the driveway to the garage and associated crossover is on the northwest side of the site. Other development on the site include retaining walls and pathways around the dwelling.

Detailed Description of Adjoining/Surrounding Development

Development on adjoining sites to the southwest consists of detached dwelling houses; the site adjoining the northwest boundary contains a unnamed public reserve. Residential-zoned areas within the surrounding areas consist predominantly of residential development that is of varying densities (i.e. dwelling houses and smaller-scale residential flat buildings) and some isolated commercial development. Areas further to the north include Fairy Bower Beach and Cabbage tree Bay, while areas further to the southeast contain the St Patrick's Estate/International College of Management) and associated sites.

Map:



SITE HISTORY

On 10 February 2021, a pre-lodgement meeting was held with respect to the proposal currently before Council.

On 31 May 2021, the subject application was lodged.

On 20 July 2021, Council wrote to the applicant, raising concerns with regards to the following:

- Building height
- View loss
- Roof terrace
- Heritage significance

On 13 August 2021, amended plans were presented to Council to demonstrate the deletion of the upper floor roof terrace.

On 23 August 2021, an amended clause 4.6 submission was presented to Council.

On 20 September 2021, certification was received from a registered surveyor confirming the height and placement of height poles at the subject site.

Note: The time frames associated with the erection of height poles and subsequent view loss site inspections were impacted by the Covid-19 health restrictions that prevented access to the site for an extended period of time.

On 3 December 2021, further amended plans were presented to Council. The amended plans demonstrate a reduction to the size of the upper floor, with the retention of a greater proportion of the existing roof form. The further amended plans also reduce the forward projection of the front gable roof, lower the pitch and maximum RL of the roof, and reduce the width of the driveway (consistent with that recommended by Council's Development Engineer).

In circumstances where the amendments result in reduced impacts to surrounding properties and noting that the changes are consistent with those recommended by the neighbouring property owners to address view loss concerns, the amended plans were not formally notified (consistent with the provisions of Council's Community Participation Plan).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested during the assessment process and subsequently provided.

Section 4.15 Matters for Consideration'	Comments
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be 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 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 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/06/2021 to 18/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Hugh Burns	45 Bower Street MANLY NSW 2095
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
Richard Lamb & Associates	Suite 1A 134 Military Road NEUTRAL BAY NSW 2089
Reddall Street Pty Ltd	Townhouse 1 51-55 Upper Pitt Street KIRRIBILLI NSW 2061
Mr Rodney Owen Duncan	97 Bower Street MANLY NSW 2095

The concerns raised in the submissions received are addressed as follows:

- **View loss**

Submissions have been received from and on behalf of the owners of 29 Reddall Street and 31 Reddall Street raising concerns with regard to the potential impact upon views arising from the proposed development. The submissions suggest that the level of impact could be reduced by virtue of a reduction to the pitch of the roof. The applicant has provided amended plans incorporating this suggested change, in addition to a reduction in the width of the upper floor, which will further reduce the impact upon views.

The submissions received from and on behalf of the owners of 29 Reddall Street and 31 Reddall Street also requested that landscaping be limited to no more than 6m in height, to maintain existing view corridors. A condition of consent has been recommended in this regard, which requires all but one tree, being the replacement of the existing Cheese Tree proposed to be removed, to be limited to 6m in height.

A submission has also been received from the adjoining property owners of 97 Bower Street, raising concern with regard to the potential loss of the view to St Patrick's Cathedral from a lower floor side window.

As discussed with regard to clause 3.4.3 of MDCP 2011, the resultant impact upon views is considered to be reasonable and view sharing between properties is achieved.

- **Visual privacy**

A submission has been received on behalf of the owner of the adjoining dwellings at 31 and 35 Reddall Street, raising concerns with regard to visual privacy. In particular, the submission makes reference to the need for screening of the south-eastern upper floor terrace to prevent overlooking of the terrace from the adjoining properties to the south-west, that are likely to be redeveloped in the near future to maximise the water views available to the north-east. It is not considered reasonable for Council to enforce additional screening measures to prevent overlooking from a potential development that has not been lodged or approved by Council. The privacy screen proposed along the south-western elevation of the terrace is considered to provide suitable privacy between properties based on the current context of the site.

- **Heritage significance**

A submission has been received in objection to the proposal on heritage grounds. Whilst the existing dwelling is not nominated as an item of local or state heritage significance, the application was supported by a Heritage Impact Statement that states:

"The dwelling dates from the mid c1920s (c1924) and comprises an Inter-War period dwelling which references a substantial Inter-War Californian Bungalow..."

The subject site has moderate historical significance as mid-20th century dwelling, which form part of later phase of development in the area following the subdivision of the St Patrick's College Estate. The site therefore has some historical association with the college site... The subject site has moderate aesthetic significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period, with internal decoration and details largely intact. However, it is noted that there are other better examples of the style in the vicinity and the estate, with more substantial features and decoration, and in better condition."

The potential heritage significance of the dwelling has been carefully considered by Council's Heritage Officer, who is now satisfied that, subject to conditions of consent, the amended proposal is an appropriate response for the development of the non-listed site.

No matter raised in the submissions received is considered to warrant the refusal of the subject application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objection, with conditions. <i>The development application is for alterations and additions to an existing dwelling.</i> <i>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan zone E3 Environmental Management, and against the following landscape controls of Manly DCP 2013 (but not limited to):</i> <i>• section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,</i> <i>• section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping.</i> <i>The development application is accompanied by a Landscape Master Plan and a Arboricultural Impact Assessment.</i> <i>The Landscape Master Plan provides an indication of existing trees to be retained and removed, and includes augmented hard and soft landscape treatments and tree replacement. The Landscape Master Plan does not nominate planting layout and species and conditions of consent shall be imposed for Amended Landscape Plans. Tree replacement planting within the front setback as nominated on the Landscape Plan shall be limited to a height of 8 metres to coincide with the top of the roof level to ensure neighbouring views are not impacted.</i> <i>The Arboricultural Impact Assessment report recommends the removal of three (3) native trees identified as T1 (Cheese Tree), T6 (Cheese Tree) and T7 (Brush Cherry) and one (1) native fern T5 (Tree Fern). Existing tree T1 is assessed as in fair to poor condition with minimal potential for improvement, T6 and T7 are located within the development footprint and are currently exempt under the 2 metre</i>

Internal Referral Body	Comments
	<i>rule proximity to existing building, and T5 has self-sown into the existing retaining wall. Two (2) exempt species, identified as T2 and T4 are proposed for removal and these do not require Council consent. One native Tree Fern identified as T3 is recommended for retention, and the report provides tree protection measures.</i> <i>Landscape Referral raises no objections to the development proposal, subject to conditions of consent.</i>
NECC (Bushland and Biodiversity)	No objection, with conditions. <i>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</i> • <i>NSW Biodiversity Conservation Act 2016 (BC Act)</i> • <i>Manly LEP Clause 6.5 (Terrestrial Biodiversity)</i> • <i>Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat).</i> <i>The application seeks approval for alteration and additions to an existing dwelling, and construction of a new pedestrian path and new rear roof terrace.</i> <i>The Arboricultural Impact Assessment report recommends the removal of three (3) native trees identified as T1 (Cheese Tree), T6 (Cheese Tree) and T7 (Brush Cherry) and one (1) native fern T5 (Tree Fern). Existing tree T1 is assessed as in fair to poor condition with minimal potential for improvement, T6 and T7 are located within the development footprint and are currently exempt under the 2 metre rule proximity to existing building, and T5 has self-sown into the existing retaining wall. Two (2) exempt species, identified as T2 and T4 are proposed for removal and these do not require Council consent.</i> <i>The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, the development is to be accompanied by a 'test of significance' prepared in accordance with Section 7.3 of the BC Act. An ecological impact assessment with test of significance for the endangered bandicoot population has been submitted with the DA and concludes that the proposal will not have a significant impact on the population. Given that the proposal is largely within the existing footprint, Council's Biodiversity referral body concur with this conclusion, subject to recommended conditions to maintain bandicoot access and mitigate construction-related impacts.</i>
NECC (Coast and Catchments)	No objection, with conditions. <i>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements</i>

Internal Referral Body	Comments
	<i>of the Manly LEP and DCP. The proposed development meets Clauses 12, 13 and 15 of the Coastal Management SEPP (13 and 14 do not apply) and meets the requirements of the relevant clauses of the Manly LEP and DCP. The impacts on the coastal environment have been assessed as acceptable subject to conditions.</i>
NECC (Development Engineering)	No objection, with conditions. <i>Development Engineering has no objection to the application subject to the following conditions of consent.</i>
NECC (Stormwater and Floodplain Engineering – Flood risk)	No objection, with conditions. <i>The proposed DA generally meets the flood controls in the LEP and DCP. The proposed DA is outside the 1% AEP flood extent.</i>
Strategic and Place Planning (Heritage Officer)	No objection, with conditions.
	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is within the vicinity of a number of heritage items: Item I131 - St Patrick's Estate - 151 Darley Road (Primary address, alternate address 106 Darley Road) Item I90 - Street trees (<i>Acaucaria heterophylla</i>) - Bower Street (from Cliff Street to College Street)
	Details of heritage items affected Details of the heritage items as contained within the Northern Beaches inventory is as follows: Item I131 - St Patrick's Estate <u>Statement of significance:</u> St Patrick's Estate is a site of national heritage significance. The unparalleled grandeur of the cultural landscape, including its setting, buildings and landscape components, as well as the history it embodies, reflects a unique physical manifestation of the Catholic Church in Australia, not seen in any other location in the country. The site exemplifies an important period in the Church's history in Australia, as well as the vision of Cardinal Moran, and for that reason has great significant to Australian Catholics, as well as the broader community. The built elements, particularly Moran House with its Gothic Revival architectural style, reflect both the romanticism of Cardinal Moran's vision for the Australian Catholic Church, as well as the austere nature of the Church at that time. Sited on the prominent northern side of North Head, overlooking Manly and the surrounding area, St Patrick's has become a landmark recognised by locals and visitors alike. Despite recent redevelopments of parts of the site, and the

Internal Referral Body	Comments																					
	adaptive reuse of the key buildings, the site has retained its integrity and still presents as a cohesive whole. <u>Physical description:</u> St Patrick's Estate is a complex cultural landscape comprising many significant components, including buildings, grounds, gardens and landscape elements (including walls, pathways, and significant trees). It is magnificently sited on the northern slopes of North Head, overlooking Manly and Ocean Beach, and it is a prominent and striking landmark in the Manly area. Architecturally, the complex comprises a variety of Nineteenth and early Twentieth Century buildings primarily in Gothic Revival style. The most prominent of these is Moran House, a four storey symmetrical sandstone building with bell tower at the centre, above the main entrance, which is also flanked by a two storey colonnade. The kitchen wing was added in 1935. Key vistas include looking south east toward the building from the town centre, and from the front of Moran House looking north west towards the town centre. Item I90 - Street trees (<i>Acaucaria heterophylla</i>) <u>Statement of significance:</u> Listed for its aesthetic importance to the streetscape. Continuity with the earlier street tree plants of Manly 'Village' area. <u>Physical description:</u> Norfolk Island pines (<i>Araucaria Heterophylla</i>). Appear to have been planted in the early 1900's. <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> Consideration of Application The proposal seeks consent for alterations and additions to the existing dwelling, including substantial demolitions and a first floor addition. Although, not a listed under Manly Local Environmental Plan 2013, the property appears to contain elements of an Inter-war Californian bungalow style building. It is noted that, the original features of the existing dwelling, including most of the internal original fabric, has been preserved and still intact. This proposal is for substantial alterations and additions to the existing building,	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
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Other	N/A																					

Internal Referral Body	Comments
	changing the existing building form from single storey to a two storey building by removing the existing roof and adding a second floor. The subject site is not a listed heritage item under the Manly Local Environmental Plan 2013, however it is considered that the property appears to contain elements of a substantial Inter-war Californian Bungalow. Therefore, the potential heritage significance should be taken into consideration in accordance with Manly DCP 2013: <i>Clause 133.2.1.2 Potential Heritage Significance</i> <i>If the property is assessed as having merit as a potential heritage item, the heritage controls and considerations in this plan will apply. (3.2.1 Consideration of Heritage Significance)</i> The application includes a Heritage Assessment by Damian O'Toole Town Planning and Heritage Services, which has assessed both the potential heritage significance of the site and the impact of the proposed development on identified heritage items in the vicinity. The report has determined that the house is not of significance and that the proposal is acceptable when assessed against the identified significance of the heritage items in the vicinity. However, the building itself has been identified as <i>"representative of Inter-War Californian Bungalow Style"</i> in the same report and the following statement from the same report demonstrates that the property has moderate significance in accordance with the assessment of significance against the criterion set by the NSW Heritage Office: <i>"The subject site has moderate heritage significance as a substantial Inter-War dwelling house which formed part of the original mid-20th century development following the subdivision of the wider St Patricks Estate. Whilst the dwelling is largely intact externally, it is probable, based on visual inspection of on-site fabric, that changes have been made to the internal floor plan that have affected its overall significance"</i>. The Heritage Guidelines by NSW Heritage Office states that <i>"The level of heritage significance at State or local levels can only be determined by comparison with other like items. The attributes described for criteria (f) and (g) will assist in the determination of significance. A heritage item is not to be excluded on the ground that items with similar characteristics have already been entered on a statutory list"</i>, and the Heritage Assessment report by Damian O'Toole Town Planning and Heritage Services states in the criteria (g) that <i>"The subject site has moderate representative value representative significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period."</i> The report continues as <i>"Whilst the site has moderate aesthetic significance, with many features of the Inter-</i>

Internal Referral Body	Comments
	<i>War period (including internal decoration and details) largely intact, it is noted that there are other better examples of the style in the vicinity, with more substantial features and decoration, and in better condition." and concludes as "The site does not meet the threshold for Local heritage listing as an individual item."</i> However, an item will be considered to be of State (or local) heritage significance if it meets one or more of the criterion set by Heritage Council of NSW, and the report states that the property meets the criteria in more than one criterion: <i>Criterion (A) - Historical Significance</i> <i>Comments – The subject site has moderate historical significance as mid-20th century dwelling, which form part of later phase of development in the area following the subdivision of the St Patricks College Estate. The site therefore has some historical association with the college site.</i> <i>Criterion (C) - Aesthetic Significance</i> <i>Comments – The subject site has moderate aesthetic significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period, with internal decoration and details largely intact. However, it is noted that there are other better examples of the style in the vicinity and the estate, with more substantial features and decoration, and in better condition.</i> <i>Criterion (G) - Representativeness</i> <i>Comments – The subject site has moderate representative value representative significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period.</i> Therefore, the conclusion stated in the Heritage Assessment report is inconsistent with the "NSW heritage assessment criteria". it is believed that, as stated above, the possibility of a moderate significance of the existing building should be taken into consideration in designing the internal alterations and the new additions as outlined below: • retention of the original fire place and the adjoining art-deco style cabinetry in the living room • retention of the internal original fabric including the plaster ceilings with some ceilings with plaster decoration, original lights fittings with some ceiling roses, picture rails, cornices, skirting boards where possible • retention of the original timber doors or timber with multi-paned glazing doors • retention of the original windows where possible • a more considerate approach to the first floor addition - retention of part of existing roof for interpretation of the original single level bungalow • deletion of the southern roof terrace and the external stairs leading to this terrace

Internal Referral Body	Comments
	Revised comments Amended plans, received in 03 September 2021, have resolved one concern Heritage had with the proposal, but there are still remaining concerns, regarding maintaining the heritage values and integrity of the original building. Given the highly prominent location of the property and the visibility of the long frontage of the site from a number of viewpoints including the Marine Parade Walkway, it is considered that the design of the first floor addition is not appropriate as it dominates the heritage details of the existing building, removes the existing roof and diminishes the single storey presentation of the original building. Therefore, Heritage recommends a more considerate approach to the first floor addition. If the Applicant is unwilling to make required amendments as stated, then Heritage do not support the DA proposal. Revised comments - 09 December 2021 Amended drawings, received on 30 November 2021, demonstrate improvement from the previous amendments. However, it is considered, that the prolonged negotiations have not yet achieved the best outcome for the existing building, therefore conditions of consent are required. The front balcony above the existing bay window is required to be set back from the sides to allow this retained roof below to be at the same level of the retained portion of the main roof (at the internal corners). In other words, the retained portion of the original roof should include the sloping section of the roof above the bay window. It is also required to reduce the first floor roof overhang, that its width should not exceed the width of the existing main roof overhang, to reduce the impact of this addition on the existing building when viewed from Bower Street. Therefore, no objections are raised to this application on heritage grounds, subject to four conditions. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes Further Comments COMPLETED BY: Oya Guner, Heritage Advisor/Reviewed by Anne-Maree Newbery

Internal Referral Body	Comments
	DATE: 30 July 2021, Amended 06 October 2021/Reviewed 14 October 2021, Reviewed 09 December 2021 <u>Planner comment:</u> Two of the four conditions recommended by Council's Heritage Officer, being those that require amendments to the proposed development, have been consolidated into one condition in the attached draft determination.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A412525_03, dated 24 May 2021).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Use Area under the provisions of State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the surrounding coastal and built environment, and the bulk, scale and size of the proposed development has been considered, and
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 14 and 15 of this policy.

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	9.435m	0.935m or 11%	No
Floor Space Ratio	0.6:1 (479.82m ²)	0.43:1 (343.2m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The proposal is consistent with the objectives of the R1 General Residential Zone, as follows:

- *To provide for the housing needs of the community.*

Comment: The proposed development provides for the enlargement of an existing dwelling house to a degree that is more commensurate with that of surrounding development. The resultant development will continue to contribute to housing stock within the Manly locality.

- *To provide for a variety of housing types and densities.*

Comment: The resultant single dwelling house will contribute to the varied mix of residential development along Bower Street and throughout the wider locality.

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

Comment: Not applicable.

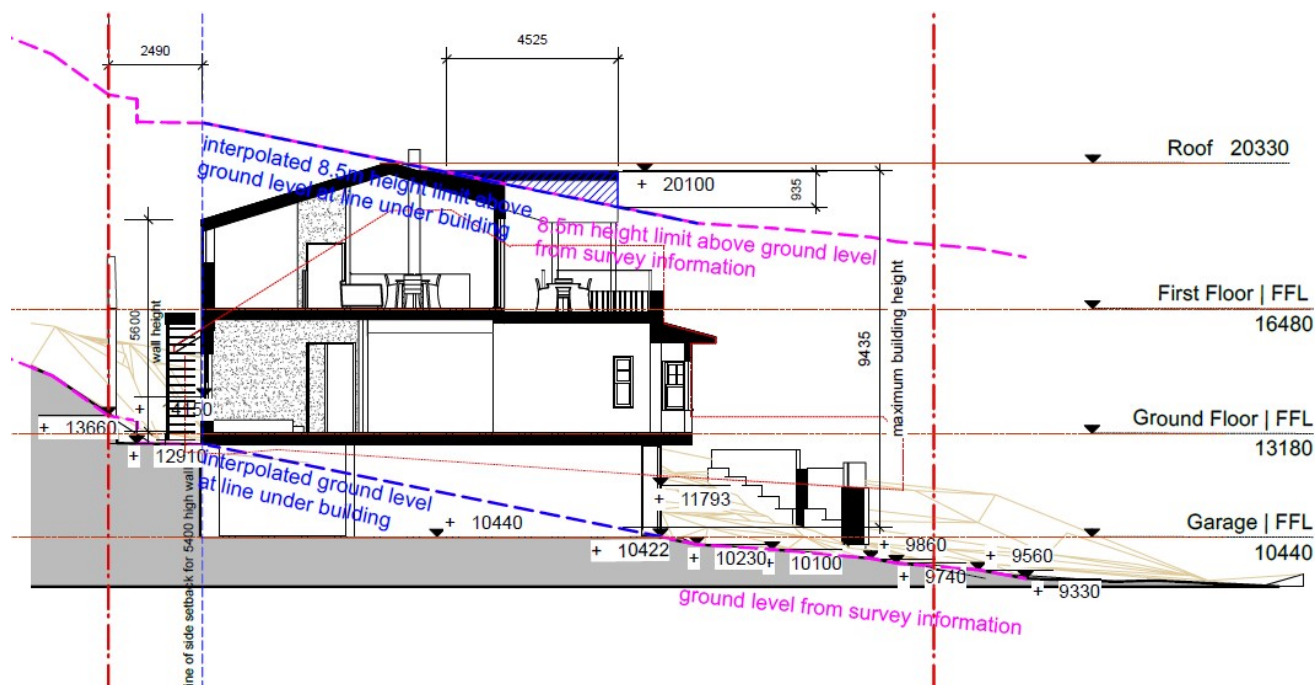
4.3 Height of buildings

With a maximum height of 9.435m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard is not expressly excluded and thus, the clause can be applied in this instance.

What is the extent of the breach?

The proposed development reaches a maximum height of 9.345m, representative of a 0.935m or 11% variation the the 8.5m maximum building height development standard. The maximum height occurs at the the north-eastern end of the front gable, with the extent of non-compliance receding away from the street, as shown in the section, below.



Has the applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clause 4.6 of MLEP 2013. The submission has been considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard.

- b. *That 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] NSWLEC118, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The applicant's submission highlights the following reasons/grounds for the proposed departure from the building height development standard:

- *The proposed new works which include a compatible style and character, reflected through the introduction of the complementary gable roof form over the first floor terrace which retains the style and form of the dwelling as it currently contributes to Bower Street is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EP&A Act.*
- *The proposed alterations and additions introduce modulation and architectural relief to the*

building's facade, whilst maintaining a modest bulk and scale, which promotes good design and improves the amenity of the built environment (1.3(g)).

- *The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the Bower Street locality which also promotes the orderly and economic use of the land (cl 1.3(c)).*

Further, the written request highlights that the non-compliance occurs over a part of the site that has been excavated to not only accommodate for the existing garage but also the associated driveway access. If you were to consider pre-existing natural ground levels below the existing dwelling and driveway, the proposal would comply with the 8.5m height plane.

Overall, The applicant's submission has established sufficient environmental planning grounds to justify the proposed contravention of the building height development standard.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matter required by clause 4.6(3) of MLEP 2013.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

The proposal is considered to be consistent with the objectives of the building height development standard, as follows:

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

Comment: The proposed development appears to be nestled into the natural slope of the land, and with the exception of the front gable roof detail, is generally maintained well below the height plane. The proposed upper floor addition is an appropriate contextual response to the development of the site, that is compatible with the height of surrounding development and the character of the locality.

- *to control the bulk and scale of buildings,*

Comment: The proposed development is well articulated, with varied materiality to reduce the scale of the development. The minor height exceedance occurs at the front of the gable roof form over the proposed upper floor balcony. The gable roof form is setback from the facade of the level below and is an open structure that does not attribute to excessive bulk or scale. It is also noted that the FSR of the development is 0.43:1, well below the 0.6:1 maximum FSR prescribed for the site.

In an area where the majority of surrounding development appears to be at or above the maximum development standard, the bulk and scale of the proposal is considered to be reasonable.

- *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*

Comment: As discussed with regards to clause 3.4.3 of MDCP 2013, the proposed development does not result in any unreasonable impacts upon views currently enjoyed by adjoining properties. Whilst portions of existing view corridors will be obstructed by the proposal, it is generally the main ridgeline of the proposed roof form that attributes to this impact, which is maintained below the maximum building height.

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

Comment: The proposed development does not result in any unreasonable overshadowing of adjoining properties.

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

Comment: Not applicable - The site is located within the R1 General Residential zone.

Furthermore, as discussed separately above, the proposal is consistent with the relevant objectives of the R1 General Residential zone.

Therefore, the consent authority can be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with the correspondence from the Executive Director at the Department dated 2 November 2021 and the DDP Charter, the DDP may assume the Secretary's concurrence in relation to the determination of development applications for Class 1 buildings where the development contravenes a numerical standard by greater than 10%.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposed building height variation can be supported.

5.10 Heritage conservation

The existing dwelling is not identified as an item of local or state heritage significance, the site is not located within a heritage conservation area and neither the site nor the dwelling are listed or described in Schedule 5 of MLEP 2013. The provisions of clause 5.10 of MLEP 2013 are not applicable.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 799.7m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings	1 dwelling	-	Yes
	Min. Dwelling Size: 112m ²	366.7m ²	-	Yes
4.1.2.1 Wall Height	SW: 6.8m (based on gradient 1:20.9)	5.4m - 6.0m	-	Yes
	NW: 7.3m (based on gradient 1:8.5)	5.1m - 7.3m	-	Yes
4.1.2.2 Number of Storeys	2	3	1 storey or 50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.6m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (Nil - 3m)	3.9m - 8.3m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	SW: 1.9m	ground: 1.8m (existing) upper level: 2.5m		Yes
	Habitable Windows: 3m	1.8m (existing) >3m (proposed)	-	Yes
	Secondary street frontage: 2.54m (side setback)	8.0m - 13.0m	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	Common boundary: 6m	ground: 2.36m (existing) upper level: 6.0m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (439.8m ²)	529.6m ² or 66%	-	Yes
	Open space above ground 25% of total open space (110m ²)	90.2m ² or 17%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area (35%) of open space (153.9m ²)	313m ² or 59%	-	Yes
	3 native trees	8 trees	-	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.7m or 25.6% (unchanged)	-	Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	-	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

The application is appropriately characterised as alterations and additions. Non-compliance with the numeric requirements of the DCP associated with existing structures are considered to be acceptable and are not addressed further in this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 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	Yes	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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Views to Shelly Beach and the ocean are currently enjoyed over the subject site by neighbouring properties. In response to the notification of the application, submissions were received in objection to the potential impact upon such views from the owners of dwellings at 29 and 31 Reddall Street. A further submission was also received from the adjoining property owner of 97 Bower Street raising concern with regard to the potential loss of a view to St Patrick's Cathedral that is currently available over the subject site.

Height poles were erected to demonstrate the indicative height of the original proposal. An assessment of the level of impact based upon these height poles and with regard to the four step planning principle developed in *Tenacity Consulting v Warringah Council* has been undertaken, as follows:

29 Reddall Street

1. The dwelling at 29 Reddall Street is located immediately to the south-west of the subject site. The occupants of the dwelling at 29 Reddall Street currently enjoy views to Shelly Beach and the ocean in a north-easterly direction and views along the coast in a northerly direction.
2. From the kitchen/dining and living room at the rear eastern corner of the upper level, the primary orientation is towards Shelly Beach in a north-easterly direction, with additional views along the coastline in a northerly direction. The views are obtained over the northern side and rear boundary, and over down slope properties, including the subject site.

From the primary area of the balcony, located in the northern corner of the upper level, the view is limited by vegetation, with a primary orientation to Shelly Beach. The view to Shelly Beach is obtained over the rear boundary and over down slope properties, including the subject site.

All views are currently enjoyed in both a seated and standing position.

3. The proposed development will impact upon views towards Shelly Beach from the kitchen/dining area, living area and balcony to varying degrees.

From the kitchen and dining area, the roof of the proposal will obstruct a portion of the foreground water view that is partially obstructed by other buildings and vegetation. The views to the surf break adjacent to Shelly Beach, the large expanse of ocean and views of the coastline remain unaffected by the proposal. The impact upon this view is considered to be minor.

From the living area, the roof of the proposal will obstruct a portion of the foreground water view that is partially obstructed by other buildings and vegetation. The views to the surf break adjacent to Shelly Beach, the large expanse of ocean remain unaffected by the proposal. The impact upon this view is considered to be minor.

It is the view corridor from a seated position in the primary area of the balcony that is most affected by the proposal, as depicted in Image 1, below. The originally proposed roof would have resulted in the obstruction of the majority of the foreground water currently enjoyed. The impact upon this view was considered to be moderate.

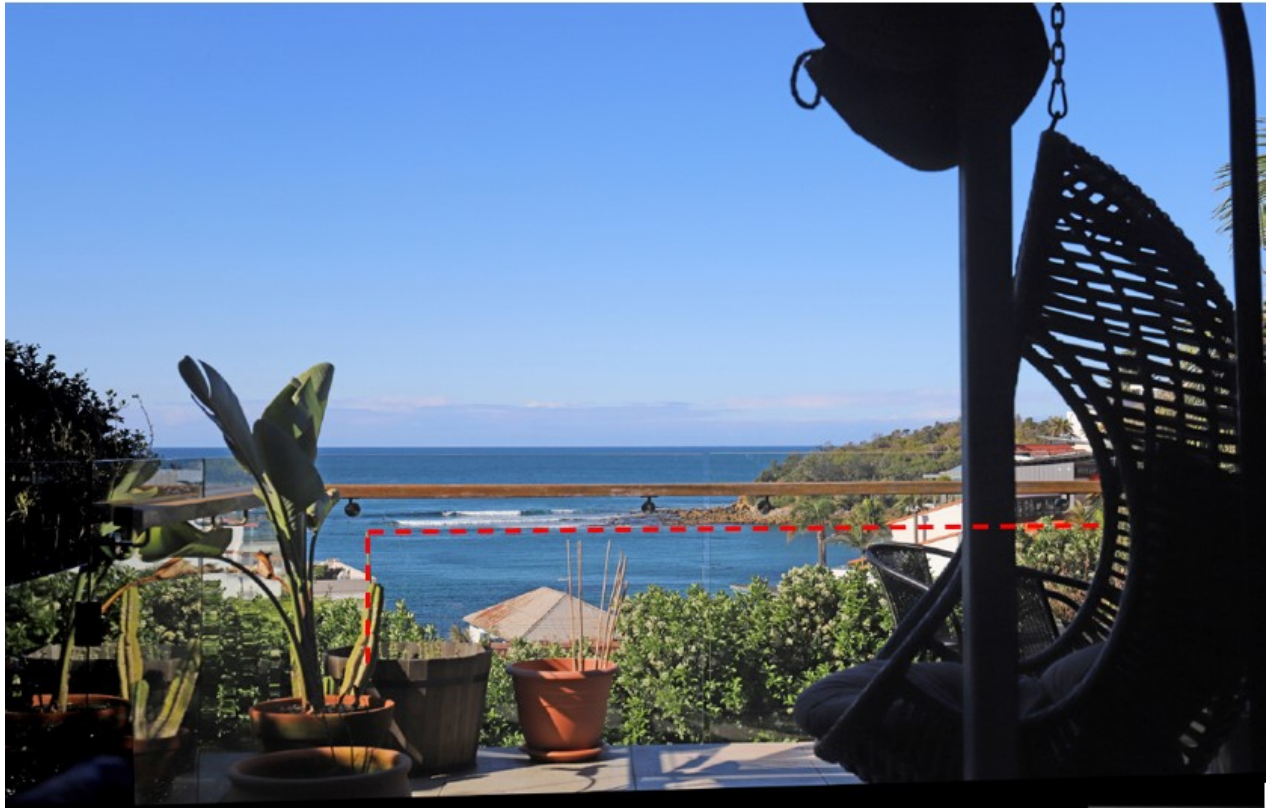


Image 1 - View from primary rear balcony of 29 Reddall Street in seated position.

ORIGINAL

PROPOSAL.

However, the application has since been amended to reduce the pitch of the roof by 370mm, as suggested by the owners of 29 Reddall Street, which provides a greater retention of the proportion of water below the surf break and the headland interface. Furthermore, the setback of the upper floor from the north-western side boundary has been increased, which provides for a greater proportion of the immediate foreground water view to be retained. Whilst amended height poles have not been erected, the owner of the property at 29 Reddall Street has provided detailed view analysis of this outcome. Based upon this information, the assumed impact upon this most corridor is shown in Image 2, below.



Image 2 - View from primary rear balcony of 29 Reddall Street in seated position.

AMENDED

PLANS.

Based on the amended plans, the cumulative impact upon views currently enjoyed from 29 Reddall Street is considered minor.

4. The amended plans, which minimise the pitch of the roof and increase the setback of the upper floor from the north-western side boundary, are considered to represent a skilful design solution that ensures view sharing between properties is achieved. The impact upon the views currently enjoyed from 29 Reddall Street is reasonable.

31 Reddall Street

1. The dwelling at 31 Reddall Street is located immediately to the south-west of the subject site. The occupants of the dwelling at 31 Reddall Street currently enjoy views to the ocean, including the surf break adjacent to Shelly Beach in a north-easterly direction.
2. The views are obtained from the living/dining room at the rear of the middle level of the dwelling in a north-easterly direction. The same views are also available from the bedroom on the level above and from the garden situated a level below. The views are obtained across the rear boundary and over down slope properties, including the subject site.
3. The proposed development will impact upon views towards Shelly Beach from the living/dining room, and to a much lesser degree, the bedroom above. The impact from the living/dining room of the original proposal is shown in the red outline in Image 3, below, with the impact of the amended proposal demonstrated by the semi-transparent outline slightly below. The amended development will result in the obstruction of the immediate foreground water view, consistent with the alignment of the roofs of the waterfront properties. The impact is considered to be minor.



Image 3 - View from living/dining room of 31 Reddall Street.
ORIGINAL AND AMENDED.

Source: Richard Lamb on behalf of 31 Reddall St.

The proposed upper floor addition will result in the total obstruction of the water views currently available from the rear garden, as shown in Image 4. The impact upon views from the garden is considered to be devastating.



Image 4 - View from rear garden of 31 Reddall Street.
ASSUMED AMENDED PROPOSAL.

However, in consideration of the vulnerability of the views currently enjoyed from the garden area, which would be lost as a result on any increase to the height of the existing dwelling, and noting the views retained from other areas of the dwelling, the cumulative impact upon views from 31 Reddall Street is considered to be minor.

4. Whilst the proposal will result in the complete loss of views from the rear garden, this impact is considered to be reasonable in circumstances where it is a compliant second storey addition that is creating the impact. The rear garden has benefited from the current views for an extended period of time, largely as a consequence of the comparably undeveloped/original state of the existing dwelling at 95 Bower Street.

It is acknowledged that the pitch of the front gable roof of the proposed development at 95 Bower Street will result in a minor loss of water views. However, the impact is not considered to be offensive or detrimental to the retained view. This is somewhat affirmed within the submissions received, which confirm that a reasonable view sharing arrangement is achieved as a result of the amended plans (being the plans that represent the 370mm reduction to the ridge line suggested in the submissions).

97 Bower Street

1. The dwelling at 97 Bower Street is located to the north-west of the subject site. The occupants of the dwelling at 97 Bower Street currently enjoy views towards Shelly Beach and the ocean in a north-easterly direction. Views to St Patrick's Cathedral are also available in a south-easterly

direction.

2. The views towards Shelly Beach and the ocean are obtained from the study, master bedroom and ensuite on the lower level, the living area on the upper level, and from the roof deck. These views are obtained across the front boundary and over the top of down slope properties.

The views towards St Patrick's Cathedral are gained from windows along the south-eastern side elevation at both the upper and lower levels and from the roof deck, across the side boundary and over the subject site.

3. The proposal will not result in any impacts upon views to the ocean from anywhere within the dwelling at 97 Bower Street. The impact of the proposal is limited to the view of St Patrick's Cathedral from the study on the lower level. The impact of the original proposal upon this view is shown in Image 5, below.



Image 5 - View from lower level study of 97 Bower Street (standing).
ORIGINAL PROPOSAL.

Source: Owner of 97 Bower Street.

The impact highlighted in Image 5 reflects the original proposal, which has since been lowered in height and setback an additional 4.39m from that shown, such that it is likely that the view will be wholly or partially retained. However, even if the view was to be lost in its entirety, the impact is still considered to be minor, as the primary outlook from the study is towards the ocean which remains unaffected by the proposal and as the view towards St Patrick's is otherwise retained from the levels above.

4. In circumstances where the siting of the upper floor is setback in compliance with the 6m setback control, and when that part of the development is maintained well below the height limit with a minimal roof pitch, the proposal is considered to be a skilful design solution, despite the level of impact upon this view corridor. The view corridor in question is highly vulnerable to obstruction by vegetation growth, particularly noting that the view is obstructed by existing vegetation from a seated position. The impact upon the views enjoyed from 97 Bower Street is reasonable and view sharing between properties is achieved.

Overall, the proposed development will not result in any unreasonable impacts upon views currently enjoyed, and the proposed development is consistent with the requirements and objectives of this clause.

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

With a maximum height of 3 storeys in any one place, the proposed development is inconsistent with the two storey height limit prescribed by this control. A significant proportion of surrounding and nearby development reaches or exceeds three storeys in height, and as such, the height of the development in storeys cannot be said to be inconsistent with the character of the locality. Furthermore, the three storey element is limited in size/scale and does not contribute to any unreasonable impacts upon the amenity of adjoining properties.

Clause 4.1.2.2 of MDCP 2013 does not prescribe any specific objectives relating to the limitation on the number of storeys, but rather defers to the objectives of clause 4.3 (Height of buildings) of MLEP 2013. As discussed with regard to clause 4.3 of MLEP 2013, the proposed development is consistent with the objectives of the height of buildings development standard and as such, the proposed variation to the two storey height limit is supportable on merit.

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$31,710 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,171,027.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;

- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The applicant has worked with Council to satisfactorily resolve all concerns. The proposed development is considered to be a contextually appropriate response for the development of the site.

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 clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0668 for Alterations and additions to a dwelling house on land at Lot 81 DP 8076, 95 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Site Plan, issue C	10 December 2021	Your Beautiful Home
DA03 Basement, issue B	10 December 2021	Your Beautiful Home
DA04 Ground Floor, issue B	10 December 2021	Your Beautiful Home
DA05 First Floor, issue B	10 December 2021	Your Beautiful Home
DA06 Roof Plan, issue C	10 December 2021	Your Beautiful Home
DA07 North East Elevation, issue C	10 December 2021	Your Beautiful Home
DA08 South West Elevation, issue C	10 December 2021	Your Beautiful Home
DA09 North West Elevation, issue C	10 December 2021	Your Beautiful Home
DA10 South East Elevation, issue C	10 December 2021	Your Beautiful Home
DA11 Section A-A, issue C	10 December 2021	Your Beautiful Home
DA12 Section B-B, issue C	10 December 2021	Your Beautiful Home

Engineering Plans		
Drawing No.	Dated	Prepared By
SW-1, Drawing No. 21035, issue 1	22 April 2021	Michael Korecky
SW-2, Drawing No. 21035, issue 1	22 April 2021	Michael Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report	8 April 2021	Hugh the Arborist
BASIX Certificate A412525_03	24 May 2021	Efficient Living Pty Ltd
Flora and Fauna Assessment	6 May 2021	GIS Environmental Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscaping Master Plan	27 April 2021	Harrison's Landscaping

In the event of any inconsistency between conditions of this consent and the

drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **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	Response Ausgrid Referral	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 Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must

not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

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) 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.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) 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.

- (e) 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.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) 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.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) 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.
- (l) 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.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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 sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$31,710.27 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 2021. The monetary contribution is based on a development cost of \$3,171,026.50.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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 \$10,000 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 Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

7. Amended Landscape Plan

The approved Landscape Master Plan referenced in Condition 1 of this consent is to be amended, as follows:

- a. Garden areas nominated in the Landscape Master Plan shall include detailed planting layouts including species selection, quantities, and pot sizes,
- b. The three (3) nominated replacement trees within the front setback facing College Street shall be selected from Northern Beaches Council's Native Tree Guide - Manly Ward. With the exception of one direct replacement of the Cheese Tree species - *Glochiodion ferndinandi*, all trees are to be small trees, with a maturity height no more than 6 metres above natural ground,
- c. Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings and other trees,
- d. Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views,
- e. All garden beds shall be mass planted including shrub planting at a 200mm pot container size, and groundcover planting at a 140mm pot size.
- f. Provision of native plant species to provide new and/or improved low dense clumping habitat to provide for potential bandicoot foraging and nesting in accordance with Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat). The planting schedule should comprise species such as *Lomandra* sp., *Dianella* sp., *Banksia spinulosa*, *Caustis* sp., *Xanthorrhoea* sp., *Isolepis* sp., *Juncus* sp., *Calochlaena* sp., *Callistemon* sp., *Gleichenia* sp. and *Grevillea* 'Robyn Gordon'.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided

to the Certifying Authority prior to issue of the Construction Certificate.

Reason: Landscape amenity and habitat.

8. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. The maximum discharge into the street kerb shall be 25 l/s.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

9. **Fencing for Wildlife Passage**

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Plans are to be certified as complying with this condition and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

10. **Fencing for Wildlife Passage – Ecologist Certification**

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

The Project Ecologist is to provide written certification of compliance to the Certifying Authority prior to issue of any Construction Certificate.

Reason: To preserve wildlife corridors.

11. **Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works.

The Project Ecologist must be an accredited assessor under the NSW Biodiversity Conservation Act 2016.

Employment of a Project Ecologist is to provide an engagement letter, which is to be submitted to and certified by the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

12. **Photographic Archival Record**

A photographic archival record of the site is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the NSW Office of Environment & Heritage (OEH).

This record must be submitted and approved by the Certifying Authority prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

13. **Amendments to Approved Plans - Heritage Consideration**

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

- a. The front balcony above the bay window is required to be set back from the sides, to allow this retained portion of the roof below to be at the same level (height) of the retained portion of the main roof (matching height at the internal corners). In other words, the retained portion of the original roof should include the sloping section of the roof above the bay window.
- b. The first floor roof overhang should not exceed the width of the existing main roof overhang.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To allow the interpretation and preserve the significance of the original building.

14. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner

anticipated by the development consent.

15. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

16. **Materials & Finishes**

Details of the proposed colour scheme and finishes (clearly identified and cross referenced) must be provided to Council's Heritage Officer.

Written approval from Council's Heritage Officer is to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the materials and colours are complementary to the existing building.

17. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

18. **Compliance with Standards**

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

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

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

19. **Sydney Water "Tap In"**

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

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

20. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) T1 and T6 - Cheese Tree
- ii) T5 - Tree Fern
- iii) T7 - Brush Cherry

Existing trees T1, T6 and T7 are subject to tree replacement in accordance with the Amended Landscape Plan.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

21. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

22. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,

- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

24. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

25. **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.

26. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

27. 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 Certifying Authority.

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

28. Installation and Maintenance of Sediment Control

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

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

from the site.

29. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

30. **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 Certifying Authority.

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

31. **Implementation of Ecologist Recommendations**

All biodiversity-related measures recommended within the approved Flora and Fauna Assessment referenced in Condition 1 of this consent are to be implemented prior to and during construction

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

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

32. **Landscape Completion**

Landscaping is to be implemented in accordance with the Amended Landscape Plan required by this consent.

Prior to the issue of any occupation certificate details shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

33. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final

Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

34. **Bright Lighting**

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to any Occupation Certificate.

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

35. **No Weeds Imported On To The Site**

No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

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

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

36. **Certification of adherence with Ecologist Recommendations**

Prior to the issue of the occupation certification, the Project Ecologist is to provide the Principal Certifying Authority with written certification that the development has been undertaken in accordance with the recommendations of the Approved Flora and Fauna Assessment referenced in Condition 1 of this consent.

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

37. **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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

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

38. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.