

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0299
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 82 DP 8076, 35 Reddall Street MANLY NSW 2095 Lot 83 DP 8076, 31 Reddall Street MANLY NSW 2095 Lot 84 DP 8076, 29 Reddall Street MANLY NSW 2095
Proposed Development:	Demolition works, subdivision of three lots into five and construction of five new dwelling houses with swimming pools, associated landscaping and parking.
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Reddall Street Pty Ltd
Applicant:	The Trustee For Reddall Street Trust

Application Lodged:	24/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	03/10/2023 to 17/10/2023
Advertised:	Not Advertised
Submissions Received:	32
Clause 4.6 Variation:	4.3 Height of buildings: 15.3%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 10,810,000.00
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EXECUTIVE SUMMARY

This proposal, for demolition works, subdivision of three lots into five and construction of five new dwelling houses with swimming pools, associated landscaping and parking has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the number of submissions (thirty in objection and two in support), and due to the proposed variation to height of building development standard of 15.3% (9.8 metres where 8.5 metres is allowed).

The applicant lodged an appeal with the Land and Environment Court on 7 August 2023, at the time Council was assessing the application in detail. Consequently, in accordance with Court protocol, no correspondence was entered into with the Applicant about Council's concerns with the application.

The 4.6 request for the non-compliance with height standard arises from the site being partially excavated underneath the existing buildings creating a 15.3% variation for at least one of the proposed new dwelling houses.

Insufficient information has been provided to determine the building height of the other four proposed dwelling houses. Accordingly, a Clause 4.6 may be required if it is demonstrated that these dwellings are also over the 8.5 metre height control.

Based on the applicant lodging an appeal with the Court some of the reasons of refusal may be resolved by additional information being provided, however based on the location of the lots and dwellings the building height and associated view loss issues require accurate information to determine reasonable view sharing is provided. The applicant was advised of issues relating to building height and views at pre-lodgement stage.

Concerns raised in the objections predominantly relate to:

- Traffic congestion and parking concerns;
- Impacts on amenity including view loss and privacy loss;
- Floodwater and stormwater management;
- Impacts to flora and fauna including tree removal;
- Excessive built form and non-compliance with planning controls;
- Excessive excavation; and
- Inconsistency with the character of the area.

The critical assessment issues related to building height, wall height, number of storeys, setbacks, stormwater management, and view sharing.

This report concludes with a recommendation that the NBLPP refused the development application with respect to built form non-compliances, insufficient information, inadequate stormwater management, and view loss.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- Demolition of existing structures,
- Subdivision of the existing three lots into five:
 - Three southern lots fronting Reddall Street (Lots 1, 2 and 3) and two northern lots in a battleaxe configuration via College Street (Lots 4 and 5),
 - Lot sizes (excluding access handles), as follows:
 - Lot 1: 486.5m²
 - Lot 2: 377.7m²
 - Lot 3: 416.8m²
 - Lot 4: 329.8m²
 - Lot 5: 433m²

- Construction of five two-storey dwelling houses (one on each new lot),
- Basement parking accessed via two driveways off College Street:
 - One driveway servicing Lots 1, 2 and 3,
 - One driveway servicing Lots 4 and 5,
- Construction of a swimming pool on each lot, and
- Landscaping works including tree removal.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.7 Stormwater Management

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

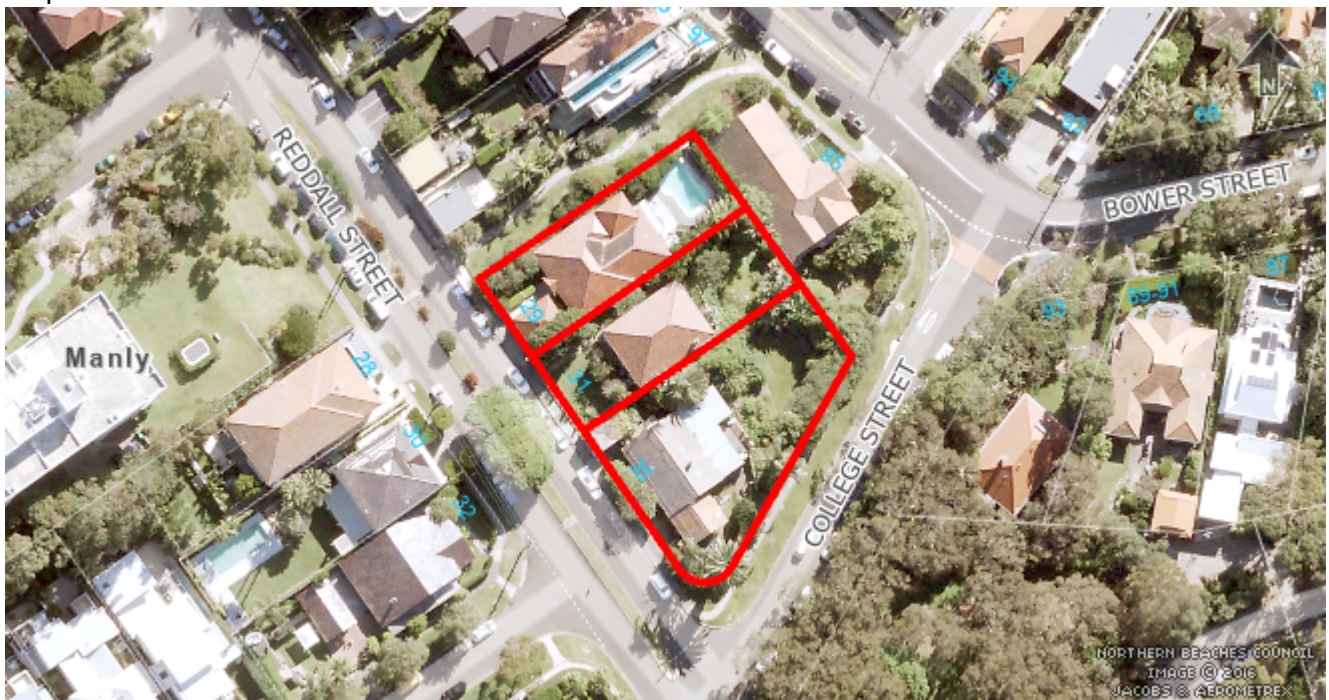
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

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

SITE DESCRIPTION

Property Description:	Lot 82 DP 8076 , 35 Reddall Street MANLY NSW 2095 Lot 83 DP 8076 , 31 Reddall Street MANLY NSW 2095 Lot 84 DP 8076 , 29 Reddall Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of three allotments located on the northern side of Reddall Street, Manly, being Nos. 29, 31 and 35 (Lots 82, 83 and 84 DP 8076). The site is irregular in shape with frontages of 56.98 metres along Reddall Street (with a corner splay of 11.605 metres) and 55.725 metres along College Street, with a maximum depth of 42.67 metres. The site has a surveyed area of 2,352m² across the three existing lots. The site is located within the R1 General Residential zone and contains three one- and two-storey detached dwelling houses. No. 29 Reddall Street contains a swimming pool in the rear yard. The site slopes down approximately 8 metres from front (south-west) to rear (north-east). The site contains various trees across the three lots, predominantly in the rear yards and along the side boundaries. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a variety of residential development types, including detached dwelling houses and residential flat buildings.

Map:



SITE HISTORY

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

- DA2019/0683 for demolition works and construction of a residential development including residential flat buildings was withdrawn by the Applicant on 13 December 2019.
- Pre-lodgement Meeting PLM2021/0134 was held on 24 June 2021 to discuss subdivision of land and construction of dwelling houses.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case as the 'deemed refusal of the application was appealed before the NSW Land and Environment Court before such time as a request could be made. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the

Section 4.15 Matters for Consideration	Comments
	consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable 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 03/10/2023 to 17/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 32 submission/s from:

Name:	Address:
Caroline Hey	2 / 11 Reddall Street MANLY NSW 2095
Mr Alexandre Pierre Lacoste Ms Jane Mary Hilton Mark Mcleod	9 Reddall Street MANLY NSW 2095
Miss Carlie Joanne Plummer	1 / 25 Ashburner Street MANLY NSW 2095
Mr Ben Metcalfe	5 / 140 Addison Road MANLY NSW 2095
Mckees Legal Solutions Ms Ikuyo Feldman Barrie Feldman	Po Box 7909 BAULKHAM HILLS NSW 2153
Mrs Kerry Ann Cunningham	7 / 140 Addison Road MANLY NSW 2095
David Edge	1 / 121 Bower Street MANLY NSW 2095
Ms Susan Bryant	2 / 104 Bower Street MANLY NSW 2095
Mr Gregory Douglas Burgess	8 Clarence Crescent COFFS HARBOUR NSW 2450
Ms Sarah Louise Goodman	40 Cliff Street MANLY NSW 2095
Withheld	MANLY NSW 2095
Ms Lisa Kathleen Meadows	113 Bower Street MANLY NSW 2095
Miss Julia Goebel	1 / 117 Bower Street MANLY NSW 2095
Ms Anne Mary Stewart	4 / 49 Addison Road MANLY NSW 2095
Mrs Melinda Tualima	4 / 7 South Steyne MANLY NSW 2095
Ms Merrilee Ann Linegar	2 / 92 Bower Street MANLY NSW 2095
Mrs Mary Anne Vorlicsek	6 / 7 College Street MANLY NSW 2095
Mr Stephen John Coll Ms Fleur Leanne Kennedy	5 College Street MANLY NSW 2095
Mrs Deanna Jeanette Bergelin DM Planning Pty Ltd	1 / 28 Reddall Street MANLY NSW 2095
Withheld	MANLY NSW 2095
Mrs Judith Penelope Furniss	4 Cliff Street MANLY NSW 2095
Mr Steven Mason	3 / 28 Reddall Street MANLY NSW 2095
Mr Christopher Drew Brasler	5 Cliff Street MANLY NSW 2095
Mr David John Johnston	5 / 7 College Street MANLY NSW 2095
Mr Rodney Owen Duncan Mrs Karen Duncan	97 Bower Street MANLY NSW 2095
Mr Anson Douglas Blackwood Sewell	80 Wood Street MANLY NSW 2095
BBC Consulting Planners	Level 2 55 Mountain Street ULTIMO NSW 2007
Mrs Michele Ann Hill	2 / 28 Reddall Street MANLY NSW 2095
Mr Warwick King Dawson	2 / 7 College Street MANLY NSW 2095
Mr Justin Alexander Graham Urbaine Architectural	30 Reddall Street MANLY NSW 2095
Ms Julie Louise Meldrum	2 / 102 Bower Street MANLY NSW 2095

Name:	Address:
Rowan Kos	31 Reddall Street MANLY NSW 2095

Thirty-two submissions were received relating to this application. Two were in support and the remaining thirty raised objections, as follows:

- The proposed development is not in keeping with the character of the area, including being in the Foreshore Scenic Protection Area.
- The proposed development presents excessive density and amounts to an over-development.
- The proposed development will result in increased traffic congestion and demand on street parking.
- The proposed development does not provide sufficient open space, landscaping and tree planting, and removes habitat for local wildlife.
- The proposed development will result in unreasonable stormwater runoff and flooding to downstream properties.
- The proposed development breaches built form controls.
- The proposed development will overlook the private open space and windows of No. 95 Bower Street.
- The proposed development will result in loss of views to private properties and from the public domain, and height poles should be erected.
- The proposed development relies on significant excavation.
- The proposed development does not maintain the existing subdivision pattern of the locality.
- The proposed development will result in loss of property value for surrounding properties.
- Construction of the development will be unreasonably disruptive to surrounding residents with respect to noise and vibration.
- Inconsistency between the roof and elevation plans with regard to provision of solar panels.

The above issues are addressed as follows:

Character of the Area

Comment:

The subject site is zoned R1 General Residential, a zone which permits a variety of residential development types with consent, including, but not limited to, detached dwelling houses (such as those proposed), dual occupancies, multi-dwelling housing, and residential flat buildings. The proposed development type is anticipated for this zone. As below, the proposal is also of a density less than anticipated for the area. The proposal is generally acceptable with respect to the requirements of Clause 5.4.1 of the Manly DCP and Clause 6.9 of the Manly LEP, which relate to the Foreshore Scenic Protection Area (FSPA), with the exception of the impact on views. With the exception of the view impact, the proposal is of a type and character anticipated in the FSPA.

Density and Over-development

Comment:

The proposed development provides five dwellings across the 2,352m² site, equating to an average of one dwelling per 470m² (including access handles), where Clause 4.1.1.1 of the Manly DCP allows for one dwelling per 250m². Therefore, the proposed development is compliant with the maximum density allowed by Clause 4.1.1.1 of the Manly DCP. The area of the site could accommodate a further four dwellings and still be compliant and representative of the anticipated density for the area. As such, the proposal is not considered an over-development of the land.

Traffic Congestion and Parking

Comment:

The proposal has been reviewed by Council's Traffic Engineer, who is supportive of the proposal subject to conditions of consent, which can be applied if the application is to be determined by way of approval. The proposal will generate minimal vehicular traffic during the peak, and it will not have any unacceptable implications in terms of road network capacity performance. The proposal also includes removal of the three driveway crossovers on Reddall Street and consolidates parking for all five dwellings to two driveways on College Street, rather than providing one driveway per dwelling, totalling five. This is a positive outcome for parking: three on-street parking spaces are gained on Reddall Street, two on-street parking spaces are lost on College Street (meaning a net gain of one space), and two off-street parking spaces are provided per dwelling to support occupants of the proposed dwellings in accordance with the requirements of Schedule 3 Parking and Access of the Manly DCP.

Open Space, Vegetation and Local Wildlife

Comment:

The proposed development provides compliant total open space and landscaped area, in accordance with the requirements of Clause 4.1.5 of the Manly DCP. The proposal has been reviewed by Council's Landscape Officer and Bushland & Biodiversity team. No objections are raised with respect to landscaping or impact to flora and fauna subject to conditions of consent, which can be applied if the application is to be determined by way of approval.

Stormwater Runoff and Flooding

Comment:

The proposal has been reviewed by Council's Development Engineer, who has raised concern with the proposed development, with respect to stormwater management measures. This is included as a reason for refusal.

Breaches to Built Form Controls

Comment:

Any non-compliance with built form controls is addressed in the relevant section of this report. Unacceptable non-compliant elements are included as reasons for refusal.

Amenity - Visual Privacy, View Loss

Comment:

The proposed development is acceptable with respect to visual privacy for the reasons detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly DCP. The proposed development is assessed with respect to view loss in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly DCP.

Excavation

Comment:

Excavation for the basement generally follows the built-upon footprint of the proposed lots. The exceptions to this are for the proposed driveways, which is not an unacceptable outcome. The proposed development is supported by a geotechnical assessment report, which demonstrates acceptably low risk for the works. The proposed basement excavation presents the benefit of consolidating parking for the proposed new lots, thereby limiting the number of driveways to two, rather than one per dwelling, totalling five. With respect to potential for damage to adjoining properties due to demolition, excavation or construction, conditions of consent requiring pre-commencement and post-completion dilapidation reports can be applied if the application is to be determined by way of approval.

Subdivision Pattern

Comment:

The proposed new lots are compliant with the minimum subdivision lot size set by Clause 4.1 of the Manly LEP. The proposed development is also compliant with the requirements of Clause 4.4.8 Subdivision of the Manly DCP. The subject site is currently developed with three dwellings presenting to Reddall Street. This presentation is retained with the proposed subdivision. The only difference in subdivision pattern is the presentation to College Street, with the introduction of one new dwelling fronting the street (given the fifth dwelling is in a battle-axe formation and is not street-facing). The proposal replicates the lot width of No. 95 Bower Street to the north-east as it presents to College Street. In this way, the proposed development is not inconsistent with the existing subdivision pattern or street pattern.

Property Value

Comment:

Impact of a proposed development on the value of nearby properties is not a planning matter for consideration under Section 4.15 Evaluation of the *Environmental Planning and Assessment Act 1979* and is, therefore, not a reason for refusal.

Construction Impacts

Comment:

Council's Traffic Engineer has recommended conditions of consent requiring a Demolition Traffic Management Plan and a Construction Traffic Management Plan. The demolition and construction impacts of the proposed development can be managed with the preparation and implementation of these documents. These conditions can be applied if the application is to be determined by way of approval.

Solar Panels

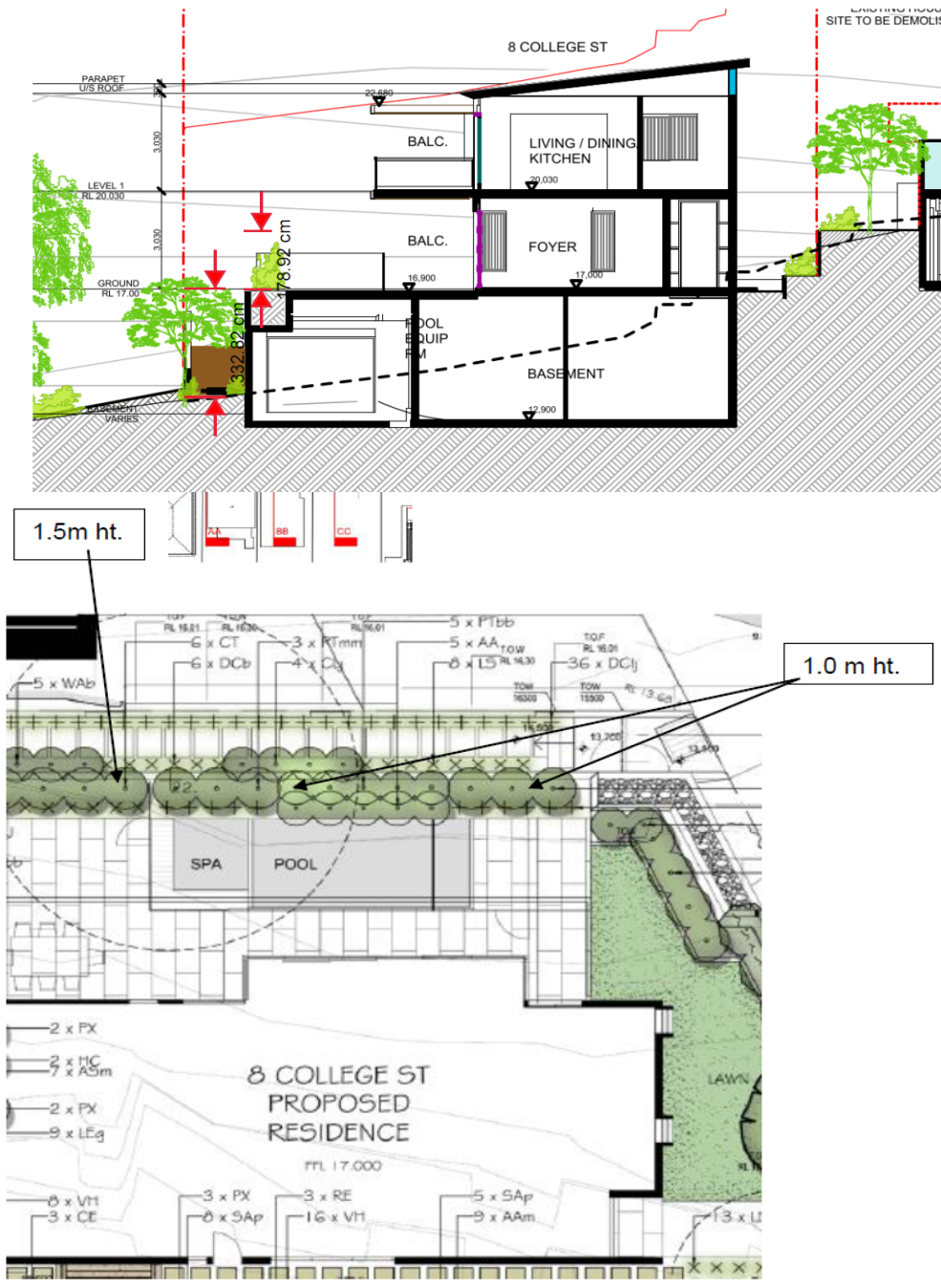
Comment:

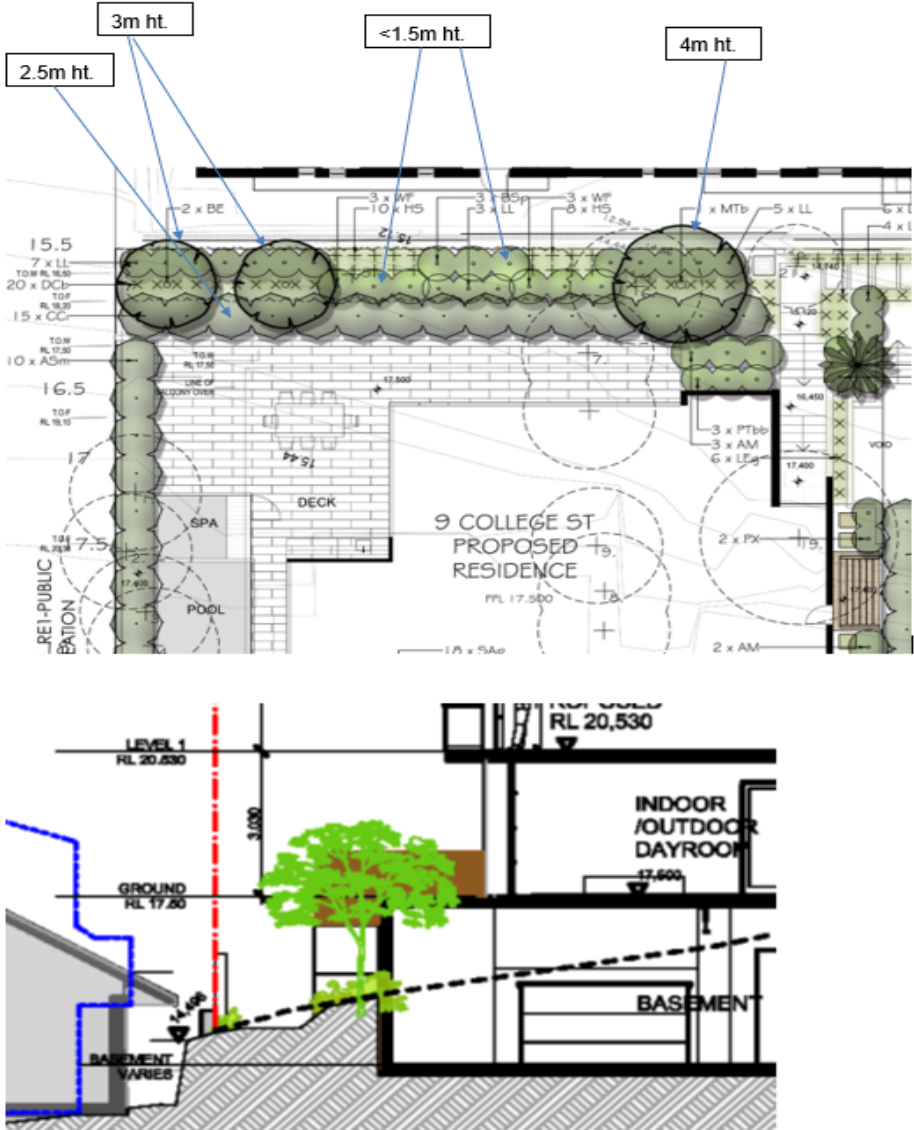
The submitted proposed roof plan indicates solar panels on the roofs of the five dwellings. Details of the solar panels are not shown on elevations or sections. Notwithstanding this, development for the purpose of solar energy systems (e.g., a photovoltaic electricity generating system, solar hot water system or solar air heating system) is specified as exempt development under *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Part 2.3, Division 5, Subclause 2.41(4) Exempt Development. This means that deletion of the structures would be moot, as they can be constructed without consent.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to conditions of consent (if approved): The application seeks consent for demolition works, subdivision of three lots into five and construction of five new dwelling houses with swimming pools, associated landscaping and parking. The Arborist's report prepared by Urban Forestry Australia and Landscape Plans prepared by iScape are noted. The Arborist's Report indicates that 18 exempt trees are to be removed, 13 non-exempt trees are to be removed and 2 trees on the adjoining Council Reserve are to be removed. Of the non-exempt trees to be removed, only 1 tree, T19, <i>Ficus rubiginosa</i>

Internal Referral Body	Comments
	(Port Jackson Fig) is rated Medium retention value. All other trees have been rated Low retention value. T19 is described a being in Fair condition and <i>Locally indigenous species</i>. <i>Codominant stem to S removed, with resulting epicormic growth low on remaining stem and pruned stub. Falls well within the proposed development footprint and would be removed.</i> The two trees on Council's reserve are immediately adjacent to the property boundary. The trees are T10 <i>Ficus benjamina</i> (Weeping Fig) and T11 <i>Nerium oleander</i> (Oleander). T10 is described as being in Fair condition and <i>Introduced exotic species</i>. <i>On Council reserve. Has been topped and lopped. Salt burn to leaves. F. benjamina</i> is an exempt species under Manly DCP. T11 is described as being in Fair condition and <i>Introduced exotic species</i>. <i>On Council land. N. oleander</i> is an exempt species under Manly DCP. No objections are raised to the proposed tree removals, subject to replanting. The documentation and SEE indicate that the required landscaped open space and soft landscape areas are compliant with the planning controls. Assessment of such is left to planning assessment, however, some aspects of the proposed landscape works may be in conflict with other planning requirements, as discussed below: 1. Landscape plans indicate planting to achieve a height of 1.0 - 1.5 metres height along the rear of No 8 College St. at terrace height Based on the Sections provided, overlooking into the yard and internal space of No. 95 Bower St may be an issue requiring further planning assessment. (Extract from Landscape Plans and Sections 8 College Street below)

Internal Referral Body	Comments
	 2. Similar applies to No 9 College St. (Extract from Landscape Plans and Sections 9 College Street below)

Internal Referral Body	Comments
	 The image contains two architectural drawings. The top drawing is a landscape plan for the '9 COLLEGE ST PROPOSED RESIDENCE'. It shows a rear garden area with a pool, spa, and deck. Various plantings are indicated with codes like '2 x BE', '3 x WP', '10 x HS', '3 x MTb', '5 x LL', '6 x L', '4 x L', '3 x PTbb', '3 x AM', '6 x LE', '2 x PX', and '2 x AM'. Callouts specify tree heights: '2.5m ht.', '3m ht.', '<1.5m ht.', and '4m ht.'. Elevation markers on the left include 15.5, 16.5, and 17. The bottom drawing is a vertical section showing the building's profile. It labels 'LEVEL 1 RL 20,530', 'GROUND RL 17,20', and 'BASEMENT VARIES'. A tree is shown in the garden, and the building interior is labeled 'INDOOR /OUTDOOR DAYROOM' and 'BASEMENT'. A vertical dimension of 3,000 is shown between the ground level and the first floor level. 3. In general terms, the rear retaining walls are quite high (>3 metres height). Built from will be predominant and subsequently cannot rely on soft landscape for amelioration. (Section extract below).

Internal Referral Body	Comments
	 Conditions have been provided if consent to the proposal is to be granted.
NECC (Bushland and Biodiversity)	Supported, subject to conditions of consent (if approved): The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 (BC Act) • Manly LEP Clause 6.5 Terrestrial Biodiversity • Manly DCP Clause 5.4.2 Threatened Species and Critical Habitat Lands • Manly DCP Clause 3.3.1 Landscape Design - Bandicoot Habitat The subject site is located within the declared habitat area of the endangered population of Long-nosed Bandicoots at North Head, and as such, requires a threatened species 'test of significance' to be undertaken in accordance with s.73 of the BC Act. The submitted Flora and Fauna Impact Assessment includes tests of significance for the endangered bandicoot population, grey-headed flying-fox and yellow-bellied sheath-tail-bat, and concludes that the proposal will not result in a significant impact to these threatened entities due

Internal Referral Body	Comments
	to the extent of alternative habitat available within the local area. This conclusion is concurred with; however, it is considered that demolition and construction activities may result in direct impacts to individual animals without appropriate management and staging. There is currently substantial good quality bandicoot habitat within the immediate vicinity which would already constitute part of the home range of any bandicoots utilising the subject site. Inspections undertaken by the consulting ecologist in 2021 and 2022, and a Council Biodiversity Officer in 2021 and 2023, identified no bandicoot nesting sites within the properties. Thus it is considered that construction and demolition works can be undertaken without resulting in direct impact to individual bandicoots, subject to appropriate mitigation measures. A Construction and Demolition Environmental Management Plan (CDEMP) must be prepared to ensure that works are managed and staged in such a way as to provide adequate refugia to allow bandicoots to self-relocate as required. This will be conditioned, in addition to measures to retain bandicoot access within the site and to adjoining lands. The development will require the removal of almost all existing vegetation on the properties. However, only one tree proposed for removal is locally indigenous (Tree 19 - <i>Ficus rubiginosa</i>), while three others are non-locally native or cultivated varieties. The remaining trees proposed for removal are either exotic or exempt and do not constitute part of a natural vegetation community. This is verified by inspections undertaken in 2021 and 2023 which confirmed that existing vegetation on the properties mainly comprises exotic and weedy species. It is noted that the submitted Landscape Plans are compliant with applicable Landscaped Area and bandicoot habitat landscaping requirements of the Manly DCP. However, given the extent of vegetation removal required to facilitate construction, amendments to the planting schedule are considered warranted in order to retain and improve habitat values on the site. This will be conditioned, noting that additional amendments may also be recommended by Council's Landscape referrals section.
NECC (Coast and Catchments)	Supported, subject to conditions of consent (if approved): This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA.

Internal Referral Body	Comments
	Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated February 2023 , the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated February 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.
NECC (Development Engineering)	Unsupported: <u>Original Comments:</u> The stormwater drainage plans as prepared by Accor consulting engineers are not supported for the following reasons. 1) A DRAINS model is to be prepared and submitted to Council for review to determine the On Site Stormwater Detention volumes and Permitted site discharge (PSD) required in accordance with Councils Water management for development policy. As the property is located in the Manly area Zone 1 the post developed PSD is to be limited to the 20%AEP pre- developed condition assuming 250m2 of impervious area. 2) The stormwater plans are to document the minimum information required as per section 9.7.3 of Councils Water management for development policy. <u>Updated Comments 16 June 2023:</u> 1) The DRAINS model has been reviewed and the post developed discharges do not meet the predeveloped condition ie As the property is located in the Manly area Zone 1 the post developed PSD is to be limited to the 20%AEP pre- developed condition assuming 250m2 of impervious area. The on site detention volumes will need to be increased to meet this

Internal Referral Body	Comments
	requirement. 2) The DRAINS model has represented by one detention tank however the drainage plans as prepared by Accor consultants detail 5 individual OSD/rainwater tanks . The DRAINS model needs to be amended to reflect the 5 individual OSD/rainwater tanks. 3)The DRAINS model has used ARR 1987 IFD rainfall data ,the 2019 ARR Rainfall data is to be used. 4)The stormwater plans are to document the minimum information required as per section 9.7.3 of Councils Water management for development policy. The drainage plans are to detail the outlet pipe cross section within the footpath area in relation to existing services. The application is not supported.
NECC (Flooding)	Supported without conditions of consent (if approved): The property has a small area of Medium Flood Risk Precinct in the north-east side of the site. There are no flood related objections.
NECC (Water Management)	Unsupported: This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses The proposal increases impervious surfaces on site and triggers the Table 5 – General Stormwater Quality Requirements of the Council Water Management for Development Policy. The information provided to demonstrate compliance with Table 5 is insufficient. To properly assess the water management, the MUSIC model water reuse parameters are required. The applicant must provide the MUSIC file. The proposal cannot be supported in its current form.
Strategic and Place Planning (Heritage Officer)	Supported without conditions
	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is within the vicinity of a number of heritage items, listed in Schedule 5 of Manly Local Environmental Plan 2013: Item I131 - St Patrick's Estate - 151 Darley Road, Manly (State) Item I220 - Item I220 – House “Logan Brae” - 32 Reddall Street, Manly Item I01 - House, “Bower Hall” - 101 Bower Street, Manly
	Details of heritage items affected

Internal Referral Body	Comments																		
	Details of the heritage items, as contained within the Northern Beaches Heritage Inventory are: 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 adaptive reuse of the key buildings, the site has retained its integrity and still presents as a cohesive whole. Item I220 – House “Logan Brae” <u>Statement of Significance</u> A spectacular and finely detailed example of Inter-War California Bungalow on a corner site. Featuring cobbled front, elaborate gable ends facing each. Street frontage. A fine example of California Bungalow Style building. <u>Physical Description</u> Single storey Inter-War California Bungalow on a corner site, constructed of dark face brick. Features elaborate gable ends to each street frontage, cobbled finish to front verandah base and columns, diamond-pattern leadlight casement windows. Original dark face brick front fence. Diamond - pattern leadlight casement windows. Item I01 - House, “Bower Hall” <u>Statement of Significance</u> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</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>In the vicinity of St Patrick's Estate which is State listed</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</td><td>No</td><td></td></tr></table>	Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No	In the vicinity of St Patrick's Estate which is State listed	National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of	No	
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National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th Century Buildings of	No																		

Internal Referral Body	Comments		
	Significance		
	Other	No	
	Consideration of Application		
	The proposal seeks consent for the demolition of all existing structures and landscaping on the subject site, the subdivision of three lots into five lots and the construction of five detached, two storey dwellings with basement level parking, swimming pools and storage areas. The subject site is not a heritage item but is within the vicinity of a number of items, including 35 Reddall Street and the St Partick's Estate. Heritage initially objected to the proposal for its impact upon the streetscape and setting around the heritage items. While Heritage maintains a more skillful design for the proposal could respond in a more nuanced and considered way, it will no longer object to the proposal as it is not located directly upon a heritage item. Therefore Heritage no longer raises any objections to the proposal and requires no 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		
Traffic Engineer	Supported, subject to conditions (if approved): The traffic team has reviewed the following documents: • <i>Transport and Parking Impact Assessment</i>, Reference 21271, Issue: Final C, prepared by Transport Strategies dated 01/02/2023, • The <i>Statement of Environment Effects</i> prepared by BBF Town Planners dated February 2023, and • Plans (Master Set) – designed by WOLSKI.COPPIN ARCHITECTURE, dated 25/01/2023. <u>Parking requirement and design:</u> • The Manly DCP applies to the subject site. Under the DCP, two (2) parking spaces per dwelling is required for a dwelling house. As 10 parking spaces (in the form of 5 double garages) have been provided, the proposal comprising five (5) residential dwellings provides adequately for the parking needs generated by the development.		

Internal Referral Body	Comments
	- Given that the residential parking supply meets DCP requirements, the parking needs of residents will be adequately addressed, and residents of the development will therefore not be eligible for resident parking permits. This will be conditioned. - Under the DCP, a secure storage area capable of accommodating at least two adult-sized bicycles are required for each dwelling house. It is reported in the Traffic report that all 5 garages can accommodate 2 bicycle spaces, in compliance with the DCP. - The double garages' layout appears to be compliant with Australian Standards AS2890.1:2004 Off-Street Parking requirements. However, the driveway and the internal area have not been dimensioned on the architectural plans. The plans should be accompanied by dimensioned driveway width and internal area widths. This will be conditioned. - A circulation roadway width of approximately 3m to 5.4m has been proposed on the plans. The circulation roadway is more than 30m, triggering the requirement for a long driveway to be provided with a vehicle passing opportunity. This is to allow a vehicle to exit the driveway while another vehicle is waiting in the passing bay (i.e. a minimum width of 5.5m according to AS2890.1:2004 Off Street Car Parking Section 3.2.2). However, the sight distance from one end to the other is not restricted, and there are also not more than 3 vehicle trips per hour being generated from/to the subject site. Therefore, the proposed circulation aisle widths are deemed acceptable. - It is noted that swept path plots demonstrating satisfactory access to and from the parking spaces to the street are included in the traffic report. - The driveway and ramp gradients appear satisfactory, and it is noted that vertical clearance plots for a Sports Car are included in the traffic report, however the assessment on the driveway ramp should be undertaken for a B99 car entering and accessing the garages to demonstrate that there is adequate overhead clearance and that scraping and bottoming does not occur. This will be conditioned. <u>Vehicle Access</u> - It is noted that the three (3) existing vehicular crossings along Reddall Street will be removed, resulting in 3 additional unrestricted on-street parking spaces along this street if these are reinstated to kerb and gutter. - Vehicular access to the proposed garages will be provided via two (2) new entry/exit driveways along the College Street frontage. This would result in the loss of two (2) on-street parking spaces to facilitate access to on-site parking for the new dwellings. Council does not oppose the resultant loss of on-

Internal Referral Body	Comments
	street parking spaces along College Street given that a provision of off-street parking spaces to support the development is a DCP requirement, and in total, there would be a net increase of one (1) on-street parking space associated with development works. - According to the TfNSW Guide to Traffic Generating Developments section 6.2, direct access across the boundary with a major road is to be avoided wherever possible. The site has no frontages with major roads with access solely to local streets (both Reddall Street and College Street are local streets). There is little difference in terms of safety if vehicle crossing locations are moved from Reddall Street to College Street and the access to/from College Street is considered acceptable given that: - the road hierarchy on College Street is similar to Reddall Street, and the development would generate minimal vehicular traffic. <u>Pedestrian safety and sightlines</u> - AS/NZS 2890.1:2004 requires that a pedestrian sightline triangle of 2.0 metres by 2.5 metres be provided at the point where the vehicle accesses meet the property boundary, to ensure adequate pedestrian visibility for exiting vehicles. This does not appear to have been provided however the applicant proposes to reconstruct and relocate the footpath nearer to the kerb alignment which will ensure that pedestrians walking along the sites College Street frontage will be more visible to vehicles exiting the new driveways. Details for the new footpath have not been provided but this will be conditioned. <u>Traffic Impact</u> - The proposal will generate minimal vehicular traffic during the peak, and it will not have any unacceptable implications in terms of road network capacity performance.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations can be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1344556S_05 dated 23 January 2023). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	84

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is fully located on private land, so does not cause adverse impact upon public foreshore, beach, headland or rock platform land. The proposed development does not cause adverse impact on persons with a disability as it does not alter public access. The proposed around the site beyond installation of driveways. The development is supported by shadow diagrams that demonstrate acceptable overshadowing impact. The proposed development is designed such that it does not increase wind funnelling. An assessment of the proposed development with respect to view sharing is detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. The subject site is not classified as containing Aboriginal heritage significance. In this way, the proposed development is demonstrably designed, sited and will be managed to avoid adverse impact. The bulk and scale of the proposed development has been considered throughout this assessment.

Division 5 General

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

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

Comment:

The proposed development is demonstrably designed and sited so as not to cause increased risk of coastal hazard on the subject site or surrounding land.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	250m ²	Lot 1: 486.5m ²	-	Yes
		Lot 2: 377.7m ² (468.5m ² incl. handle)		
		Lot 3: 416.8m ² (497.2m ² incl. handle)		
		Lot 4: 329.8m ² (455.1m ² incl. handle)		
		Lot 5: 433m ² (473.7m ² incl. handle)		
Height of Buildings:	8.5m	Lot 1: 9.8m*	15.3%	No
		Lot 2: 8.3m*	-	Yes
		Lot 3: 8.2m*		
		Lot 4: 8.5m		
		Lot 5: 7.6m		
Floor Space Ratio	FSR: 0.6:1	Lot 1: 0.57:1 (277.3m ²)	-	Yes
		Lot 2: 0.59:1 (277m ²)		
		Lot 3: 0.59:1 (295.7m ²)		
		Lot 4: 0.59:1 (267.4m ²)		
		Lot 5: 0.59:1 (279m ²)		

* Building height is calculated from the existing ground level, whether disturbed or undisturbed: see *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. Insufficient information has been provided in this regard, as detailed in the section of this report relating to Clause 4.3 Height of Buildings of the Manly LEP 2013.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	No
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	No
6.9 Foreshore scenic protection area	No
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The proposed development is not compliant with the height of buildings development standard in Clause 4.3 of the MLEP. Building height is calculated from the existing ground level, whether disturbed or undisturbed, as per the judgement in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* by the NSW Land and Environment Court.

The proposed development presents variation to the development standard contained within Clause 4.3 of the MLEP, as at least one of the proposed dwelling houses breaches the maximum height of 8.5 metres above the existing ground levels (i.e. the ground levels of the existing dwelling houses). The dwelling house on proposed Lot 1 includes a height of up to 9.8 metres, where a maximum of 8.5 metres is allowable. It is anticipated that the dwelling houses on proposed Lots 2 and 3 will also breach the maximum building height, though insufficient information has been provided to establish the exact extent of the numerical non-compliance.

The submitted elevation and section plans do not demonstrate existing ground levels (including where disturbed by development) and extrapolated natural ground levels. Further, the proposed development is not supported by a written request to vary the development standard contained within Clause 4.3 of the MLEP, in accordance with Clause 4.6 Exceptions to Development Standards of the MLEP. It is anticipated that the proposed development will result in view loss attributable to the non-compliant height of buildings, in contravention of objective (c)(ii) of Clause 4.3 of MLEP, which provides:

(c) to minimise disruption to the following—

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

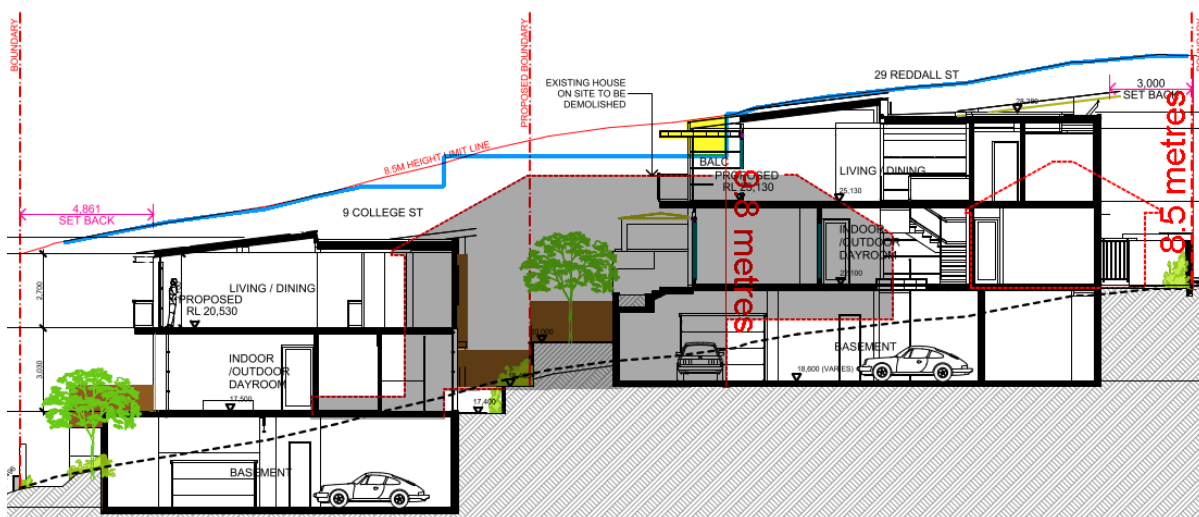
This is included as a reason for refusal.

4.6 Exceptions to development standards

Description of non-compliance:

Building height is calculated from the existing ground level, whether disturbed or undisturbed, as per the judgement in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 by the NSW Land and Environment Court. The proposed development presents variation to the development standard contained within Clause 4.3 of the MLEP, as at least one of the the proposed dwelling houses breaches the maximum height of 8.5 metres above the existing ground levels (i.e. the ground levels of the existing dwelling houses). The dwelling house on proposed Lot 1 includes a height of up to 9.8 metres, where a maximum of 8.5 metres is allowable. It is anticipated that the dwelling houses on proposed Lots 2 and 3 may also breach the maximum building height, though insufficient information has been provided to establish the exact extent of the numerical non-compliance.

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15.3%

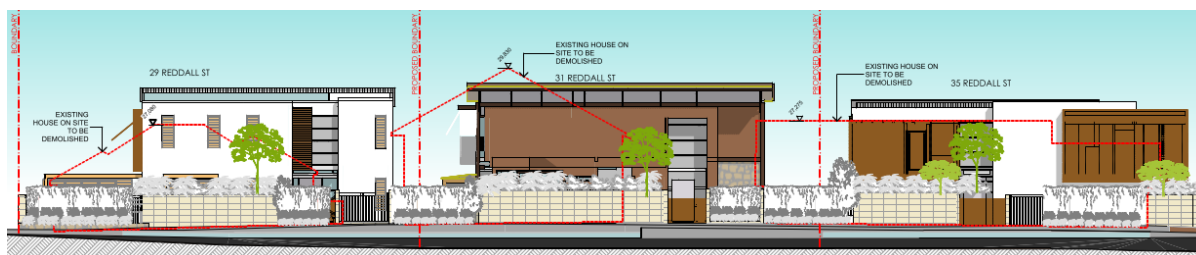


Above: The section through the proposed dwelling houses on proposed Lot 1 (uphill) and proposed Lot 5 (downhill). The extent of the height of buildings breach is highlighted in yellow and is due to the historical excavation for the existing dwelling, shadowed above.



Above: The existing ridge RLs of Nos. 29, 31 and 35 Reddall Street (left to right), as photographed

from Unit 5, 7 College Street, Manly.



Above: The south-western elevation of the three proposed dwellings facing Reddall Street.

From left to right with reference to the above elevation, the Reduced Levels (RLs) of the roofs of the existing and proposed dwellings fronting Reddall Street are:

- No. 29 Reddall Street: Existing RL 27.08, proposed RL 28.38 = Increase of 1.3 metres
- No. 31 Reddall Street: Existing RL 29.83, proposed RL 29.231 = decrease of 698 millimetres (though increased dwelling width)
- No. 35 Reddall Street: Existing RL 27.275, proposed RL 28.40 = increase of 1.125 metres

It should be noted the proposed dwellings and their ridges are in different locations to the existing dwellings.

Assessment of request to vary a development standard:

The following assessment of the variation to the development standard set by Clause 4.3 Height of Buildings has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development*

standard.

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) Assessment:

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

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

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

Comment:

The Applicant has not submitted a written request to vary the development standard. In this regard, the Applicant has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case or that there are sufficient environmental planning grounds to justify the contravention, as required by Clause 4.6(3)(a) and (b) of the Manly LEP.

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Development Standard Objectives

The underlying objectives of Clause 4.3 Height of Buildings are addressed as follows:

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

Comment:

The proposed development includes sloping skillion and flat roof forms to all five proposed dwellings. These roof forms are of a more modern design than those of the existing three dwellings, though are not uncommon in the locality, and are acceptable with respect to the topography, in that the slope follows that of the land (as shown in the above diagram). The roof forms serve to reduce the overall height of the dwellings, compared to if a hipped or gabled pitched roof form was proposed.

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

Comment:

The proposed development demonstrates compliance with the maximum floor space ratio set by Clause 4.4 of the Manly LEP, which controls the bulk and scale of buildings. The proposed dwellings are of an overall bulk and scale anticipated for the site and locality.

(c) to minimise disruption to the following—

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

Comment:

The proposed development results in view loss to a number of properties to the south, south-east and south-west. This is assessed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly DCP and is included as a reason for refusal.

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

Comment:

The proposed development is compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP, and is therefore acceptable with respect to solar access.

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

Comment:

Not applicable. The subject site is zoned R1 General Residential.

Zone Objectives

The underlying objectives of the R1 General Residential zone are addressed as follows:

To provide for the housing needs of the community.

Comment:

The proposal increases the number of houses on the land from three to five, thereby providing for the housing needs of the community.

To provide for a variety of housing types and densities.

Comment:

The proposal contributes to the variety of housing types and densities in the locality, in that it replaces three dwellings with five four-bedroom dwelling houses.

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

Comment:

Not applicable. The proposed development retains the residential use of the site.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. Given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the height of buildings development standard can not be assumed.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

- (f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

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

Comment:

Conditions can be included in the recommendation of this report that will minimise the impacts of the development.

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

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

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

Comment:

The proposal has been assessed by Council's Development Engineers who have raised objection with respect to the proposed stormwater management measures. In this regard, the consent authority cannot be satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters. This is included as a reason for refusal.

6.5 Terrestrial biodiversity

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

(a) protecting native fauna and flora, and

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

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

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

- (a) *whether the development is likely to have:*
 - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

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

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

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

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

6.8 Landslide risk

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

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

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

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The development is supported by architectural plans, stormwater plans, a geotechnical report, and a

waste management plan. The application was referred to Council's Development Engineer, who is supportive of the proposal, other than with respect to stormwater management. This is included as a reason for refusal.

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

(a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or

(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or

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

Comment:

The application was referred to Council's Development Engineer, who is not supportive of the proposal with respect to stormwater management. As such, the consent authority cannot be satisfied that the proposed development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development. This is included as a reason for refusal.

6.9 Foreshore scenic protection area

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

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The subject site does not adjoin foreshore land and is proposed to be well-vegetated. The proposed development is compliant with respect to solar access requirements. The site's location, configuration and landscaped setting assist in obscuring the development from view from the foreshore. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds,
- protects and improves scenic quality along the coastline,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

However, the proposed development results in unreasonable view loss attributable to a variation to the height of building development standard, as detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013. This is included as a reason for refusal.

6.12 Essential services

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

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

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

Manly Development Control Plan

Built Form Controls

Under the Principal Development Standards, lot size has been calculated according to Clause 4.1 Minimum Subdivision Lot Size of the Manly Local Environmental Plan 2013, which excludes access handles from the total area. The controls in the table below refer to 'site area' (as opposed to 'lot size'), which is a separately defined term under the Dictionary of the Manly Local Environmental Plan 2013, and includes access handles.

Lot 1 - 29 Reddall Street				
Built Form Controls - Site Area: 486.5m ²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 250m ² site	1 dwelling on 486.5m ² site	-	Yes
	Dwelling Size: Min. 117m ²	277.3m ²	-	Yes
4.1.2.1 Wall Height (based on gradient)	Max. 7.5m	SE: 6.3m*	-	Yes
		NW: 8.3m	10.7%	No
4.1.2.2 Number of Storeys	Max. 2 Storeys	3 storeys	50%	No
4.1.2.3 Roof Height	Height: Max. 2.5m	1.2m	-	Yes
	Pitch: Max. 35 degrees	8 degrees	-	Yes
4.1.4.1 Street Front Setbacks (Reddall St)	Prevailing building line / Min. 6m	Min. 3.325m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks (based on wall height)	SE: Min. 2.1m*	Basement: 0-1.6m	23.8-100%	No
		Ground: Min. 1.3m	38.1%	No
		First: Min. 1.3m	38.1%	No
	NW: Min. 2.76m	Basement: 6m	-	Yes
		Ground: Cabana: 1.2m	56.5%	No

	Windows: Min. 3m	Dwelling: Min. 6m	-	Yes
		First: Min. 5.6m	-	Yes
		SE: Min. 1.3m	56.7%	No
		NW: Min. 6m	-	Yes
4.1.4.4 Rear Setbacks	Min. 8m	Basement: 3m	62.5%	No
		Ground: Min. 5.8m	27.5%	No
		First: Min. 4.6m	42.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site Area (267.6m ²)	64.5% (314m ²)	-	Yes
	Above Ground: Max. 25% of TOS (78.5m ²)	9.9% (31m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (109.9m ²)	48.4% (152m ²)	-	Yes
	Min. 1 Native Tree	6 trees	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	Max. 2.7m	170%	No
	Min. 1m to coping	NW: 1.2m	-	Yes
		NE: 3m	-	Yes
	Min. 1.5m to water	NW: 1.3m	13.33%	No
		NE: 3.1m	-	Yes
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	-	Yes

Lot 2 - 31 Reddall Street				
Built Form Controls - Site Area: 468.5m ²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 250m ² site	1 dwelling on 468.5m ² site	-	Yes
	Dwelling Size: Min. 117m ²	277m ²	-	Yes
4.1.2.1 Wall Height (based on gradient)	Max. 7.2m	SE: 6.4m*	-	Yes
		NW: 5.8m*	-	Yes
4.1.2.2 Number of Storeys	Max. 2 Storeys	3 storeys	50%	No
4.1.2.3 Roof Height	Height: Max. 2.5m	Max. 1m	-	Yes
	Pitch: Max. 35 degrees	7 degrees	-	Yes
4.1.4.1 Street Front Setbacks (Reddall St)	Prevailing building line / Min. 6m	Min. 3.4m, consistent with	-	Yes

		prevailing setback		
4.1.4.2 Side Setbacks (based on wall height) and Secondary Street Frontages	SE: Min. 2.13m*	Basement: 0-3.2m	0-100%	No
		Ground: Min. 2.8m	-	Yes
		First: Min. 2.8m	-	Yes
	NW: Min. 1.93m*	Basement: 0-3.7m	0-100%	No
		Ground: Cabana: 1.2m Dwelling: Min. 2.8m	37.8% -	No Yes
		First: Min. 2m	-	Yes
	Windows: Min. 3m	SE: Min. 2.8m	6.7%	No
		NW: Min. 2.8m	6.7%	No
4.1.4.4 Rear Setbacks	Min. 8m	Basement: 3m		No
		Cabana: 3.3m	58.75%	No
		Ground: Min. 7.2m	-	Yes
		First: Min. 6m	25%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site Area (257.7m ²)	73.75% (345.5m ²)	-	Yes
	Above Ground: Max. 25% of TOS (86.4m ²)	9.9% (34m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (120.9m ²)	45.7% (158m ²)	-	Yes
	Min. 1 Native Tree	5 trees	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	Max. 2.9m	190%	No
	Min. 1m to coping	SE: 900mm	10%	No
		NE: 3m	-	Yes
	Min. 1.5m to water	SE: 1.1m	26.7%	No
		NE: 3m	-	Yes
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	-	Yes

Lot 3 - 35 Reddall Street				
Built Form Controls - Site Area: 497.2m ²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 250m ² site	1 dwelling on 497.2m ² site	-	Yes
	Dwelling Size: Min. 117m ²	295.7m ²	-	Yes

4.1.2.1 Wall Height (based on gradient)	Max. 8.0m	NE: 5.8m*	-	Yes
		NW: 6m*	-	Yes
4.1.2.2 Number of Storeys	Max. 2 Storeys	3 storeys	50%	No
4.1.2.3 Roof Height	Height: Max. 2.5m	1m	-	Yes
	Pitch: Max. 35 degrees	6 degrees	-	Yes
4.1.4.1 Street Front Setbacks (College St)	Prevailing building line / Min. 6m	Min. 5.2m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks (based on wall height) and Secondary Street Frontages (Reddall St)	NE: Min. 1.93m*	Basement: Min. 2.1m	-	Yes
		Ground: Min. 6.8m	-	Yes
		First: Min. 5.5m	-	Yes
	NW: Min. 2m*	Basement: 0-1.2m	40-100%	No
		Ground: Min. 1.6m	20%	No
		First: Min. 1.5m	25%	No
	Windows: Min. 3m	N: 6.8m	-	Yes
		W: Min. 1.5m	50%	No
	Secondary frontage: Prevailing setback	Min. 3.4m, consistent with prevailing setback	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site Area (273.5m ²)	76.74% (359.5m ²)	-	Yes
	Above Ground: Max. 25% of TOS (89.9m ²)	7.4% (26.5m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (125.8m ²)	59.4% (213.5m ²)	-	Yes
	Min. 1 Native Tree	6 trees	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage up to 6.2m	4.2m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	2.5m	150%	No
	Min. 1m to coping	E: 900mm	10%	No
		N: 3m	-	Yes
	Min. 1.5m to water	E: 1.1m	26.7%	No
		N: 3m	-	Yes
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	-	Yes

Built Form Controls - Site Area: 455.1m²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 250m ² site	1 dwelling on 455.1m ² site	-	Yes
	Dwelling Size: Min. 117m ²	267.4m ²	-	Yes
4.1.2.1 Wall Height (based on gradient)	Max. 7.4m	NE: 6.1m*	-	Yes
		SW: 6.3m*	-	Yes
4.1.2.2 Number of Storeys	Max. 2 Storeys	3 storeys	50%	No
4.1.2.3 Roof Height	Height: Max. 2.5m	1.2m	-	Yes
	Pitch: Max. 35 degrees	7 degrees	-	Yes
4.1.4.1 Street Front Setbacks (College St)	Prevailing building line / Min. 6m	Min. 4.4m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks (based on wall height)	NE: Min. 2.03m*	Basement: 0m	100%	No
		Ground: Min. 5.4m	-	Yes
		First: 3.6m	-	Yes
	SW: Min. 2.1m*	Basement: 2.3m	-	Yes
		Ground: 2.4m	-	Yes
		First: Min. 2.3m	-	Yes
	Windows: Min. 3m	NE: Min. 4.7m	-	Yes
		SW: Min. 2.4m	20%	No
4.1.4.4 Rear Setbacks	Min. 8m	Basement: 0-3.6m	55-100%	No
		Ground: Min. 2.6m	67.5%	No
		First: Min. 1.3m	83.75%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site Area (256.3m ²)	75.8% (345m ²)	-	Yes
	Above Ground: Max. 25% of TOS (86.25m ²)	10.7% (37m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (120.75m ²)	51.74% (178.5m ²)	-	Yes
	Min. 1 Native Tree	1 tree	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage up to 6.2m	3.8m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	Max. 3.2m	220%	No
	Min. 1m to coping	W: 7.7m	-	Yes

	Min. 1.5m to water	N: 1.4m	-	Yes
		W: 8.3m	-	Yes
		N: 1.4m	6.7%	No
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	-	Yes

Lot 5 - 9 College Street				
Built Form Controls - Site Area: 473.7m ²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 250m ² site	1 dwelling on 473.7m ² site	-	Yes
	Dwelling Size: Min. 117m ²	279m ²	-	Yes
4.1.2.1 Wall Height (based on gradient)	Max. 7.6m	NE: 5.5m*	-	Yes
		SW: 6.1m*	-	Yes
4.1.2.2 Number of Storeys	Max. 2 Storeys	3 storeys	50%	No
4.1.2.3 Roof Height	Height: Max. 2.5m	1m	-	Yes
	Pitch: Max. 35 degrees	7 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / Min. 6m	27.2m	-	Yes
4.1.4.2 Side Setbacks (based on wall height)	NE: Min. 1.83m*	Basement: Min. 2.9m	-	Yes
		Ground: Min. 4.8m	-	Yes
		First: Min. 4.2m	-	Yes
	SW: Min. 2.03m*	Basement: Min. 2.6m	-	Yes
		Ground: Min. 2.6m	-	Yes
		First: 2.4m	-	Yes
	Windows: Min. 3m	NE: 5.1m	-	Yes
		SW: Min. 2.8m	6.7%	No
4.1.4.4 Rear Setbacks	Min. 8m	Min. 4m	50%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site Area (260.5m ²)	74.6% (353.5m ²)	-	Yes
	Above Ground: Max. 25% of TOS (88.4m ²)	8.8% (31m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (123.73m ²)	49.65% (175.5m ²)	-	Yes
	Min. 1 Native Tree	3 trees	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	-	Yes

4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	<1m	-	Yes
	Min. 1m to coping	S: 1.9m	-	Yes
		W: 1.2m	-	Yes
	Min. 1.5m to water	S: 2m	-	Yes
		W: 1.3m	13.3%	No
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	-	Yes

* Insufficient information has been provided with respect to existing ground lines. Existing ground lines inform calculation of proposed wall heights, and wall heights inform side setback requirements. This is detailed in the section of this report relating to Clause 4.1.2 Height of Buildings of the Manly DCP 2013.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	No
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposed development has provided a suitable design response amongst the five proposed lots. The private open spaces, balconies and windows of the proposed dwellings are well offset from each other and provide a suitable level of visual privacy between the five proposed lots. Objections have raised concern that the proposal will result in loss of privacy to Nos. 95 and 97 Bower Street. The development is considered against the underlying objectives of the control as follows:

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

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

Comment:

With respect to No. 95 Bower Street to the north-east of the subject site:

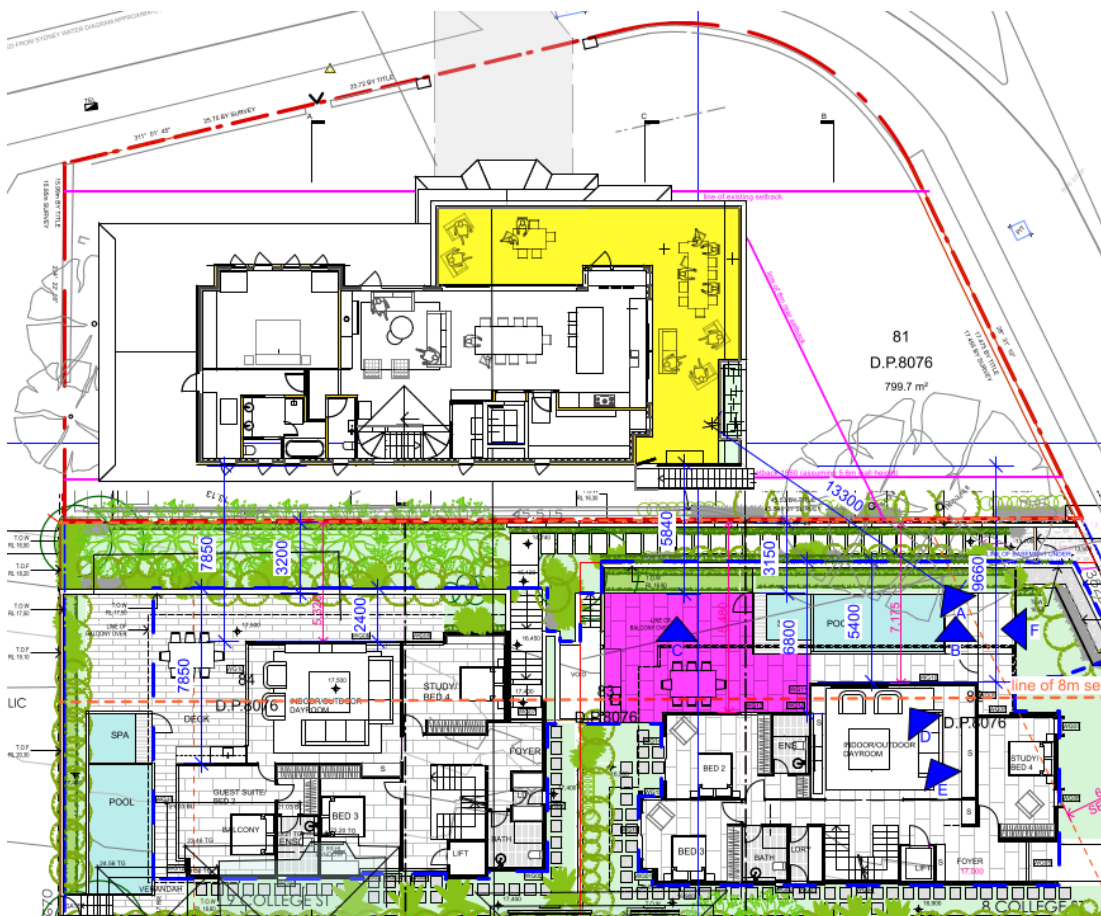
The dwelling of concern (on proposed Lot 4) is designed such that it does not result in an unreasonable visual privacy outcome to No. 95 Bower, as follows.

The owners of No. 95 Bower Street raised concern about the new dwelling on proposed Lot 4 overlooking of the private open space areas on their property (which include decks at the ground and first floors, and a landscaped lawn area). The private open space areas of No. 95 Bower Street are located to the south-east of No. 95 Bower Street.

The dwelling on proposed Lot 4 is compliant with the required side setbacks set by Clause 4.1.4.2 of the Manly DCP, with the exception of the basement, which is not a consideration with respect to visual privacy, given that it is not a habitable space. In this way, the proposed dwelling is adequately set away from what will be its north-eastern side boundary, in order to provide suitable separation to No. 95 Bower Street. Additional separation is provided by the battleaxe pedestrian access handle to proposed Lot 5. The owners of No. 95 Bower Street also raised concern about this access handle with respect to privacy. The concern is not agreed with, given this is a point of access only, and not a point

of recreation, and that users of the pathway will have their view of No. 95 Bower Street obscured from view by the wall between the walkway and No. 95 Bower Street, which acts as a fence of between 1.56 and 1.8 metres height.

The interaction between the ground floor main recreation space of the dwelling on proposed Lot 4 and the first floor deck of No. 95 Bower Street is worthy of close consideration, given their similar finished floor levels and their spatial alignment. The below is an excerpt from the submission prepared by McKees Legal Solutions on behalf of the owners of No. 95 Bower Street. For ease of reference, the first floor deck has been highlighted in yellow and the main portion of recreation space on proposed Lot 4 is highlighted in pink.



Above: An excerpt from the submission prepared by McKees Legal Solutions on behalf of the owners of No. 95 Bower Street, depicting the relationship between the main recreation space of proposed Lot 4 (pink) and the first floor deck of No. 95 Bower Street.

The main recreation space at proposed Lot 4 has a finished floor level of RL 17.00. The first floor deck of No. 95 Bower Street has a finished floor level of RL 16.41, being 590mm lower than at proposed Lot 4. This is considered a minimal difference in levels. It is noted that the rear south-western elevation of the first floor deck at No. 95 Bower Street is treated with a 1.8 metre privacy screen, which prevents direct overlooking to that deck from proposed Lot 4. It is considered that there is not a privacy concern between these two locations.

The pool at proposed Lot 4 is not considered to give to unreasonable privacy impacts to the first floor deck of No. 95 Bower Street, as this has a significantly lower floor level.

The grassed area to the south-east of the dwelling on proposed Lot 4 is acceptable in that the portion of lawn nearest No. 95 Bower Street is of restricted dimensions, and does not present as a place of

common recreation.

It is noted that the first floor balcony in the eastern corner of proposed Lot 1 aligns with the landscaped lawn area at No. 95 Bower Street. This lawn area location is a particularly vulnerable, given the reasonable expectation for redevelopment of the subject lots and the higher density that is readily anticipated for the area by the controls within the Manly LEP and DCP. Notwithstanding this vulnerable location, the first floor deck on proposed Lot 4 is set well above the lawn area, such that users of the balcony will generally look over the top of this private open space, rather than down to it.

The first floor balcony in the eastern corner of proposed Lot 1 also allows an angled view to the first floor deck of No. 95 Bower Street. However, there is a distance of approximately 11 metres at the closest point, which is adequate separation for visual privacy in this context, being R1 General Residential land.

With respect to No. 97 Bower Street to the north-west of the subject site:

It should first be noted that a pedestrian access reserve approximately 9 metres wide exists to the north-west of the subject site, providing ample building separation between the proposed dwellings and the dwelling on the objecting property. In addition, the dwellings of concern (on proposed Lots 1 and 5) are designed such that they do not result in an unreasonable visual privacy outcome to No. 97 Bower Street, as follows.

The dwelling on proposed Lot 1 is located such that it aligns with the garage and private open space lawn area to the rear of No. 97 Bower Street. No concern is raised about overlooking the garage, as this is not a habitable space. However, with respect to the private open space lawn area, the north-western elevation of the dwelling on proposed Lot 1 is treated with privacy screening to prevent viewing in this direction, including along the north-western elevation of the northern-most balcony. The view is instead orientated towards the north. At this point, the distance between the balcony and the nearest boundary of No. 97 Bower Street is approximately 16 metres, being well more than required or expected for a dwelling house development in the R1 General Residential zone in metropolitan Sydney.

The dwelling on proposed Lot 5 is located such that it aligns with the rear half of the dwelling house at No. 97 Bower Street. Both the ground and first floors are set at levels below the living levels and roof terrace of No. 97 Bower Street. Further, the north-western elevation of the dwelling on proposed Lot 5 is treated with privacy screening. The exception to this is the upper level balcony for the dwelling on proposed Lot 5, which is orientated to the north. This balcony is set 4.025 metres from the north-western side boundary of the site, and approximately 13 metres from the nearest boundary of No. 97 Bower Street.

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

Comment:

Given the above, the proposal is designed and sited so as to allow a suitable balance between providing privacy for the proposed dwellings and adjoining dwellings, without compromising access to light and air for the proposed development. The proposal provides outlook for the proposed dwellings and the dwellings on adjoining land.

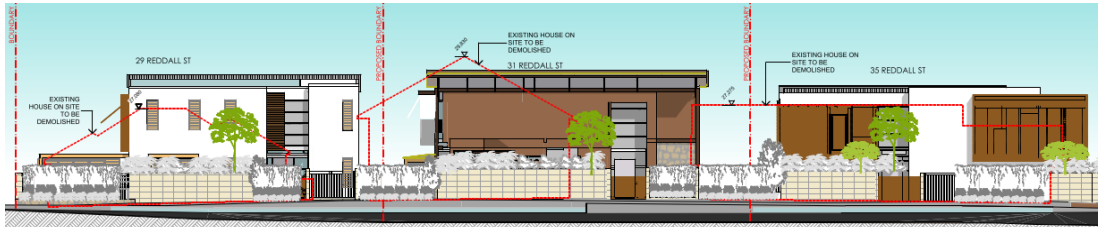
Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes windows to the street frontages to allow for passive surveillance and assist with awareness of neighbourhood security.

3.4.3 Maintenance of Views

A number of submissions raised concern about the proposed development's impact on views. The Applicant submitted a detailed analysis of the view impact, in accordance with the requirements set by the NSW Land and Environment Court, which assists with assessment of this application.



Above: The south-western elevation of the three dwellings facing Reddall Street.

From left to right with reference to the above elevation, the Reduced Levels (RLs) of the roofs of the existing and proposed dwellings fronting Reddall Street are:

- No. 29 Reddall Street: Existing RL 27.08, proposed RL 28.38 = Increase of 1.3 metres
- No. 31 Reddall Street: Existing RL 29.83, proposed RL 29.231 = decrease of 698 millimetres (though increased dwelling width)
- No. 35 Reddall Street: Existing RL 27.275, proposed RL 28.40 = increase of 1.125 metres

The development is considered against the objectives of the control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

In determining the extent of potential view loss to adjoining and nearby properties, the four planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The affected views are described as follows, with photographs:

97 Bower Street: The dwellings and vegetation on the subject site, other residential properties, St Patrick's Estate, and vegetation.



Above: The view from the kitchen window of No. 97 Bower Street, from a standing position.



Above: The view from the living room windows of No. 97 Bower Street, from a seated position.

Unit 3, 28 Reddall Street: The dwellings and vegetation on the subject site, other surrounding sites to the north-east, Shelly Beach Reserve, and the ocean and its horizon.



Above: The view from No. 3/28 Reddall Street, from a standing position.

30 Reddall Street: The street tree in the centre of Reddall Street, the dwellings and vegetation on the subject site, corridors to the ocean and its horizon, and Shelly Beach Reserve.



Above: The view from the lower level dining room of No. 30 Reddall Street, from a standing position.



Above: The view from the upper level balcony of No. 30 Reddall Street, from a standing position.

Unit 5, 7 College Street: The dwellings and vegetation on the subject site, and corridors to the ocean and its horizon and distant headlands to the north.



Above: The view from the front terrace of Unit 5, 7 College Street, from a standing position.

Unit 6, 7 College Street: The dwellings and vegetation on the subject site, and corridors to the ocean and its horizon and distant headlands to the north.



Above: The view from the front terrace of Unit 6, 7 College Street, from a standing position.

Unit 10, 7 College Street: The dwellings and vegetation on the subject site, wide corridors to the ocean and its horizon, and distant headlands to the north.



Above: The view from the front terrace of Unit 10, 7 College Street, from a standing position.

Unit 7, 140 Addison Road: The dwellings and vegetation on the subject site, other surrounding sites to the north-east, Shelly Beach Reserve, and the ocean and its horizon.



Above: The view from the living room of Unit 7, 140 Addison Road, from a standing position.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The affected views are obtained as follows:

- 97 Bower Street: The view is obtained to the south-east, across the side boundary, from both standing and seated positions. The view is obtained from the main bedroom, study and terrace at the lower living level, the kitchen, dining room, living room and balcony of the upper living level, and from the roof terrace.
- Unit 3, 28 Reddall Street: The view is obtained to the north-east, across the front boundary, from both standing and seated positions. The view is obtained from the front balcony, dining room, kitchen and living room.
- 30 Reddall Street: The view is obtained to the north-east, across the front boundary, from both standing and seated positions. The view is obtained from the front balcony, living room, dining room and study of the ground floor, and the front balcony, study, and main bedroom of the first floor. It should be noted that the ground and first floors are set above a garage level, so are raised above the street.
- Unit 5, 7 College Street: The view is obtained to the north, across the front boundary, from both standing and seated positions. The view is obtained from the front terrace, living room, dining room, and from the kitchen (via a mirror).
- Unit 6, 7 College Street: The view is obtained to the north, across the front boundary, from both standing and seated positions. The view is obtained from the front terrace, living room, dining room, kitchen and side balcony.
- Unit 10, 7 College Street: The view is obtained to the north, across the front boundary, from both standing and seated positions. The view is obtained from the front terrace, living room, dining room, kitchen and side balcony. Angled views are also obtained from the north-western side windows along the length of the unit.
- Unit 7, 140 Addison Road: The view is obtained to the north-east, across the front boundary, from both standing and seated positions. The view is obtained from the front balcony, living room, and dining room.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The affected views are impacted as follows:

- 97 Bower Street: The view to St Patrick's Estate is anticipated to be entirely or predominantly retained from each noted location. The view loss is assessed as negligible.
- Unit 3, 28 Reddall Street: The proposed development is located such that it is anticipated to obscure other dwellings, rather than the valuable elements of the view, being the ocean and Shelly Beach Reserve. The view is anticipated to be improved in a minor way due to removal of some vegetation throughout the site. The view loss is assessed as negligible.

- 30 Reddall Street: The lower level of the dwelling is anticipated to lose view to the ocean and its horizon, for approximately 60% of the view corridor available. The upper level of the dwelling is anticipated to lose a minor portion view to the ocean, but retain the ocean's horizon and Shelly Beach Reserve. The view loss is assessed as moderate to the lower level and minor to the upper level.
- Unit 5, 7 College Street: The view to the distant headlands are anticipated to be retained from the terrace, but lost to the dining room, living room and kitchen. Approximately 40% of the ocean is anticipated to be lost. The remainder of the view to the ocean and its horizon is anticipated to be improved due to removal of vegetation. The view loss is assessed as moderate.
- Unit 6, 7 College Street: The view to the distant headlands are anticipated to be predominantly lost. Approximately 50% of the ocean and its horizon is anticipated to be lost. A portion of the view to the ocean and its horizon is anticipated to be improved due to removal of vegetation.
- Unit 10, 7 College Street: A minor portion of the view to the horizon is anticipated to be lost. The remainder of the view is anticipated to be improved due to removal of vegetation. The view loss is assessed as moderate.
- Unit 7, 140 Addison Road: The proposed development is located such that it is anticipated to obscure other dwellings, rather than the valuable elements of the view, being the ocean and Shelly Beach Reserve. The view is anticipated to be improved in a minor way due to removal of some vegetation throughout the site. The view loss is assessed as negligible.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

It is established throughout this report that inadequate information has been provided with respect to establishing exact compliance with the building height, wall height, and setback controls. It is expected that the proposed development will result in view loss attributable to non-compliance with those controls. In this way, the proposed development does not demonstrate minimisation of disruption to views from adjacent and nearby development and views to and from public spaces including views to the ocean and recognised landmarks from private property.

3.7 Stormwater Management

The proposed development does not provide sufficient information to demonstrate compliance with Council's stormwater management requirements with respect to the provision of onsite stormwater detention (OSD). This is included as a reason for refusal.

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

The submitted plans indicate non-compliant wall heights for each dwelling house on the proposed new lots, in contravention of Clause 4.1.2.1 of the Manly DCP. Insufficient information has been provided to establish the exact extent of the numerical non-compliance with respect to wall heights, though estimations are made in this assessment report.

The proposed lowest level of each dwelling house fails to satisfy the definition of 'basement' in

accordance with the Dictionary of the MLEP, as these levels are not predominantly below ground level (existing) and the levels above are generally greater than 1 metre above ground level (existing). As such, each dwelling house must be classified as three storeys in height, where the maximum allowable for this development under Clause 4.1.2.2 (a) of the Manly DCP is two storeys

In the absence of its own objectives, Clause 4.1.2 relies on the objectives of Clause 4.3 Height of Buildings of the Manly LEP, which are addressed as follows:

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

Comment:

The proposed development includes sloping skillion and flat roof forms to all five proposed dwellings. These roof forms are of a more modern design than those of the existing three dwellings, though are not uncommon in the locality, and are acceptable with respect to the topography, in that the slope follows that of the land (as shown in the above diagram). The roof forms serve to reduce the overall height of the dwellings, compared to if a hipped or gabled pitched roof form was proposed.

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

Comment:

The proposed development demonstrates compliance with the maximum floor space ratio set by Clause 4.4 of the Manly LEP, which controls the bulk and scale of buildings. The proposed dwellings are of an overall bulk and scale anticipated for the site and locality. The proposed excavation for the purpose of the basements (which results in the number of storeys non-compliance) provides the benefit of consolidated vehicular parking, and a net increase in both on-street and off-street parking, without resulting in unreasonable bulk.

(c) to minimise disruption to the following—

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

Comment:

It is anticipated that the proposed development will result in view loss to a number of properties to the south, south-east and south-west, attributable to the non-compliant height of buildings, including with respect to the number of storeys and wall heights. This is assessed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly DCP and is included as a reason for refusal.

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

Comment:

The proposed development is compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP, and is therefore acceptable with respect to solar access.

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

Comment:

Not applicable. The subject site is zoned R1 General Residential.

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

The submitted plans demonstrate non-compliant front, side, and/or rear setbacks for each proposed dwelling house. Insufficient information has been provided to establish the exact numerical extent of all the non-compliant setbacks, as the numerical requirements for compliance rely on calculation of wall

heights, and insufficient information has been provided to establish exact wall heights. The objectives of Clause 4.1.4 are addressed as follows:

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

Comment:

Insufficient information is provided to establish the level of non-compliance with respect to setbacks, and therefore with respect to the spatial proportions of the street, the street edge, and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development provides for suitable visual privacy, as detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly DCP. The proposed development is compliant with the solar access requirements set by Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP. It is anticipated that the proposed development will result in view loss to a number of properties to the south, south-east and south-west and insufficient information is provided to establish whether this view loss is attributable to the non-compliant setbacks. This is assessed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly DCP and is included as a reason for refusal. Insufficient information is provided to establish the level of non-compliance with respect to setbacks, and therefore with respect to space between buildings and the rhythm and pattern of spaces. The proposed development is acceptable with regard to the proposed new driveways, as supported by Council's Traffic Engineer.

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

Comment:

Insufficient information is provided to establish the level of non-compliance with respect to setbacks, and therefore with respect to flexibility in the siting of the proposed buildings.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development is compliant with the total open space and landscaped area. The proposal is supported by a suitable landscape plan, demonstrating acceptable planting. The proposed development does not unreasonably impact upon or detract from the landscaped context of the site, being adjacent to public land to the north-west. The proposal does not impact upon urban bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

4.1.9 Swimming Pools, Spas and Water Features

The swimming pools proposed on each new lot are not compliant with the maximum height above ground and minimum setbacks stipulated by Clauses 4.1.9.1 Height Above Ground and 4.1.9.2 Location and Setbacks of the Manly DCP, respectively. Insufficient information has been provided to establish the exact extent of the numerical non-compliance with respect to swimming pool heights and setbacks

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

Comment:

Insufficient information has been provided to establish the exact impact of the non-compliant pool heights and setbacks with respect to privacy.

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

Comment:

Insufficient information has been provided to establish the exact impact of the non-compliant pool heights and setbacks with respect to streetscape and character.

Objective 3) To integrate landscaping; and

Comment:

The proposed development is supported by a suitable landscape plan, demonstrating adequate planting has been integrated around the proposed pools and dwellings.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$108,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$10,810,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that compliance with the development standard set by Clause 4.3 Height of Buildings of the Manly LEP 2013 is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify the contravention. The proposed development is not supported by a written request to vary the development standard, in contravention of Clause 4.6 Exceptions to Development Standards of the MLEP. The proposed development will not be in the public interest because it is inconsistent with the objectives of the development standard.

PLANNING CONCLUSION

This proposal, for demolition works, subdivision of three lots into five and construction of five new dwelling houses with swimming pools, associated landscaping and parking has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the number of submissions (30 in objection), and due to the proposed variation to height of building development standard of 15.3%.

The concerns raised in the objections have been addressed in the relevant section of this report and are resolved where possible or included as reasons of refusal where the matter remains unresolved.

The critical assessment issues related to building height, wall height, number of storeys, setbacks, stormwater management, and view sharing.

Overall, the development does not demonstrate suitable performance against the relevant controls and will result in unreasonable impacts. The proposal has therefore been recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all

processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/0299 for the Demolition works, subdivision of three lots into five and construction of five new dwelling houses with swimming pools, associated landscaping and parking. on land at Lot 82 DP 8076,35 Reddall Street, MANLY, Lot 83 DP 8076,31 Reddall Street, MANLY, Lot 84 DP 8076,29 Reddall Street, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013. The proposed development is not compliant with the height of buildings development standard. The proposed development is not supported by adequate architectural plans to establish the full extent of non-compliance.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013, with respect to the variation of the development standard set by Clause 4.3 Height of Buildings.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.8 Landslide Risk of the Manly Local Environmental Plan 2013, with respect to stormwater management.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.7 Stormwater Management of the Manly Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan. The proposed development includes non-compliant wall heights and numbers of storeys, and the proposal is in contravention of objective (c)(ii) of Clause 4.3 Height of Buildings (on which Clause 4.1.2 of the MDCP relies) with respect to view loss.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. Insufficient information has been provided to establish the exact numerical extent of the non-compliant

setbacks.

10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan. Insufficient information has been provided to establish the exact numerical extent of the non-compliant pool setbacks and heights.