

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via teleconference on

WEDNESDAY 7 JULY 2021

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Panel Members

Peter Biscoe	Chair
Brian Kirk	Town Planner
Lisa Bella Esposito	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 7 July 2021

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 16 June 2021	
3.0	PUBLIC MEETING ITEMS.....	5
3.1	REV2021/0006 - 181 Allambie Road, Allambie Heights - Review of Determination of Application DA2020/0552 granted for demolition works and construction of a Seniors Living Development	5
3.2	DA2021/0008 - 12 & 14 Ponsonby Parade, Seaforth - Demolition works and construction of a seniors living development over basement car parking	37
4.0	NON PUBLIC MEETING ITEMS.....	101
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
4.1	DA2021/0497 - 87-88 North Steyne, Manly - Alterations and additions to a Residential Flat Building	101

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 16 JUNE 2021

The Panel notes that the Minutes of the Northern Beaches Local Planning Panel held 16 June 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1 **REV2021/0006 - 181 ALLAMBIE ROAD, ALLAMBIE HEIGHTS -
REVIEW OF DETERMINATION OF APPLICATION
DA2020/0552 GRANTED FOR DEMOLITION WORKS AND
CONSTRUCTION OF A SENIORS LIVING DEVELOPMENT**

AUTHORISING MANAGER Lashta Haidari

TRIM FILE REF **2021/468017**

ATTACHMENTS **1 Assessment Report
2 Site Plan**

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PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a review of a determination or decision made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. REV2021/0006 for Review of Determination of Application DA2020/0552 granted for demolition works and construction of a Seniors Living Development at Lot 2615 DP 752038, 181 Allambie Road, Allambie Heights for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0006
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 2615 DP 752038, 181 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Review of Determination of Application DA2020/0552 granted for demolition works and construction of a Seniors Living Development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Allambie Heights Village Ltd Department Of Lands
Applicant:	Allambie Heights Village Ltd
Application Lodged:	15/02/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	03/03/2021 to 02/04/2021
Advertised:	03/03/2021
Submissions Received:	43
Clause 4.6 Variation:	4.3 Height of buildings: %
Recommendation:	Refusal
Estimated Cost of Works:	\$ 17,920,858.00

Executive Summary

The application seeks a review of the determination of DA2020/0552 made by the Northern Beaches Local Planning Panel (NBLPP) on 24 November 2020.

This review application does not provide any change to the design of the proposed development. However, further information has been provided to address the reason of the refusal provided by the NBLPP on 24 November 2020 which is as follows:

"The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW

having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused."

The application was referred to internal departments and external authorities. Council's Natural Environment Team does not support the application due to the impact on the natural environment caused by the Asset Protection zones required under Planning for Bushfire Protection. Despite the additional information and reasoning provided, Council's Biodiversity Officer has stated the proposed APZ will have an unreasonable impact on the natural environment. The facilitator of Manly Warringah War Memorial State Park also cannot support the application. Further, there has not been sufficient assessment of impacts of the proposed APZ on Sydney Water Land.

Notwithstanding the above issues and the recommendation for refusal of the application, the remainder of the assessment has found that the proposal is generally acceptable and can be supported subject to conditions. In particular, the assessment has found that the proposed development is satisfactory from a planning perspective with regards to its overall character, built form and amenity impact.

Under DA2020/0552, the applicant lodged a request under Clause 4.6 of the WLEP 2011 to vary the building height development standard under the SEPP (HSPD) 2004. The proposed building height is up to 0.65m above the permissible height of 8.0m under the SEPP, representing a variation of 8.1%. The variation was considered acceptable largely due to the topography of the land, the lack of adverse impacts and it is offset throughout the development. Specifically, the variation was not considered to result in excessive bulk and scale, does not result in adverse shadow and amenity impacts on surrounding properties and there is no impact on streetscape or the visual and scenic quality of the locality. This assessment also adopts this reasoning.

The public exhibition of the review application resulted in 43 submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to environmental aspects of the proposal on bushland and biodiversity and generally on the Manly Dam catchment. The issues raised in the submissions have been addressed in the "Public Notification" section of this report. Included in the submissions is a submission made by the facilitator of the Manly Warringah War Memorial State Park who does not support the proposed APZ on the adjoining land. This lack of support is provided as an additional reason of refusal.

On balance, the assessment of the proposed seniors housing development on this site against the applicable planning controls and related legislation reveals that it is still unable to be recommended for approval, owing to the adverse impact on remnant bushland and biodiversity values of adjoining land.

Therefore, the application is recommended for refusal for the reasons detailed in the recommendation section of this report.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the demolition works and construction of a seniors housing development, which consists of partial demolition works, site preparation works, the removal of trees and the construction of an 24 independent units in two separate blocks (known as Building A and Building B) to be occupied as seniors housing.

In detail, the development includes the following:

- **Building A** – 8 units over two storeys (4 units per floor) . Units are accessible from two lifts located on the parking level.
- **Building B** – 16 units over two storeys (8 units per floor). Ground floor units are accessible directly from the parking level, through private courtyards. First floor units are accessible by two lifts and raised walkways above ground floor courtyards.
- **Carparking** - the carpark provides 30 resident parking spaces, which includes 2 visitor parking spaces and a loading bay.
- **Access** – existing vehicular access to the site is via Martin Luther Place and the existing internal driveway. A new loop road is proposed to expand from this internal driveway to the parking area for the proposed development.
- **Landscape works** - The landscape design comprises new tree plantings, turf areas, and community activity areas and structures.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - E2 Prescribed Vegetation

Warringah Development Control Plan - E5 Native Vegetation

Warringah Development Control Plan - E6 Retaining unique environmental features

Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot 2615 DP 752038 , 181 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	<p>The subject site is generally rectangular, with long northern and southern boundaries, and narrow western and eastern boundaries. The site is located at No. 181 Allambie Road, Allambie Heights, and has a legal description of Lot 2615 in DP 752038. The land has total area of approximately 3.72 hectares (37,200m²).</p> <p>The site slopes in a westerly direction and contains large areas of bushland for approximately half of the area of the site, being the western portion. Bushland also extends along the northern boundary of the site adjacent to an existing Sydney Water pipeline.</p> <p>The site is currently occupied aged care facility known as William Charlton Village, which provides seniors housing development. The existing buildings are located on the eastern portion of the site and include ILUs in 2 storey walk-up buildings, administration/staff buildings and detached outbuildings. Vehicular access to the site is via Allambie Road and also Martin Luther Lane, to the south.</p> <p>The site adjoins on its southern boundary is another seniors development also operated by Allambie Heights Village, that provides a variety of ILUs, assisted living units, dementia care and a full range of catering, recreation, transportation and administration facilities. Located to the north of the site is a Sydney Water pipeline, which runs parallel to the northern boundary of the subject site and is surrounded by bushland. Further to the north of the pipeline is a retirement village known as Fred Hutley Village, which comprises a range of affordable ILUs.</p> <p>The bushland to the west and south west of the site forms part of the Manly Dam catchment and is under the ownership of the Crown.</p>

Map:



SITE HISTORY

Pre-lodgement Meeting

A pre-lodgement meeting (PLM) was originally held with Council relating to the proposed development of the site as seniors housing on 21 November 2017.

Development Application DA2018/1667

This was the original application and was submitted in 2018 and referred to the Northern Beaches Local Planning Panel (NBLPP) for determination. The subject application is similar in nature to this application with the exception of changes such as relocation of the communal area and removal of the golf course.

On 12 June 2019, this application was deferred by the NBLPP as it still had not received the required approval from the NSW RFS.

The NSW RFS finally issued approval (General Terms of Approval) to the proposal, subject to conditions. However, the panel refused the application on 3 September 2019 on the grounds that the conditions of approval required substantial amendments to be made to the proposal.

Development Application DA2020/0552

This is the application in which is being reviewed under the subject review application (REV2021/0006), submitted in 2020 and referred to the Northern Beaches Local Planning Panel (NBLPP) for determination.

On 24 November 2020, the NBLPP refused the application for the following reason:

"1. The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts

that would be caused."

Review Application REV2021/0006 (subject application)

This application was submitted on 2 February 2021. This application is a review application of DA2020/0552.

In the statement of review it is submitted that "the design of the development has not been altered as a part of the review request." Along with this, a further plan was submitted, *SK011 - Manly Reserve APZ Plan*. This plan is consistent with the plans that were submitted under DA2020/0552 dated 9/03/18.

The review application was provided with new information to address the reason of refusal provided by the panel. The following is the reason of refusal provided by the panel:

The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.

The additional information including the letter from "Total earth care" in regard to the Asset Protection Zone Vegetation Removal dated 24th of January 2021 has been considered as a part of this assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 24/11/2020 and the notice of determination was issued on 24/11/2020. The review was lodged on 25 February 2021 and is to be considered by NBLPP on 16 June 2021, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal and that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

How has the 8.2 Application Responded to The Reasons for Refusal?

The applicant has provided additional supporting information in regard to the reason of Refusal. Consequently, the reason for refusal of DA2020/0552 that is stipulated in the Notice of Determination is examined below to determine if it remains applicable or should be overturned:

1. The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.

Comment:

The additional information including the letter from "Total earth care" in regard to the Asset Protection zone Vegetation Removal dated 24th of January 2021 has been considered as a part of this assessment.

In this regard, it has been determined there is still insufficient information to ascertain the likely impacts of the development on the Natural Environment. Further to this, it is maintained by Council's Biodiversity officer that the proposed APZ would have an unreasonable impact on the natural environment, and that reliance on an existing APZ for adjoining development is unacceptable.

Council's Biodiversity officer has also provided that there is insufficient information to support the proposed APZ within the Sydney Water land to the north. This includes that there is a lack of assessment of this impact in the BDAR, and that a Sydney Water Environmental representative has not provided approval (as is required under the Property Environmental Management Plan 2018).

The lack of support from facilitator of Manly Warringah War Memorial State Park for the proposed APZ also raises concern with regard to the suitability of the site for this development.

As such, it is concluded that the reason of refusal provided by the NBLPP has not been satisfactorily addressed.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

See assessment under the referral for Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/03/2021 to 02/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 43 submission/s from:

Name:	Address:
Mrs Ann Frances Collins	41 Gordon Street MANLY VALE NSW 2093
Mr Malcolm John Fisher	37 King Street MANLY VALE NSW 2093

Name:	Address:
Ms Clare Trevena	68 Parr Parade NARRAWEENA NSW 2099
Ms Edwina Laginestra	22 Wyndora Avenue FRESHWATER NSW 2096
Mr Christopher Joseph Buykx	1 Arnhem Road ALLAMBIE HEIGHTS NSW 2100
Shona Marjorie McKenzie	106 A Clontarf Street NORTH BALGOWLAH NSW 2093
Mrs Michelle Anne Dunlop	117 Warriewood Road WARRIEWOOD NSW 2102
Heike Roth	21 Tottenham Street NORTH BALGOWLAH NSW 2093
Jade Reynolds	240 Sydney Road FAIRLIGHT NSW 2094
Ms Leonie Gail Cowan	37 King Street MANLY VALE NSW 2093
Ms Susan Patricia Robertson	16 Thornton Street FAIRLIGHT NSW 2094
Mrs Margaret Ritchie	7 A Pitt Street MANLY VALE NSW 2093
Sonya Ku	Address Unknown
Ms Judith Claire Bennett	19 Elliot Street BEACON HILL NSW 2100
Mrs Eira Wynn Janet Battaglia	50 / 8 Koorala Street MANLY VALE NSW 2093
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Mrs Zena Debra Carter	5 Lewis Street AVALON BEACH NSW 2107
Emily Ann Fewster	25 Tottenham Street NORTH BALGOWLAH NSW 2093
Ms Saskia Kirsten Blanch	19 / 16 Campbell Parade MANLY VALE NSW 2093
Mr Raymond James Cox	3 Austin Avenue NORTH CURL CURL NSW 2099
Miss Diane Carolyn Willman	49 Upper Beach Street BALGOWLAH NSW 2093
Gary Cook	Address Unknown
Mrs Morgan Bee Irvine	C/- Bellriver Homes Po Box 7391 BAULKHAM HILLS NSW 2153
Mrs Margaret M Hogg	8 Armour Avenue MAROUBRA NSW 2035
Mr Nathan Lo	13 Nenagh Street NORTH MANLY NSW 2100
Mr Stephen Gray	Address Unknown
Mrs Denise Mary Keen	29 / 80 Evans Street FRESHWATER NSW 2096
Mr Gary Andrew O'Brien	16 Clifford Avenue FAIRLIGHT NSW 2094
Mr Lloyd Michael Keen	3 Birkley Road MANLY NSW 2095
Mr Robert Nicoll	6 Myrtle Street NORTH BALGOWLAH NSW 2093
Mrs Sandra Madeline Hudspith	1 / 10 Hilltop Crescent FAIRLIGHT NSW 2094
Mrs Susan Narelle Byrne	7 Arana Street MANLY VALE NSW 2093
Save Manly Dam Catchment Committee Inc	Address Unknown
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
Ms Louise Elizabeth Ashley Williams	42 Baringa Avenue SEAFORTH NSW 2092
Mr Greg Wallis	19 Foam Street FRESHWATER NSW 2096
Mr Kevin John Collins	41 Gordon Street MANLY VALE NSW 2093
Mr Nick Reid	25 Eurobin Avenue MANLY NSW 2095
Ms Yvette Megan Eunson	5 / 20 Wheeler Parade DEE WHY NSW 2099

Name:	Address:
Ms Jennifer Louise Buck	6 Lister Avenue SEAFORTH NSW 2092
Claudia Terstappen	Address Unknown
Terrence Flower	Address Unknown
Steven Lawler	1 Boondah Road WARRIEWOOD NSW 2102

The matters raised within the submissions have been considered and are addressed as follows:

1. Impact on the Natural Environment

A significant number of submissions raised concerns in relation to the impact of the development on the natural environment. The following specific concerns were raised:

- *Impact on threatened flora and fauna in the area and Manly Dam Catchment and sensitive bushland surrounds/ecosystems;*
- *Extensive tree removal (particularly including as a result of Asset protection Zones);*
- *The existing landscape area provides a transition between the bushland and existing buildings;*
- *Bushland and riparian buffer areas in Manly Dam Catchment should be protected (and not developed as a residential site)*
- *Surrounding detention basins adversely affected (Manly Warringah War Memorial Park and Manly Dam);*
- *Extensive excavation will intercept subsurface flow and result in irreversible changes to the natural hydrology of the site; and*
- *Natural features of the subject site should be protected.*
- *Stormwater Impacts*
- *Future environmental concerns*
- *Erosion and Pollution*

Comment:

These issues are addressed in the relevant referral sections by Council's Natural Environment Section (including Biodiversity, Riparian Lands and Creeks, Development Engineering, and Water Management) and the NSW RFS referral comments. In summary, the impacts on the natural environment, particularly as a result of the required APZ, are found to be unsatisfactory, and this reason is included as a reason for refusal.

2. Impact of Construction on existing residents (noise, dust, amenity)

Concern is raised regarding the excavation and construction impacts associated with the development and the potential impact on adjoining development.

Comment:

Appropriate conditions to minimise impact can be imposed on a consent to reduce and mitigate impacts associated with construction if this application was to be approved.

Therefore, this issue should not form a reason of refusal.

3. Development is not Suitable for this land; concern regarding crown land; concern regarding lease and appropriate owner's consent

Concerns have been raised that, as the site is Crown Land, it should be maintained as public open

space, and be available for bushwalking and picnic areas (rather than density of Seniors Living). Concerns are also raised in regard to the lease agreements, surrounding land, and the APZ, and whether the applicant is authorised to make the application.

Comment:

The site is owned by Department of Industry - Lands and is currently leased to Allambie Heights Village. The site is zoned to permit a seniors housing development, and the applicant has lodged the application with valid owners consent from the Department.

The issue as it relates to the lease agreement and whether the site should be used for public recreation purposes is not a matter for Council to consider as part of the assessment of the application.

Therefore, this issue should not be given determining weight.

4. Bushfire Impact

Concerns have been raised that the siting of a development of this type within an area that is bushfire prone is dangerous, due to the limited mobility of residents. In addition, concerns have also been raised that the Asset Protection Zones (APZ) required for the development will impact on the environmental qualities of the site and its surrounds.

Comment:

The site is identified as bushfire prone land. A Bushfire Report accompanies the application. In the report, recommendations are provided to ensure the safety of the residents of the facility in accordance with the provisions of 'Planning for Bush Fire Protection 2006' as published by the NSW Rural Fire Service (NSWRFS).

Further, as detailed in the referral response from the NSWRFS under the 'Referrals' section in this report, the Service is supportive of a license agreement along with Sydney Water, to manage the Asset Protection Zone.

However, Council's Natural Environment team does not support the proposal due to the environmental impact caused by the Asset Protection Zones.

Accordingly, this matter forms a reason for refusal.

5. Visual Impacts, Character, Height of Buildings and Impact on the War Memorial Area (Heritage); Overdevelopment

Concerns have been raised in relation to the visual impact of the development from many vantage points within the Manly-Warringah War Memorial Park. The submissions have also raised concern in relation to the impact of the development on the War Memorial area as it is heritage listed.

Comment:

The issue of the visual impact, building height and character of the development on the War Memorial Area is addressed under WLEP 2011 and State Planning Policies section of this report and found to be acceptable.

A Clause 4.6 variation request was been provided in relation to the building height for the original development application and was considered to sufficiently justified contravention of the building height standard. As further discussed, this assessment finds that a Clause 4.6 application could be supported for the reasons outlined in the previous Assessment report, and due to the lack of change in design.

Therefore, this issue should not be given determining weight.

6. Not consistent with the requirements of SEPP (HSPD) 2004

Insufficient expert information

The submissions have raised concerns that the development does not comply with the following clauses of the SEPP:

- *Clause 12 of SEPP not addressed;*
- *Not compatible with the surrounding land uses*
- *Exceeds the maximum height requirement*

Comment:

The issues above are discussed in the SEPP (HSDP) section of this report. In summary, it has been found that the development is consistent with the character of the area, as required under the provisions of *SEPP 65 - Design Quality of Residential Apartment Development* and SEPP HSPD and the non-compliance in relation to the 8.0m height is supported.

Clause 12 of SEPP HSPD is not applicable to the proposed development.

Therefore, the specific issues raised in relation to SEPP HSPD should not be given determining weight.

7. Inconsistent with the R2 Zone Objectives

Concerns have been raised that the proposed development is incompatible with the objectives and future form of development envisaged for the zone.

Comment:

The proposal is consistent with the objectives of the zone as the development would contribute to the housing needs of the community within a low density residential environment.

8. Traffic

Submissions have raised concern in regard to the impact the proposal would have on surrounding traffic issues including Allambie Road.

Comment:

Council's Traffic Officer has assessed the application and is supportive of the proposal, subject to conditions. This is partly due to the general peak generation period for a Seniors Living development not coinciding with the Network Commuter Peak Period.

9. Concern regarding multiple applications submitted.

Submissions have raised concern in regard the multiple applications submitted and the lack of change to the applications.

Comment:

There is no legislative requirement to restrict the number of applications that can be submitted by an applicant, nor any requirement for applications to change.

10. Lack of reason for refusal under SEPP in regard to environmental impact

Comment:

Under the previous application this was recommended as an additional reason for refusal under a supplementary memo provided to the Northern Beaches Local Planning Panel. As further discussed in this report, this assessment also adopts this reason as a recommended reason of refusal due to environmental impact caused by the proposed APZ.

11. Lack of support of proposed APZ by facilitator of Manly Warringah War Memorial State Park

Comment:

This is included as a reason of refusal.

12. Review of LEP

Concerns have been raised that the current review of the LEP should impact the assessment of this application

Comment:

Consideration of a new LEP cannot be made until it is adopted as legislation.

Therefore, this issue should not be given determining weight.

13. Insufficient Parking

Concerns have been raised that there is insufficient parking provided for the development.

Comment:

The parking requirement for the development is stipulated under the provisions of SEPP (HSPD) 2004. An assessment of the car parking provision and location on the site has been undertaken. In summary, the proposed amount of car parking spaces is 30, and the required amount is 24.

Accordingly, this issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported -Subject to conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>Supported -Subject to conditions</p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p>

Internal Referral Body	Comments
	<p>An alternate Landscape Officer has undertaken the landscape assessment of the review application REV2021/0006.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>Further, the assessment of the development against the relevant planning instruments remains identical to that which is carried out in the Statement of Environmental Effects lodged with DA2020/0552.</p> <p>Landscape Referral raise no objection to the landscape proposal, and the conditions of consent under DA2020/0552 are appropriate with no other additional nor amendments required to the conditions.</p>
NECC (Bushland and Biodiversity)	<p>Not Supported</p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>The assessment of the development against the relevant planning instruments remains identical to that which is carried out in the Statement of Environmental Effects lodged with DA2020/0552.</p> <p>As identified in the previous biodiversity referral response, the application included a Biodiversity Development Assessment Report (BDAR) that has quantified the biodiversity values of the land and applied the avoid, minimise and offset hierarchy and assessed the direct and indirect impacts associated with the proposed development. While the potential impacts of the development design have been reduced from that of the previous application, the development in its current format is not supported due to unacceptable impacts to the natural environment.</p> <p>The location and design of the proposed development does not satisfy the objectives and/or requirements of the Warringah Development Control Plan 2011, including</p> <ul style="list-style-type: none"> • E2 Prescribed Vegetation • E5 Native Vegetation • E6 Retaining unique environmental features, and

Internal Referral Body	Comments
	<p>• E7 Development on land adjoining public open space.</p> <p>The proposed development will directly and indirectly impact native vegetation and fauna habitat, including threatened species or vegetation communities with potential for a serious and irreversible impact as mapped on the Biodiversity Values Map. The development is located on land adjoining public open space, and should protect, preserve and enhance the native bushland and natural qualities of the adjoining Park, and not threaten the protection or preservation of the bushland and fauna habitats.</p> <p>Additional impacts that require further assessment, and potentially additional biodiversity offsets, have not been adequately addressed as described below.</p> <p>The Asset Protection Zone (APZ) requirement of 85 metres to the south-west increases the extent and ongoing reliance of vegetation management of land within the adjoining public reserve. The adjoining public reserve has some existing asset protection requirements, both as a result of a historic agreement with the adjoining development and the Fire Management Plan requirements. However, to achieve the full 85m setback (Manly Dam APZ (4) as shown in Map 2 of the Bush Fire Management Plan (Total Earth Care Feb 2020)), the development relies on the modification of native vegetation to create an asset protection zone beyond what currently exists. Further, Council does not support the use of adjoining lands for the provision of an asset protection zone required as part of new development.</p> <p>In accordance with the Biodiversity Assessment Method, all of the direct and relevant indirect impacts on native vegetation, threatened species and their habitat must be assessed. The impacts of the proposed APZ within the adjoining Sydney Water land to the north (APZ (3) of Map 2) have not been assessed in the BDAR. The future value of the biodiversity value attributes must be amended to reflect the impacts from the partially clearing of each vegetation zone, including areas such as asset protection zones. The Property Environmental Management Plan (Sydney Water Oct 2018) for the water pipeline corridor site maps the area as Environmental Protection: Restricted. Activities within this area such as burning, intensive weed control, cutting or trimming, such as the APZ works proposed, requires Sydney Water Environmental Representative approval.</p> <p>The inclusion of pedestrian walkways into the native bushland area of the site mapped on the Biodiversity Values map is not supported, and these elements should be deleted.</p> <p>Based on the comments above, the review application is recommended for refusal as it does not satisfy the NSW Biodiversity Conservation Act 2016, and Warringah Development Control Plan 2011 requirements.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Supported - Subject to conditions</p> <p>No objection to the proposed development subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>Supported - subject to conditions</p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the Warringah LEP, DCP and Protection of Waterways and Riparian Lands Policy (Policy PL740). The Warringah Creek Management Study 2004 principles and NRAR waterfront land principles were also used in the assessment.</p> <p>The supplied reports and plans were considered.</p> <p>The community submissions for the review were considered.</p> <p>The supplied documentation has been assessed satisfactory.</p> <p>On balance the proposed location of the development and proposed riparian land treatment measures have been determined as acceptable under Northern Beaches riparian controls.</p> <p>The proposal is therefore supported subject to conditions Refer to water management referral for water quality and sediment and erosion control assessment and conditions.</p>
NECC (Water Management)	<p>Supported - Subject to Deferred Commencement Condition</p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>The design of the development has not been altered as part of the review request as the reasons for refusal state that the information</p>

Internal Referral Body	Comments
	<p>provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the Warringah LEP, DCP and Protection of Waterways and Riparian Lands Policy (Policy PL740). The Warringah Creek Management Study 2004 principles and NRAR waterfront land principles were also used in the assessment.</p> <p>The supplied reports and plans were considered.</p> <p>The community submissions for the review 2021/0006 were considered.</p> <p>The supplied documentation has been assessed satisfactory.</p> <p>The proposed stormwater treatment chain includes a biofiltration system with two cells and a vegetated pond prior to the connection to the creek.</p> <p>The biofiltration system and the pond allow infiltration. The proposed treatment chain size and location is satisfactory and meets the Council stormwater quality objectives for high quality catchments.</p> <p>Due to the sensitivity of the downstream environment it is imperative that an erosion and sediment management strategy is developed to ensure protection of this area. .</p> <p>Construction activity and scheduling impacting on the downstream environment requires further assessment to determine acceptable water quality and water quantity thresholds during construction. It is required that a project ecologist is involved before and during construction to ensure the sediment and erosion controls measure are suitable to guarantee the protection of the downstream environment with specific attention to preservation of the Galaxias brevipinnis population.</p> <p>Should the applicant demonstrate that this is achieved, the application can be supported, and on this basis conditions of consent are provided.</p>
Parks, reserves, beaches, foreshore	<p>Supported - Subject to Conditions</p> <p>The review application relates to the refused development application under DA2020/0552 for the demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.</p> <p>An alternate Parks Officer has undertaken the parks referral response to review application REV2021/0006.</p> <p>The Ecological Report dated 24th January 2021 identifies that the development proposes no removal of existing vegetation from the Manly Dam Reserve.</p>

Internal Referral Body	Comments
	<p>All new development land shall incorporate the Asset Protection Zone as defined within Planning for Bush Fire Protection 2019 wholly within development sites, and shall be managed by the development site owner in perpetuity. No Asset Protection Zones are permitted within the Manly Dam Reserve, and the applicant must demonstrate this by evidence including the extent of the management agreement between the former Warringah Council and Allambie Lutheran Homes Inc (now Allambie Heights Village Ltd) dated 2009 upon the land under that agreement.</p> <p>Should the applicant demonstrate that this is achieved, the application can be supported, and on this basis conditions of consent are provided.</p>
Strategic and Place Planning (Urban Design)	<p>Supported -Subject to conditions</p> <p>Urban Design has considered the Revision (REV2021/0006) and notes that no revisions have been made to the drawings that require further assessment from that previously provided in Urban Design Referral.</p> <p>PREVIOUS COMMENTS The proposal seeks approval for a scheme revised (DA 2018/1667) in accordance with the recommendations of the Northern Beaches Local Planning Panel (NBLPP) on the grounds that insufficient information was provided to properly and fully assess the environmental impacts as a result of the RFS prescribed Asset Protection Zones (Section 4.15 (1)(a) of the Environmental Planning and Assessment Act 1979 (NSW)) and inconsistency with Clause 12(1)(a) of the Warringah Development Control Plan 2011, in particular the following clauses;</p> <ul style="list-style-type: none"> · Clause E2 Prescribed Vegetation; · Clause E5 Native Vegetation; · Clause E6 Retaining unique environmental features; and · Clause E7 Development on land adjoining public open space. <p>And that the required revisions would substantiate a significantly different proposal.</p> <p>As a result of the application of the required 85m APZ setback the revised scheme proposes moving the communal activity centre further to the east with the provision of a landscaped open space including spaces for varying levels of occupation and interaction with the natural environment and mediates the transition between built form and the natural bushland setting adequately.</p> <p>Urban Design is satisfied with the revisions and is therefore supportive of the proposal.</p>
Traffic Engineer	Supported - Subject to conditions

Internal Referral Body	Comments
	<p>The proposed development (as depicted in Annexure A for reference), includes the construction of infrastructure and other works required to facilitate the proposed senior living development consisting of 24 dwellings. The proposed development has the following features relevant to this Traffic and Parking</p> <p>Impact Assessment:</p> <ul style="list-style-type: none"> • 24 x two-bedroom seniors living units distributed across two apartment buildings; • Construction of an ancillary Communal building; • 30 x resident parking spaces located in a basement / lower ground level carpark and one (1) car wash bay on the ground floor; • 17 x visitor parking spaces with 2 provided within the basement / lower ground level carpark and the remaining 15 provided on ground level; • Construction of an emergency egress road to the north of the site. <p>All vehicular access to the site will be from the proposed two-way driveway off Martin Luther Place with the exception of waste collection and loading by vehicles up to a Small Rigid Vehicle (SRV) which will utilise the driveway of the adjacent William Charlton Village site which is located at the intersection of Allambie Road / Mortain Avenue.</p> <p>Traffic:</p> <p>The general peak generation period of a Seniors Living does not coincide with the Network Commuter Peak Period. As such, the impact of the traffic volumes is deemed negligible on the local traffic network.</p> <p>Parking:</p> <p>The parking number satisfies the SEPP and DCP requirements. As such, no objections are raised.</p> <p>Conclusion:</p> <p>The proposal is supported subject to conditions.</p>
Waste Officer	<p>Supported - Subject to Conditions</p> <p>Recommendation - approval with conditions.</p> <p>Council is not, and will not, be the waste service provider to this property.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The following comments were provided by an Ausgrid:</p> <p><i>Ausgrid has no objection with the proposed development as long as we can still maintain access through the existing roadway from pole FF48711 on the western side of the property.</i></p>
Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)	<p>The application was referred to the NSW RFS as Integrated Development.</p> <p>Section 100B of the Rural Fires Act 1997 enables the Commissioner of the NSW RFS to issue a Bush Fire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that Act identifies Seniors Housing (within the meaning of the State Environmental Planning Policy (Housing for Seniors or People with a</p>

External Referral Body	Comments
	<p>Disability) 2004) as such development.</p> <p>In their response on 18 May 2021, the NSW RFS advised the following:</p> <p><i>"Subject to Northern Beaches Council management of the Manly Warringah War Memorial Park (specifically APZ3) identified in Figure 6 – Prescribed Fire Management Zones in the document Manly Warringah War Memorial Park Fire Regime Management Plan 2006. This bush fire safety authority is also subject to the provision of an licence agreement being provided by Sydney Water allowing Allambie Heights Village Ltd and its nominated Bushfire Management subcontractors to manage the portion of Sydney Water controlled land, situated immediately north of 181 Allambie Road Allambie Heights 2100."</i></p> <p>Associated conditions of consent were also provided.</p> <p><u>Sydney Water Letter</u></p> <p>Sydney Water have provided a letter which gives support for a license agreement to Allambie heights Village Ltd and nominated Bushfire management contractors for the purpose of an Asset Protection zone.</p> <p><u>Lack of support for APZ</u></p> <p>As further discussed in this report, the provision of an APZ cannot be supported by Council's Biodiversity officer nor the facilitator of Manly Warringah War Memorial State Park. As such, these form recommended reasons of refusal for the proposal.</p>
Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse)	<p>The Natural Resources Access Regulator (NRAR) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), the proposed works are exempt from the need to obtain a controlled activity approval and no further assessment by this agency is necessary.</p> <p><u>Controlled Activity Not Required</u></p> <p>The proposed works are not located on waterfront land as defined by the WM Act - The proposed works are greater than 40m from top of bank of the watercourse.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

The SEPP establishes State-wide provisions to promote the remediation of contaminated land.

SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when the land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

Council's records indicate that the site has been used for residential (Seniors Housing) purposes for a long period of time. It is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7(1) (b) and (c) of the SEPP 55.

SEPP 65 - Design Quality of Residential Apartment Development

The proposed development is required to comply with SEPP 65 and the associated Apartment Design Guide (ADG). In this regard, the proposed car parking level is more than 1.2m above ground level, with two storeys of residential above the car park, therefore the development is in part a three storey development, triggering the application of SEPP 65.

Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires that, in determining a DA for consent to carry out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- a) *The advice (if any) obtained from the design review panel, and*
- b) *The design quality of the development when evaluated in accordance with the design quality principles, and*
- c) *The ADG.*

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted as a part of the original Development application.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

The original application DA2020/0552 was submitted prior to the implementation of Council's Design and Sustainability Review Panel.

ASSESSMENT UNDER THE REVIEW APPLICATION

The application does not propose any change to the built form as was proposed under DA2020/0552.

Further, this assessment adopts the assessment of DA2020/0552 (attached to this report) in full, being that the proposal is consistent with the requirements of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Rev Certificate No. 934623M_05).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for

Seniors Housing.

The application does not propose any change to the design as was proposed under DA2020/0552.

Further, this assessment adopts the assessment of DA2020/0552 (attached to this report) in full, being that the proposal is consistent with the requirements of SEPP (HSPD) 2004.

It is also noted that a supplementary memo was provided to the NBLPP recommending the following reason of refusal:

The proposed development is found to inconsistent with the requirement of Clause 25 (5) (b) (ii) as the proposal will have impacts on its natural environment and due this impact, the proposal is found to be unacceptable.

There has not been sufficient information provided nor sufficient amendment to the design to address the impacts on the natural environment. As such, this is again recommended as a reason of refusal for the reasons outline in the attached Assessment report.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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 following comments were provided by an AUSGRID officer:

"Ausgrid has no objection with the proposed development as long as we can still maintain access through the existing roadway from pole FF48711 on the western side of the property."

Clause 102 - Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, the SEPP Infrastructure does not apply in this respect and does not require the referral of the application to the RMS.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	The height requirement is covered by SEPP (HSPD) 2004	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

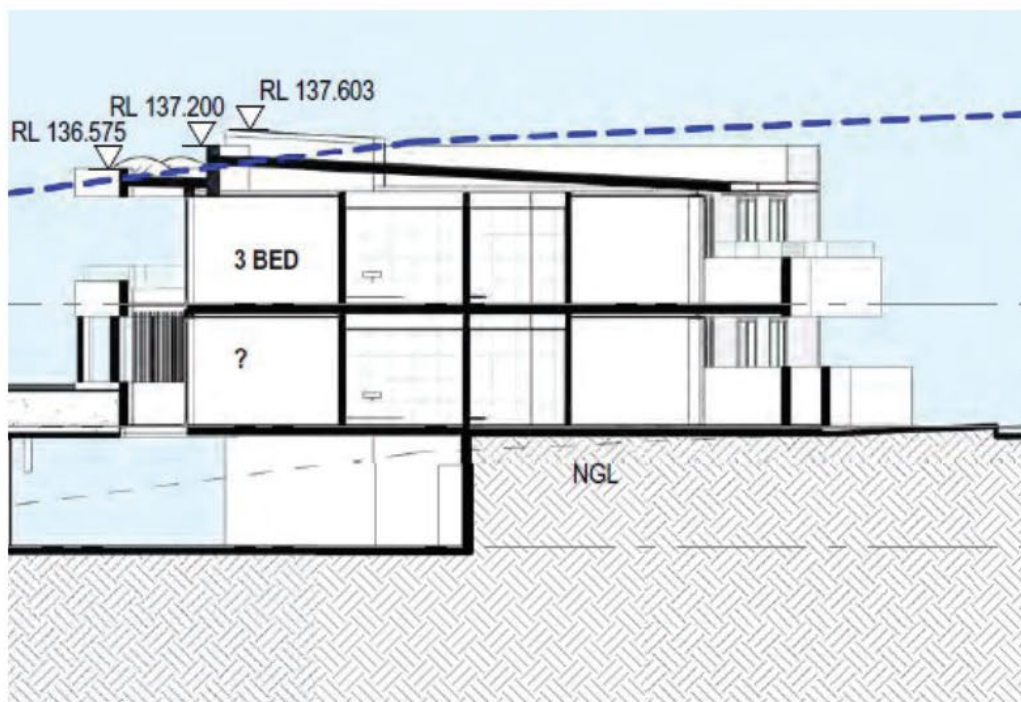
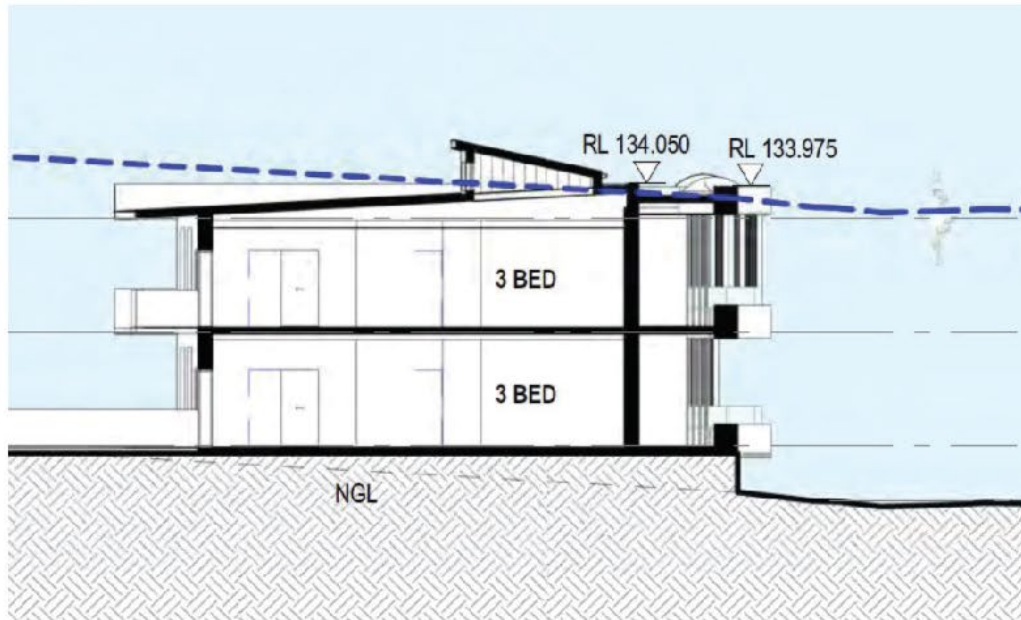
Detailed Assessment

4.6 Exceptions to development standards

ASSESSMENT OF CLAUSE 4.6 VARIATION REQUEST

This application relies on the application that was submitted. There is no change to the design of the proposed Senior's Living, and this assessment accepts the Clause 4.6 variation for the reasons outlined in the attached assessment report.

As demonstrated below, the proposed height is 8.65m, and this does not comply with the requirement under *SEPP (Housing for Seniors or People with a Disability) 2004* which is 8m (measured vertically from ceiling of topmost floor to ground level immediately below).



Figures 1 & 2: Demonstration of height non-compliance.

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

cl. 4.6(4) (b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS-18-003, as issued by the NSW Planning and Environment on 21 February 2018,

advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to clause 40 of SEPP (HSPD) 2004 Development Standard can be assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	The height is covered by SEPP (HSPD) 2004	N/A	N/A
B5 Side Boundary Setbacks	0.9m	In excess of 0.9m to both north and south boundaries	N/A	Yes
B7 Front Boundary Setbacks	10m	The proposed development provides in excess of 10m	N/A	Yes
B9 Rear Boundary Setbacks	6m	The proposed development will not encroach on the rear setback area	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	The LOS is covered by SEPP (HSPD) 2004	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	No	No
E5 Native Vegetation	No	No
E6 Retaining unique environmental features	No	No
E7 Development on land adjoining public open space	No	No
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D6 Access to Sunlight

Site Specific Requirement

Clause 35 under SEPP (HSPD) 2004 establishes precedence for solar access over the WDCP 2011 and states that development is to ensure that adequate daylight is received to the main living areas of neighbours in the vicinity and residents receive an adequate provision of sunlight to substantial areas of private open space.

In the addition to the above, the development is also assessed against the requirements of clause D6 of the WDCP 2011.

In this regard, this assessment adopts the assessment under DA2020/0552 which found the design satisfies the solar access requirement of the SEPP (HSPD) 2004 and WDCP 2011.

E2 Prescribed Vegetation

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

E5 Native Vegetation

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

E6 Retaining unique environmental features

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

E7 Development on land adjoining public open space

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$179,209 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$17,920,858.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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 satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

Conclusion

The assessment of the application has been carried out having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP (HSPD) 2004, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

The proposal seeks to review the determination of DA2020/0552. The Northern Beaches Local Planning Panel refused the original DA on the grounds that there was "insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused."

Despite the additional information and reasoning provided, Council's Biodiversity Officer has stated the

proposed APZ will have an unreasonable impact on the natural environment. The facilitator of Manly Warringah War Memorial State Park also cannot support the application. Further, there has not been a sufficient assessment of impacts of the proposed APZ on Sydney Water Land.

The natural environment issues which stem from the APZ requirement are unreasonable and this provides a situation in which the application cannot be recommended for approval. This is despite the fact that the planning, urban design, character, landscaping, traffic, stormwater, services infrastructure and noise assessments reveal the application has significant merit on those grounds.

The development contains non-compliances with the 8.0m Height of Buildings Development Standard as prescribed under Clause 40 (4) (a) of the SEPP (HSPD). The variations sought have been assessed under the provisions of Clause 4.6 of the WLEP 2011 and the departure from the development standard is supported for the reasons mentioned in the Clause 4.6 section of this report.

The public exhibition of the review application resulted in 43 submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to environment impact, incompatibility with character, non-compliance with SEPP (HSPD) 2004 and construction related impacts. The issues raised in the submissions have been addressed in the "Public Notification" section of this report and the natural environment related concerns are concurred with and form reasons for refusal.

Accordingly, it is recommended that the Northern Beaches Local Planning Panel refuse the request to review the determination of the original application for the reasons detailed within the "Recommendation" section of this report.

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 REV2021/0006 for the Review of Determination of Application DA2020/0552 granted for demolition works and construction of a Seniors Living Development on land at Lot 2615 DP 752038, 181 Allambie Road, ALLAMBIE HEIGHTS, for the reasons outlined as follows:

1. The proposed development is found to be inconsistent with the requirement of Clause 25 (5) (b) (ii) as the proposal will have impacts on its natural environment and due to this impact, the proposal is found to be unacceptable.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15 (1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Development Control Plan 2011, the development is inconsistent with the following Clauses as follows:
 - o Clause E2 Prescribed Vegetation;
 - o Clause E5 Native Vegetation
 - o Clause E6 Retaining unique environmental features; and
 - o Clause E7 Development on land adjoining public open space
4. The proposed development is unsatisfactory in respect to the Environmental Planning and Assessment Regulation 2000, particularly in relation Schedule 1, as the NSW Rural Fire Service (RFS) General Terms of Approval include a APZ requirement that cannot be supported by the facilitator of Manly Warringah War Memorial State Park.



EXISTING APZ ON COUNCIL LAND
CREATED IN 2009 BETWEEN ALLAMBIE HEIGHTS VILLAGE LTD
(FORMERLY ALLAMBIE LUTHERAN HOMES INC.) AND COUNCIL.
EXISTING APZ BENEFITS THE LAND LOCATED AT 3 MARTIN LUTHER
PLACE ALLAMBIE HEIGHTS, BEING CROWN LAND MANAGED UNDER
LEASE BY ALLAMBIE HEIGHTS VILLAGE LTD

BOUNDARY INFORMATION BASED ON SURVEY RECEIVED
19/12/19 FROM C.M.S SURVEYORS PTY LTD.
DRAWING NAME 15090 MERGED BOYS - ISSUE 1.

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AUTHORITY APPROVAL

GA GA

CORPORATE ALLAMBIE HEIGHTS VILLAGE

MANLY DAM RESERVE APZ PLAN

DATE 17/12/19 SCALE 1:500 SHEET 1

PROJECT 2017019 A SK011

PROJECT 2017019 - ALLAMBIE HEIGHTS

See 1. Plan 10 - 12. Manly Dam Reserve
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JACKSON TEECE

ITEM 3.2

**DA2021/0008 - 12 & 14 PONSONBY PARADE, SEAFORTH -
DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS
LIVING DEVELOPMENT OVER BASEMENT CAR PARKING**

AUTHORISING MANAGER Anna Williams

TRIM FILE REF 2021/468038

ATTACHMENTS

- 1** Assessment Report
- 2** Site Plan & Elevations
- 3** Design & Sustainability Advisory Panel Report

[Click or tap here to enter text](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0008 for demolition works and construction of a seniors living development over basement car parking at Lot 21 & Lot 22 DP 7577, 12 & 14 Ponsonby Parade, Seaforth for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0008
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 22 DP 7577, 14 Ponsonby Parade SEAFORTH NSW 2092 Lot 21 DP 7577, 12 Ponsonby Parade SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a seniors living development over basement car parking
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stephen John Petesic James Stephen Petesic
Applicant:	Gartner Trovato Architects
Application Lodged:	15/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	22/01/2021 to 5/02/2021
Advertised:	Not Advertised
Submissions Received:	31
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 5,541,900.00

EXECUTIVE SUMMARY

The application seeks consent for an in-fill self-care seniors housing development under the provisions of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (SEPP HSPD)*. The proposed development has a floor space ratio (**FSR**) of 0.59:1, far exceeding the 0.45:1 FSR prescribed by *Manly Local Environmental Plan 2013 (MLEP 2013)* and the 0.5:1 FSR 'cannot refuse' standards of SEPP HSPD. The non-compliant FSR contributes to excessive bulk and scale, particularly when viewed from Ponsonby Parade, and results in a development that is inconsistent with

the character of the low density residential area. Further concerns are also raised in relation to impacts upon the amenity of adjoining and nearby development and the amenity of the dwellings proposed, noting multiple areas of non-compliance with the design principles of SEPP HSPD, the Seniors Living Policy and the requirements and objectives of *Manly Development Control Plan 2013 (MDCP 2013)*.

These concerns, in addition to others, have been echoed in submissions received from adjoining and nearby residents and members of the wider community. These concerns have been maintained throughout each of the three rounds of notification.

Whilst it is appreciated that a number of concerns highlighted in this assessment can be resolved with further refinement of the scheme and the submission of additional information, the applicant has been afforded two opportunities to address these matters during the application process, in addition to feedback provided during the prelodgement process, and the response received to date has fallen short of what is required. Furthermore, as a result of amendments, the application is now littered with inconsistencies, creating unnecessary confusion for all involved. Accordingly, the application is reported to the Northern Beaches Local Planning Panel with a recommendation of refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of all existing site improvements and the construction of a seniors housing development under the provisions of SEPP HSPD. The proposed seniors housing development comprises nine self-contained dwellings spread across two two-storey buildings, with basement parking below. The proposal comprises a mix of dwelling configurations, as follows:

- Two x two bedroom, two bathroom (Units 2 and 8),
- One x two bedroom, two bathroom + media room (Unit 9),
- One x three bedroom, two bathroom (Unit 1),
- Five x three bedroom, two bathroom + media room (Units 3, 4, 5, 6 and 7).

Each unit is inclusive of a double garage within the basement.

The application also seeks consent for tree removal, stormwater infrastructure, the construction of a new access driveway and landscaping.

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 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	<p>Lot 22 DP 7577 , 14 Ponsonby Parade SEAFORTH NSW 2092</p> <p>Lot 21 DP 7577 , 12 Ponsonby Parade SEAFORTH NSW 2092</p>
Detailed Site Description:	<p>The site is rectangular in shape, with a 40.235m wide frontage to Ponsonby Parade to the south, a 40.235m wide frontage to Ross Street to the north, a depth of 50.29m and a total area of 2023m². The site currently contains two single storey dwelling houses (one on each existing lot), with vehicular access gained via Ross Street. The vegetated nature of the site is consistent with a residential garden, with a handful of mature canopy trees on the site. The site experiences a fall from Ross Street to Ponsonby Parade of approximately 5.6m, with a slope of approximately 11.1%.</p> <p>Views towards the harbour and the city skyline are available from and over the subject site in a southerly direction.</p> <p>The site is predominately surrounded by low density residential development (dwelling houses), which vary in size and scale (from single storey to three storey), age and architectural design. A seniors housing development is located opposite the site on the high side of Ross Street, and childcare centres are located to both the north-east and north-west. The site is in close proximity to Seaforth Local Centre, which is located approximately 200m to the east of</p>

the site.

Ponsonby Parade is a two lane local road with unlimited parking available on both sides of the street. Ross Street is a two lane local road, with parking restricted on the northern side of the street and partially restricted on the southern side of the street.

A bus stop regularly serviced by Sydney Buses is located on Ponsonby Parade, approximately 75m from the south-west corner of the site. There are two other bus stops located in close vicinity of the site that are serviced by the same services; being the bus stop located on the corner of Ponsonby Parade and Panorama Parade (35m from the south-west corner of the site) and the bus stop on the southern side of Ross Street (140m from the north-east corner of the site).

Map:



SITE HISTORY

Background of Site

On 27 December 2017, Development Application DA2017/1364 was lodged with Council, seeking consent for a seniors housing development at 14 Ponsonby Parade (only), comprising 4 dwellings.

On 19 December 2019, Development Application DA2017/1364 was refused by the Northern Beaches Local Planning Panel for the following reason:

1. 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.

Note: Whilst not evident in the determination notice, the concerns relating to views were limited to the loss of harbour views at 9/14 Ross Street, Seaforth.

On 28 March 2019, a Class 1 appeal was filed with the NSW Land and Environment Court (NSW LEC) against the refusal of DA2017/1364.

On 11 December 2019, DA2017/1364 was approved by the NSW LEC by means of a s.34 agreement between the parties. The development ultimately approved comprised 4 in-fill self-care dwellings, with a FSR of approximately 0.53:1.

On 10 November 2020, a prelodgement meeting was held with Council with regard to a seniors housing development at 12 and 14 Ponsonby Parade. The proposal comprised 10 in-fill self-care dwellings, with a FSR of approximately 0.63:1. The prelodgement minutes concluded:

The bulk and scale of the building was raised at the meeting as a particular concern. Primarily, the extent of building mass across the frontage of the site was considered to be visually excessive.

The building is to modulate the built form to respect the predominant character described above by providing substantial separation at the centre of the street facing façade(s).

Consideration is to be given to the sensitive use of materials and finishes which provide a visual reference to the more traditional buildings in the local area – particularly given the comments provided by Council's Heritage Officer in these Notes.

The street facing facades of the development are to be addressed by well-considered landscaping which assists in softening the final built form and contributes towards the landscaped setting of the local area.

Background of Application

On 15 January 2021, the subject application was lodged with Council. At lodgement, the proposal comprised 9 in-fill self-care dwellings, with a FSR calculation of 0.6:1.

On 25 February 2021, the application was referred to the DSAP for comment. The Panel concluded:

The Panel supports the proposal with minor amendments to address the design issues raised above.

The design is generally of good quality, and the increased FSR could be supported if the following were addressed, as detailed above:

- *Articulation of the façade*
- *Improved privacy between the dwellings*
- *Provision of a detailed landscape plan from a suitably qualified professional*
- *Inclusion of more small endemic trees in the landscape plan*
- *Connection of all units to rainwater reuse*
- *Connection of some of the solar panels direct to some of the units*
- *Reconsideration of the car park design*

On 29 March 2021, Council wrote to the Applicant and advised of the concerns relating to the following:

- a. Access to services, as the application relied upon bus services that no longer serve the bus stop in question,
- b. Building height, as portions of the development exceeded 8m in height (as defined by SEPP HSPD),
- c. Urban design, as the width of the streetscape presentations exceeded that of surrounding development,
- d. Privacy, with concerns regarding overlooking of adjoining properties and between units within the site,
- e. View sharing, as height poles had not been erected despite known potential impacts to views,
- f. Solar access as appropriate solar access diagrams were not provided,
- g. Landscaping, as adequate landscape plans were not provided,
- h. Heritage, as the existing dwelling at 12 Ponsonby Parade was considered to have potential heritage value,
- i. Waste management, as the proposal did not comply with Council's policy,
- j. Floor space ratio, as the scale and amenity of the proposal was questioned,
- k. Others general design matters raised by DSAP.

On 21 April 2021, amended plans were received from the Applicant. The amended plans were accompanied by an amended Access Report, a Heritage Report and height pole certification. The amended proposal was re-exhibited.

On 31 May 2021, further amended plans, a further amended Access Report and amended height pole certification were received. Whilst not requested by Council, the plans were accepted and re-exhibited.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

Section 4.15 Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters can be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested and a response was provided.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) 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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the scale of 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	This assessment has found the proposal to be contrary to the relevant requirements of SEPP HSPD and MDCP 2013 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 01/06/2021 to 15/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 31 submission/s from:

Name:	Address:
Mrs Judith Annette Meyer	2 / 14 Ross Street SEAFORTH NSW 2092
Mr Michael Phillip Twigg Ms Nicole Louise Crabb	9 Ross Street SEAFORTH NSW 2092
Mrs Monica Ann Wheeler Mr Peter Charles Wheeler	16 Ponsonby Parade SEAFORTH NSW 2092
Mrs Ann Bridget Hunt	5 / 14 Ross Street SEAFORTH NSW 2092
Mr Michael Angelo Julian	22 Ponsonby Parade SEAFORTH NSW 2092
Ms Orla Michelle Keane	7 Ponsonby Parade SEAFORTH NSW 2092
Mr Steven Seretis	1 A Panorama Parade SEAFORTH NSW 2092
Mr Mark Justin Burslem	41 Ponsonby Parade SEAFORTH NSW 2092
Mr Phillip Stephen Nicholl	32 Ponsonby Parade SEAFORTH NSW 2092
Mrs Valerie Charlotte Bowyer Mr John Russell Bowyer	46 Ponsonby Parade SEAFORTH NSW 2092
Mr Michael Rodney Baker Mrs Roslyn Lucy Baker	33 Ponsonby Parade SEAFORTH NSW 2092
Mrs Ann Gillian De Lasala Mr Jerome Anthony De Lasala	11 Ponsonby Parade SEAFORTH NSW 2092
Mod Urban Pty Ltd	PO Box R1702 ROYAL EXCHANGE NSW 1225
Mr Glenn Stewart Hanna	35 Ponsonby Parade SEAFORTH NSW 2092
Mr David Ian Stewart Mrs Diana Margaret Stewart	15 Ponsonby Parade SEAFORTH NSW 2092
Mrs Nicola Jane Lyne	38 Ponsonby Parade SEAFORTH NSW 2092
Mr Michael John Petrie	37 Ponsonby Parade SEAFORTH NSW 2092
Ms Suzanne Perez Walcott	4 Edgecliffe Esplanade SEAFORTH NSW 2092
Brian O'Donnell	Address Unknown
Ms Denise Ann O'Donnell	82 Frenchs Forest Road SEAFORTH NSW 2092
Dr Catherine Mary Elizabeth Brassill	36 Pearl Bay Avenue MOSMAN NSW 2088
Elizabeth Mary-Angela Ahern	C/- Emmerson & Emmerson Po Box 432 FRENCHS FOREST NSW 1640

Name:	Address:
Felicity Margaret Rose Ahern	PO Box 432 FRENCHS FOREST NSW 1640
Mr Alan Michael Johnson	4 Grandview Grove SEAFORTH NSW 2092
Mrs Margaret Elizabeth Warren	Po Box 443 SEAFORTH NSW 2092
Mr Robert Henry Cockerill Mrs Sue Maree Cockerill	610 Sydney Road SEAFORTH NSW 2092
Mr Paul Anthony Hamblett Mrs Deirdre Diana Hamblett	8 Ponsonby Parade SEAFORTH NSW 2092
Mr Edward Tracogna Mrs Abigail Mary Tracogna	1 Ponsonby Parade SEAFORTH NSW 2092
Mr James Dannaher O'Brien	612 Sydney Road SEAFORTH NSW 2092
Mr David Nelson Mrs Sally Jane Nelson	585 Sydney Road SEAFORTH NSW 2092
John Graham Wood	10 / 14 Ross Street SEAFORTH NSW 2092

The application was publicly notified on three separate occasions, in response to the submission of amended plans and additional information, as follows:

- Notification Round 1: 22/01/2021 to 05/02/2021 - 29 individual submissions
- Notification Round 2: 28/04/2021 to 12/05/2021 - 13 individual submissions
- Notification Round 3: 01/06/2021 to 15/06/2021 - 14 individual submissions

In accordance with Council's Community Participation Plan, multiple submissions received from the one household throughout the assessment process are counted as one submission. As such, a total of 31 submissions were received.

The primary issues raised in submissions and maintained throughout the assessment process are summarised and addressed, as follows:

- **FSR non-compliance**

Comment: The majority of submissions received object to the proposal on the basis of the proposed FSR and non-compliance with clause 4.4 of MLEP 2013. Submissions also note the lack of a clause 4.6 request in relation to the FSR exceedance. The concerns raised in relation to the FSR exceedance, particularly those relating to inconsistency with the character of the low density area, are echoed by Council and form basis for the refusal of the subject application.

Further submissions raised concerns in relation to the FSR calculation itself, claiming that additional areas within the basement should be included. Council have reviewed the figure provided by the Applicant and endorse the nominated FSR calculation.

The technicalities of the inter-relationship between the provisions of SEPP HSPD and MLEP 2013 are discussed in detail with respect to clause 4.4 of MLEP 2013.

- **Building height non-compliance**

Comment: Concern has been raised in relation to the height of the proposal and non-compliance with the maximum height prescribed by both MLEP 2013 and SEPP HSPD. As addressed with

regard to clause 4.3 of MLEP 2013, the proposed development complies with the height limit of SEPP HSPD and as such, the proposal cannot be refused on the basis of building height, despite contravention of the height limit prescribed by MLEP 2013.

A number of submissions also object to the height of the development presenting to Ross Street, and inconsistency with the development standard prescribed by clause 40(c) of SEPP HSPD which limits height in the rear 25% of the site to single storey. The proposal has two street frontages, with no rear boundary, and as such, the provisions of clause 40(c) are not applicable to this application.

- **Access to services**

Comment: Submissions have been received that question the proposal's ability to meet the access to services provisions of clause 26 of SEPP HSPD. It is acknowledged that statements in earlier versions of the Access Report relied upon incorrect assumptions about the bus routes that service the Ponsonby Road bus stop and the availability of access to Seaforth Local Centre. However, the most recent amendment to the Access Report (21 May 2021) accurately reflects current bus services, and whilst the reduction to the amount of routes serving the Ponsonby Parade bus stop is acknowledged, the 145 bus route meets the minimum requirements of clause 26 of SEPP HSPD.

- **View loss**

Comment: Submissions have been received from potentially impacted property owners and others on their behalf, raising concerns with regard to view loss. As discussed with regard to clause 3.4.3 of MDCP 2013, the proposal is considered to result in unreasonable impacts upon views currently enjoyed by up slope properties to a degree that warrants refusal of the application.

- **Overshadowing**

Comment: Submissions have been received from potentially impacted property owners and others on their behalf, raising concerns with regard to overshadowing. As discussed with regard to clause 3.4.1 of MDCP 2013, the proposal is not supported by sufficient information to confirm the acceptability of additional overshadowing resulting from the proposed development, and the proposal is recommended for refusal in this regard.

- **Visual privacy**

Comment: Submissions have been received from potentially impacted property owners and others on their behalf, raising concerns with regard to visual privacy. As discussed with regard to clause 3.4.2 of MDCP 2013, the proposal is unresolved with regard to visual privacy and the proposal is recommended for refusal in this regard.

- **Setback to Ponsonby Parade**

Comment: A number of submissions have been received in objection to the proximity of the proposal to Ponsonby Parade and inconsistency with the prevailing building line. As discussed with regard to clause 4.1.4 of MDCP 2013, the proposal meets and exceeds the 6m minimum setback prescribed by MDCP 2013. Furthermore, the walls are setback at a minimum distance of 7.5m, consistent with the alignment of the dwelling at 16 Ponsonby Parade, with only elements of articulation protruding forward, consistent with the provisions of MDCP 2013. The setback of the development to Ponsonby Parade was not raised as a concern by Council's

Urban Designer or the DSAP. As such, the siting of the proposal in relation to Ponsonby Parade is not considered to warrant refusal of the application.

- **Access to Ross Street**

Comment: Submissions have been received raising concern with regard to the design of the access pathway connecting to Ross Street, and a perceived lack of consideration of the change in levels within the road reserve. The design of the access pathway connecting to Ross Street has been designed to marry with surveyed levels of the road reserve, and accessible access can be achieved.

- **Construction impacts**

Comment: Objections have been raised in relation to impacts associated with excavation and construction, with a request for the production of dilapidation reports should the application be approved. Conditions of consent can be imposed to require the production of pre and post construction dilapidation reports, should the application be approved.

Additional concern has been raised in relation to the potential impact upon existing canopy trees within the boundary of 10 Ponsonby Parade associated with the basement construction. The application was supported by an Arborist Report which identifies that these trees are able to be safely retained, subject to consistency with protection recommendations. If the application is to be approved, conditions of consent can be imposed to require consistency with the recommendations of the Arborist Report.

- **Traffic**

Comment: A few of the submissions received raised concerns with regard to traffic associated with the proposal and additional pressures on the existing road network. The traffic generation associated with the proposal has been assessed by Council's Traffic Engineer and the proposal was not considered to result in any unreasonable impacts upon traffic in the locality.

Further concerns were raised in relation to risks to bike riders associated with senior drivers leaving the site. The proposal provides appropriate sight lines, in accordance with the provisions of AS2890, and Council's Traffic Engineer raised no concern in this regard.

- **Parking**

Comment: Submissions have been received that raise concerns with regard to the loss of on-street parking on Ponsonby Parade, the shortfall of visitor parking proposed and the additional demand for on-street parking in the vicinity of the site. The proposed development provides appropriate levels of parking for residents of the development and the one dedicated visitor parking spot is compensated by adequate on-street parking. The proposed development meets the minimum parking requirements of SEPP HSPD, and the proposal cannot be refused in relation to parking.

- **Design alternatives**

Comment: A number of submissions received outline a series of design amendments that would work towards alleviating the concerns of neighbouring property owners. Council is required to assess the proposal presented by the applicant. However, noting that amendments to the development are required, the applicant may choose to consider some of the suggestions put forward in submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>No objection - conditions recommended.</p> <p><i>This application is for the demolition of two existing residential dwellings on two adjoining lots, and the construction of a new seniors housing development on one consolidated lot. The new development will consist of 9 units in total, including a basement car park.</i></p> <p><i>Councils Landscape Referral section has considered the application against the State Environmental Planning Policy (Housing for Seniors or People with a Disability), Manly Local Environment Plan, and the following Manly DCP 2013 controls:</i></p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p><i>A Landscape Plan is provided with the application and proposed works include the in-ground planting of trees, shrubs, grasses and groundcovers, as well as on-slab planters with palms, shrubs, grasses and groundcovers.</i></p> <p><i>The Arboricultural Impact Assessment provided with the application notes a total of ten trees within close proximity to the site, with nine trees located within the site boundaries, and one tree located in the adjoining property to the east. Of the ten trees identified, six trees have been recommended to be removed, with four trees to be retained. Of the six trees to be removed, two trees, Tree No. 1 and 2, are located adjacent to Ponsonby Street along the southern boundary. These trees are within the footprint of the proposed pedestrian entry, and would therefore need to be removed in order to accommodate the proposed works. The remaining four trees to be removed, Trees No. 3, 4, 5 and 6, are located towards the north-west of the site, and are located within the footprint of the proposed buildings. These four trees would therefore also need to be removed in order to accommodate the proposed works. The Arboricultural Impact Assessment has recommended these six trees to be removed shall be replaced in order to compensate for the loss of landscape amenity and canopy. For this reason the Arborists recommendations are supported.</i></p> <p><i>The four trees to be retained, including Tree No. 10 which is located in the adjoining property to the east, shall all be protected throughout the life of the development in accordance with the Arborists recommendations.</i></p> <p><i>It is worth noting that additional trees, seven in total, are present on the site, located predominantly along the northern boundary adjacent to Ross Street. These trees have been identified in the Arboricultural</i></p>

Internal Referral Body	Comments
	<p><i>Impact Assessment, however it was noted that they did not require discussion. It is unclear as to why these trees shall not be discussed, as all trees within the site should be assessed. Of the seven trees, three have been proposed to be removed. Tree No. 102 is located within the footprint of the proposed pedestrian entry off Ross Street, and would therefore necessitate removal. The other two trees, Tree No. 105 and 106 appear to be either exempt species (pinus spp.) or exempt due to the height being below 5m. These trees therefore do not require Council's approval prior to removal. The current Landscape Plans indicate that sufficient compensation planting has already been proposed therefore no additional planting, in addition to that already proposed, is needed to compensate tree loss.</i></p> <p><i>The protection of trees noted for retention is vital to satisfy control 3.3.2, which seeks to "protect and enhance the scenic value and character that trees and bushland vegetation provide", as well as "to protect and enhance the urban forest of the Northern Beaches".</i></p> <p><i>Concern is raised regarding the proposed landscape works, particularly the use of canopy trees capable of reaching a mature height greater than 25m, the use of palms as vegetative screening between units, as well as insufficient information regarding proposed tree, and plant pot sizes/planting densities. Firstly, the proposed Eucalyptus punctata is recommended to be replaced with an alternative tree species capable of reaching a maximum height of 15m at maturity. Suggested alternatives include Angophora costata (as proposed elsewhere on site), Banksia integrifolia or Eucalyptus haemastoma. This substitution is particularly important in order to ensure views from the existing dwellings on Ross Street (as identified in the site analysis drawing) are maintained, as well as the solar access to adjoining properties to the west is preserved. The use of palms between the two unit blocks is also recommended to be substituted, as these palms are exempt species, and are also not likely to provide sufficient screening and privacy between dwellings on the first floor. These palms should be substituted with trees similar to those proposed elsewhere on site such as Tristaniopsis laurina or Backhousia citriodora, or alternatively Elaeocarpus reticulatus.</i></p> <p><i>The completion of the works as proposed on the Landscape Plans, inclusive of proposed species changes outlined above, is necessary to satisfy control 3.3.1 and 4.1.5. Key objectives of these controls include "to encourage appropriate tree planting and maintenance of existing vegetation", "maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting" as well as "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area".</i></p> <p><i>In order to comply with the State Environmental Planning Policy (Housing for Seniors or People with a Disability), specifically Section 33 (c), the proposed development should "maintain reasonable neighbourhood amenity and appropriate residential character". This is achieved by providing building setbacks that aid in reducing the bulk,</i></p>

Internal Referral Body	Comments
	<p><i>scale and overshadowing of the proposed development. The proposed site is unique within its block, as the two lots that will house the new seniors development are both dual access and are large in comparison to surrounding properties. The existing site, as well as the property to the east, are large parcels of land, with the existing dwellings centrally located. This has resulted in very large setbacks, particularly when compared to other lots immediately to the east and west. The proposed setbacks of 6.5m appear to be in line with those of the dwellings immediately to the west, whilst providing adequate space for landscape, which is in excess of the minimum area required.</i></p> <p><i>Considering the above, the landscape component is therefore acceptable subject to the protection of existing trees, and completion of landscape works as proposed on the Landscape Plans, inclusive of the tree species changes and requirements for increased planting intervals.</i></p>
NECC (Development Engineering)	<p>No objection - conditions recommended.</p> <p><i>Development Engineering has no objection to the application subject to the following condition of consent.</i></p>
Strategic and Place Planning (Heritage Officer)	<p>No objection - conditions recommended.</p> <p><i>The proposal has been referred to Heritage as the subject property is within the vicinity of heritage items, listed in Schedule 5 of Manly LEP 2013:</i></p> <ul style="list-style-type: none"> <p>Item I278 - House - 14 Ross Street (corner Panorama Parade) <i><u>Statement of significance:</u></i> <i>Small brick cottage unique in age, style and social association for the area; unique to context of local area architecturally. Major significance historically.</i> <i><u>Physical description:</u></i> <i>Small brick cottage possibly mid to late 19th century. Iron roof, timber verandah with brick piers. Symmetrical plan, hipped roof, stone foundation. Painted bricks are hand made. Fibro and corrugated iron lean-to to rear. Over looks Spit with views to Middle Head.</i></p> <p>Item I275 - Street trees - Panorama Parade (from Edgecliffe Esplanade to Ponsonby Parade) <i><u>Statement of significance:</u></i> <i>Listed for its aesthetic importance as a Streetscape.</i> <i><u>Physical description:</u></i> <i>Araucaria Heterophylla street trees</i></p> <p><i>The proposal seeks consent for the demolition of the existing properties on the subject site and the construction of a seniors housing development incorporating 9 apartments.</i></p>

Internal Referral Body	Comments
	<p><i>The bulk and scale and the unarticulated facade treatment of the proposal is considered to adversely impact the existing streetscape and the character of the locality. Heritage conservation requires retention of an appropriate visual setting that contributes to the existing character of the place. Section 3.2 - Heritage Considerations - Objective 3 of the Manly Development Control Plan 2013, notes that: "To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items."</i></p> <p><i>Section 3.2.1.1 Development in the vicinity of heritage items, or conservation areas.</i></p> <p><i>b) Proposed development in the vicinity of a heritage item or conservation area must ensure that:</i></p> <ul style="list-style-type: none"> <i>i) it does not detract or significantly alter the heritage significance of any heritage items, conservation area or place;</i> <i>ii) the heritage values or character of the locality are retained or enhanced; and</i> <i>iii) any contemporary response may not necessarily seek to replicate heritage details or character of heritage buildings in the vicinity, but must preserve heritage significance and integrity with complementary and respectful building form, proportions, scale, style, materials, colours and finishes and building/street alignments.</i> <p><i>Additionally Section 3.2.1.2 Potential Heritage Significance of the Manly DCP 2013 notes that:</i></p> <p><i>"If the property is assessed as having merit as a potential heritage item, the heritage controls and considerations in this plan will apply."</i></p> <p><i>Additionally, Heritage recommended in the PLM notes that, a Heritage Report, investigating the potential significance of the property at 12 Ponsonby Parade, be produced by the applicant and included with any future development application.</i></p> <p><i>Amended plans and a heritage report into the property at 12 Ponsonby Parade and its potential significance was submitted on 26 April 2021. The report by Weir Phillips Heritage and Planning concluded that the property was not of heritage significance. This conclusion is considered acceptable by Heritage.</i></p> <p><i>It is noted that the bulk and scale of the proposal is still not compatible with the character of the locality, however, given the physical separation between the subject site and the heritage items; at 14 Ross Street and the Street trees at Panorama Parade, the proposal is considered to have an acceptable impact upon the significance of the heritage items.</i></p> <p><i>Therefore, no objection is raised to this application on heritage grounds, subject to one condition.</i></p>
Strategic and Place Planning	Objection.

Internal Referral Body	Comments
(Urban Design)	<p>Amended drawings dated June 2021 were submitted. The amended proposal has not addressed all the urban design issues identified previously:</p> <ol style="list-style-type: none"> <p>The proposed floor space ratio of 0.6:1 exceeds the floor space ratio control of 0.5:1 (SEPP) and 0.45:1 (Manly LEP) resulting in additional built form bulk and scale. Response: The floor space ratio still exceeds the 0.5:1 permitted by the SEPP. The amended set of drawings have not address this issue.</p> <p>The proposed street elevations as continuous facades without a middle strong break treatment being a double lot consolidation does not respond to the massing and scale of the existing streetscape of free-standing house forms (SEPP 4.1.6 Design Requirements: Responding to Context - Street and lot layout/ Subdivision layout/ Consistency of built form; Impact on neighbours: Minimise impacts by maintaining a consistency in pattern of building). Response: There could be deeper indents introduced to the middle of both the street facades to help with façade articulation and address the floor space ratio non-compliance. The amended set of drawings have not address this issue.</p> <p>The proposed building block separation is inadequate resulting in visual and noise privacy issues between habitable rooms and balconies/ compromised sun light access to the private open spaces proposed between the building blocks (SEPP 4.1.6 Site Planning & Design - Maximise solar access and access to private open space; Internal site amenity). Using a guide (Apartment Design Guide) of 12m building separation would be more appropriate. Response: The 12m building separation between habitable spaces has not been achieved resulting in visual and sound privacy issues. The middle courtyard fence should also be raised to 1.8m high to address overlooking issues of higher level units looking down to lower units. The wider building separation will also allow more solar penetration to the lower units on the southern block and address the floor space ratio non-compliance. The amended set of drawings have not address this issue.</p>
Traffic Engineer	<p>No objection - conditions recommended.</p> <p>The development proposes the demolition of existing dwellings on No. 12 & 14 Ponsonby parade and construction of a Seniors Living development containing 9 dwellings and basement parking for 19 vehicles including 18 resident spaces and 1 visitor/wash bay.</p>

Internal Referral Body	Comments
	<p><i>Parking:</i></p> <p><i>As a Seniors Living development the parking requirements are assessed in accordance with the relevant SEPP requirements which outline that a minimum of 0.5 spaces per bedroom are required. The development proposes 6 x 3 bedroom and 3 x 2 bedroom dwellings requiring a minimum of 12 car spaces. The SEPP also requires that at least 5% of the total number of parking spaces must be designed to allow the width to be increased to 3.8m. The development proposes 19 carspaces including 1 visitor/wash bay which exceeds the requirements. It is also proposed that 9 of the spaces, 1 for each garage, be of sufficient width to meet the adaptable parking space requirement, again, this is well in excess of the requirement.</i></p> <p><i>Accessibility to public transport:</i></p> <p><i>The developers traffic report and accessibility report both indicate that the site is well served by a range of public transport services. While Route 144 and 145 buses do pass the site on Ponsonby Parade, there are currently no other State Transit services which pass the site with bus passengers having to change services at Seaforth shops or Manly in order to reach destinations other than Manly, Chatswood or Warringah Mall. Further, while the 144 service (Manly to Chatswood) is very regular, the 145 service (Warringah Mall to Seaforth) operates only 5 times a day at hourly intervals. The most accessible bus stop within close proximity to the site is located on Ponsonby Parade approximately 100m to the east of the site. There is a footpath at relatively flat grades between the site and this bus stop. From building number two, which relies on pedestrian access to Ross Street, there is no footpath link to a bus stop and to meet the requirements of clause 26 subclause 4 and clause 38 of the SEPP it is therefore required that a footpath be provided between the Ross Street access and the nearest bus stop sited on Panorama Pde near Ponsonby Pde. This will provide safe, obvious and convenient access to public transport.</i></p> <p><i>Traffic Generation:</i></p> <p><i>The traffic report has estimated the traffic generation of the proposed development from rates in the RMS guide to Traffic Generating Developments for housing for the aged or disabled. Using these rates the development is anticipated to generate only 4 vehicle trips per hour during weekday peak periods. As the development replaces two existing dwellings the increase in traffic generation will be less (in the order of 2 vehicle trips per hour). This level of traffic is unlikely to make a perceptible difference to traffic conditions on the surrounding road network.</i></p>
Waste Officer	<p>No objection - conditions recommended.</p> <p><i>Waste Management Assessment - Amended Plans Recommendation - Approval subject to conditions.</i></p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate was submitted with the application at lodgement. However, the application has been twice amended and the data entered into the BASIX Certificate and in turn, the recommendations of the BASIX Certificate are no longer relevant to the proposal and cannot be relied upon.

SEPP (Housing for Seniors or People with a Disability) 2004

Clause	Standard	Proposal	C
Chapter 1 - Preliminary			
4	Land to which the Policy applies	This Policy applies to land within NSW that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if development for the purpose of dwelling houses or residential flat buildings is permitted.	Y
5	Relationship with	If this Policy is inconsistent with any other	Y

Clause	Standard	Proposal	C	
other environmental planning instruments	environmental planning instrument, made before or after this Policy, the Policy prevails to the extent of the inconsistency.			
Chapter 2 – Key Concepts				
11	Self-Contained Dwellings	(1) In this Policy, a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis. (2) In this Policy, in-fill self-care housing is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.	The proposed development is consistent with the definition of a self-contained dwelling, specifically in-fill self-care housing.	Y
Chapter 3 – Development for seniors housing				
Part 1 – General				
14	Objectives of Chapter	The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.		Y
15	What Chapter does	This Chapter allows for development on land zoned primarily for urban purposes for any form of seniors housing despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.		Y
18	Restrictions on occupation of seniors housing allowed under this chapter	Development allowed by this Chapter may be carried out for the accommodation of the following only: (a) seniors or people who have a disability, (b) people who live within the same household with seniors or people	Subject to conditions.	Y

Clause	Standard	Proposal	C
	<p>who have a disability,</p> <p>(c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.</p> <p>A consent authority must not consent to a development application made pursuant to this Chapter unless:</p> <p>(a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to above may occupy the building to which the application relates, &</p> <p>(b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the <i>Conveyancing Act 1919</i>, limiting the use of any accommodation to which the application relates to the kinds of people referred to above.</p>		
Part 2 – Site-related requirements			
26	<p>Location and access to facilities</p> <p>The consent authority must be satisfied, by written evidence, that residents of the proposed development will have compliant access to:</p> <p>(a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and</p> <p>(b) community services and recreation facilities, and</p> <p>(c) the practice of a general medical practitioner.</p>	See discussion.	Y
27	<p>Bushfire prone land</p> <p>The consent authority must not consent to a development application on land identified on a bush fire prone map unless satisfied that the development complies with the requirements of <i>Planning for Bushfire Protection 2006</i>.</p>	Not Applicable – the site is not identified as bushfire prone land.	-
28	<p>Water and sewer</p> <p>The consent authority is satisfied, by written evidence, that the housing will be</p>		Y

Clause	Standard	Proposal	C
	connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage		
29	Site compatibility criteria to which clause 24 does not apply Applies to development not subject to clause 24. A consent authority must take into consideration and have regard for the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).	See discussion.	Y
Part 3 – Design requirements			
Division 1 - General			
30	Site analysis The consent authority must not grant consent unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.		Y
31	Design of in-fill self-care housing In determining a development application made pursuant to this Chapter to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004.	See discussion.	N
32	Design of residential development A consent authority must not consent to a development application unless satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.	See discussion.	N
Division 2 - Design Principles			
33	Neighbourhood amenity and streetscape The proposed development should: (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage	See discussion.	N

Clause		Standard	Proposal	C
		<p>items that are identified in a local environmental plan, and</p> <p>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <p>(i) providing building setbacks to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p> <p>(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</p> <p>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</p> <p>(f) retain, wherever reasonable, major existing trees, and</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>		
34	Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents.	See discussion.	N
35	Solar access and design for climate	<p>The proposed development should:</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p>	See discussion.	N

Clause	Standard	Proposal	C
	(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.		
36	Stormwater	The proposed development should:	Subject to conditions.
	(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and		Y
	(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.		
37	Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:	Y
	(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and		
	(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and		
	(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
38	Accessibility	The proposed development should:	See discussion.
	(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and		N

Clause	Standard	Proposal	C
	(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.		
39	Waste management The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.		Y
Part 4 – Development standards to be complied with			
Division 1 - General			
40	Development standards – minimum sizes and building heights	A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.	
	The size of the site must be at least 1,000m ² .	2,023m ²	Y
	The site frontage must be at least 20 metres wide measured at the building line.	40.236m	Y
	Height in zones where residential flat buildings are not permitted –	(a) 8m	Y
	(a) the height of all buildings in the proposed development must be 8 metres or less, and	(b) Two storeys	
	Note—	(c) Not applicable (no rear boundary)	
	Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).		
	(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and		
	Note—		
	The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.		
	(c) a building located in the rear 25% area of the site must not exceed 1		

Clause	Standard	Proposal	C
	storey in height.		
Part 4 – Development standards to be complied with			
Division 3 – Hostels and self-contained dwellings – standard concerning accessibility and useability			
41	Standards for hostels and self-contained dwellings	A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.	See discussion. Y
Part 7 – Development standards that cannot be used as grounds to refuse consent			
Division 1 - General			
46	Inter-relationship of Part with design principals in Part 3	Nothing in this Part permits the granting of consent to a DA made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.	Y
Division 4 Self-contained dwellings			
50	Standards that cannot be used to refuse development consent for self-contained dwellings	A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling on any of the following grounds:	
	building height:	8m	Y
	if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),		
	density and scale:	0.59:1	N
	if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less		
	landscaped area:	45%	Y
	if a minimum of 30% of the site area if to be landscaped.		
	Deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the <i>deep</i>	37%	Y

Clause	Standard	Proposal	C
	<p><i>soil zone</i>). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres,</p> <p>Solar access: if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p> <p>private open space for in-fill self-care housing: if—</p> <p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area.</p> <p>parking for residents and visitors: if at least the following is provided:</p> <p>(i) 0.5 spaces for each bedroom where the development application is made by a person other than a social housing provider.</p>		
		See discussion.	N
		See discussion.	N
		See discussion.	Y
Schedule 3 – Standard concerning accessibility and useability for hostels and self-contained dwellings			
Part 1 Standards applying to hostels and self-contained dwellings			
2	Siting standards	(1) Wheelchair access If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.	Subject to condition.
		...	Y

Clause	Standard	Proposal	C
	(2) Common areas Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.		
3	Security	Pathway lighting— (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) must provide at least 20 lux at ground level.	Subject to condition. Y
4	Letterboxes	Letterboxes— (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.	Subject to condition. Y
5	Private car accommodation	If car parking (not being car parking for employees) is provided— (a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and (b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.	See discussion. Subject to condition. Y

Clause		Standard	Proposal	C
6	Accessible entry	Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.	Subject to condition.	Y
7	Interior: general	<p>(1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.</p> <p>(2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres.</p> <p>(3) Circulation space at approaches to internal doorways must comply with AS 1428.1.</p>	Subject to condition.	Y
8	Bedroom	<p>At least one bedroom within each dwelling must have—</p> <p>(a) an area sufficient to accommodate a wardrobe and a bed sized as follows—</p> <p>(i) in the case of a dwelling in a hostel—a single-size bed,</p> <p>(ii) in the case of a self-contained dwelling—a queen-size bed, and</p> <p>(b) a clear area for the bed of at least—</p> <p>(i) 1,200 millimetres wide at the foot of the bed, and</p> <p>(ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and</p> <p>(c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</p> <p>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</p> <p>(e) a telephone outlet next to the bed on the side closest to the door and a</p>	Subject to condition.	Y

Clause	Standard	Proposal	C
	<p>general power outlet beside the telephone outlet, and</p> <p>(f) wiring to allow a potential illumination level of at least 300 lux.</p>		
9	<p>Bathroom</p> <p>(1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1—</p> <p>(a) a slip-resistant floor surface,</p> <p>(b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,</p> <p>(c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future—</p> <p>(i) a grab rail,</p> <p>(ii) portable shower head,</p> <p>(iii) folding seat,</p> <p>(d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,</p> <p>(e) a double general power outlet beside the mirror.</p> <p>(2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.</p>	Subject to condition.	Y
10	<p>Toilet</p> <p>A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.</p>	Subject to condition.	Y
11	<p>Surface finishes</p> <p>Balconies and external paved areas must have slip-resistant surfaces.</p>	Subject to condition.	Y
12	<p>Door hardware</p> <p>Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance</p>	Subject to condition.	Y

Clause		Standard	Proposal	C
		with AS 4299.		
13	Ancillary items	Switches and power points must be provided in accordance with AS 4299.	Subject to condition.	Y
Part 2 Additional standard for self-contained dwellings				
15	Living room and dining room	(1) A living room in a self-contained dwelling must have— (a) a circulation space in accordance with clause 4.7.1 of AS 4299, and (b) a telephone adjacent to a general power outlet. (2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.	Subject to condition.	Y
16	Kitchen	A kitchen in a self-contained dwelling must have— (a) a circulation space in accordance with clause 4.5.2 of AS 4299, and (b) a circulation space at door approaches that complies with AS 1428.1, and (c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299— (i) benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a), (ii) a tap set (see clause 4.5.6), (iii) cooktops (see clause 4.5.7), except that an isolating switch must be included, (iv) an oven (see clause 4.5.8), and (d) “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and	Subject to condition.	Y

Clause		Standard	Proposal	C
		<p>(e) general power outlets—</p> <p>(i) at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and</p> <p>(ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.</p>		
17	Access to kitchen, main bedroom, bathroom and toilet	In a multi-storey self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Subject to condition.	Y
18	Lifts in multi-storey buildings	In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the <i>Building Code of Australia</i> .	Subject to condition.	Y
19	Laundry	<p>A self-contained dwelling must have a laundry that has—</p> <p>(a) a circulation space at door approaches that complies with AS 1428.1, and</p> <p>(b) provision for the installation of an automatic washing machine and a clothes dryer, and</p> <p>(c) a clear space in front of appliances of at least 1,300 millimetres, and</p> <p>(d) a slip-resistant floor surface, and</p> <p>(e) an accessible path of travel to any clothes line provided in relation to the dwelling.</p>	Subject to condition.	Y
20	Storage for linen	A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.	Subject to condition.	Y
21	Garbage	A garbage storage area must be provided in an accessible location.	Subject to condition.	Y

- Clause 26 (Access to services) and clause 38 (Accessibility)**
 Clause 26(2)(b) of SEPP HSPD requires the site to be located at a distance of not more than 400m from a bus stop that is regularly serviced by public transport that will take residents of the

development to and from a place that is located within 400m from the necessary facilities and services prescribed. The access pathway to the bus stop must be accessible, in accordance with the design criteria prescribed.

The application was supported by an Access Report to confirm that the site is located less than 100m from a bus stop, being the bus stop outside 2 Ponsonby Parade, and that the pathway connecting the site to the bus stop is accessible, as defined by clause 26(3) and 26(4) of SEPP HSPD.

The bus stop is serviced by the 145 route operated by Sydney Buses. The 145 route is a loop service that runs between Seaforth Local Centre and Warringah Mall, via Balgowlah Shops. The shops and services at each of these shopping areas are considered to meet the requirements of clause 26(1) of SEPP HSPD. The service runs at regular intervals, consistent with the frequency requirements of 26(2)(b) of SEPP HSPD.

As such, the consent authority can be satisfied that the proposal is consistent with the provisions of clause 26 of SEPP HSPD.

However, it is noted that clause 38 of SEPP HSPD prescribes that the pedestrian access links to public transport are to be obvious and safe. The circumstances of the bus route and the location of the site present an unusual situation, whereby there are other bus stops located in closer proximity to the site that are serviced by the same route. To get between Warringah Mall and Seaforth, the 145 travels westbound along Ross Street past the site, down Panorama Parade, and undertakes a loop of Seaforth to the west of the site, before passing back past the site in an eastbound direction along Ponsonby Parade.

The Ponsonby Parade bus stop located 75m to the east of the site would be the most obvious and safe choice of bus stops for all future occupants leaving the site, as it would be the most direct route to Warringah Mall, avoiding the need to unnecessarily travel on the loop around Seaforth to the west which would extend ones journey by approximately 7 minutes. The bus stop is also serviced by additional outbound services, that will take residents to additional destinations.

However, the Ponsonby Parade bus stop would not be the obvious choice for occupants returning to the site. As above, the 145 route travels past the site along Ross Street and down Panorama Parade before reaching the Ponsonby Parade stop some 7 minutes later. The bus stop at the corner of Panorama Parade and Ponsonby Parade is 35m from the site, half the distance of that to the Ponsonby Parade bus stop, and is also serviced by the 145 route. Alighting at the Panorama Parade bus stop on the return journey would not only get residents home sooner by means of avoiding the 7 minute detour, but it is also physically closer to the site. As such, the Panorama Parade bus stop is considered to be the obvious choice for future residents returning to the site. However, access to the Panorama Parade bus stop is not currently safe or accessible, as the footpath from Ponsonby Parade does not continue around the corner to the bus stop. There is no physical or practical impediment to the provision of an accessible footpath to the Panorama Parade bus stop, and the imposition of a condition requiring the construction of an accessible path of travel is not considered to be unreasonable.

Council's Traffic Engineer also highlights that the Ross Street bus stop, located 140m to the east of the site, is likely to be the most obvious choice for residents of the building fronting Ross Street when returning from the site, as it would avoid the need to travel up through the building fronting Ponsonby Parade. There is no impediment to the provision of a footpath along the southern side of Ross Street to connect to the subject site.

Should the application be approved, conditions of consent can imposed to require safe and obvious access to bus stops, through the provision of accessible pathways, to ensure consistency with clause 38 of SEPP HSPD.

- **Clause 29 (Site compatibility criteria)**

Clause 29 of SEPP HSPD requires the consent authority to take into consideration the criteria referred to in clause 25 (5)(b)(i), (iii) and (v). Council can be satisfied that these matters have been considered, as follows:

- (i) *the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,*

Comment: The impact of the proposed development upon the natural environment and the existing uses and approved uses of land in the vicinity of the proposal have been considered with respect to the relevant provisions of SEPP HSPD, MLEP 2013 and MDCP 2013.

- (iii) *the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*

Comment: The proposed development is reliant upon existing infrastructure, specifically footpaths and bus services, to meet the provisions of clause 26. However, in accordance with clause 38, the proposal is also likely to require the upgrade of footpaths in the immediate vicinity of the site. Nonetheless, the proposal will not place unreasonable or excessive demand upon existing infrastructure, public transport services, or services/facilities relied upon.

If approved, the cost of any required infrastructure upgrades are to be borne by the applicant, with additional contributions levied for general infrastructure provision under the provisions of Council's Development Contributions Policy.

- (v) *without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,*

Comment: The impacts of the bulk, scale and character of the proposal have been considered in detail throughout the assessment of this report.

- **Clause 31 (Design of in-fill self-care housing)**

Clause 31 of SEPP HSPD requires consideration of the *Seniors Living Policy: Urban Design Guideline for Infill Development*. The Seniors Living Policy essentially replicates the provisions of SEPP HSPD, with additional design criteria and explanatory notes. The proposed development is not considered to have adequate regard for this policy, noting concerns regarding bulk and scale, solar access, visual privacy and general amenity. See further discussions below with respect to each individual matter.

- **Clause 32 (Design of residential development)**

Clause 32 of SEPP HSPD prescribes that a consent authority must not consent to a development application unless satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2. Division 2 of SEPP

HSPD contains principles relating to neighbourhood amenity and streetscape, visual and acoustic privacy, solar access, stormwater, crime prevention and accessibility. As discussed in further detail below, the development is not considered to have adequate regard to the principles relating to neighbourhood amenity and streetscape, visual and acoustic privacy and solar access.

- **Clause 33 (Neighbourhood amenity and streetscape)**

The design principles outlined by clause 33 of SEPP HSPD in relation to neighbourhood amenity and streetscape are addressed, as follows:

- (a) *recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*

Comment: The desired character of the area is influenced by the prevailing low density nature of the area and the low density residential controls that apply to the site and its surrounds. The proposed development is inconsistent with the desired bulk and scale for buildings within the locality, and the form of the development presenting to the public domain, specifically Ponsonby Parade, and does not appropriately reflect the prevailing subdivision pattern and form of surrounding development.

- (b) *retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*

Comment: The subject site will not have any adverse impacts upon nearby items of local heritage significance.

- (c) *maintain reasonable neighbourhood amenity and appropriate residential character by providing building setbacks to reduce bulk and overshadowing, and using building form and siting that relates to the site's land form, and adopting building heights at the street frontage that are compatible in scale with adjacent development, and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*

Comment: The height of the proposed development is compatible with surrounding development and the setbacks from side boundaries are comparatively generous. However, the proposal requires further refinement of the southern facade presenting to Ponsonby Parade to ensure that the scale of the development is compatible with surrounding low density residential dwelling, and additional information is required to qualify and/or resolve impacts of the proposed built form upon the amenity of adjoining properties.

- (d) *be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*

Comment: The proposal is sited at a distance that exceeds the 6m minimum setback prescribed by MDCP 2013, and the alignment of the proposal is compatible with nearby and surrounding buildings.

- (e) *embody planting that is in sympathy with, but not necessarily the same as, other planting*

in the streetscape, and

Comment: The proposed landscape solution for the site has been supported by Council's Landscape Officer, subject to conditions of consent requiring minor amendment to plant selection.

(f) retain, wherever reasonable, major existing trees, and

Comment: The proposed development has been designed to retain trees around the perimeter of the site.

(g) be designed so that no building is constructed in a riparian zone.

Comment: Not applicable - there is no riparian zone affecting the subject site.

The proposed development does not have appropriate regard to the neighbourhood amenity and streetscape design principles.

- **Clause 34 (Visual and acoustic privacy)**

Clause 34 of SEPP HSPD requires appropriate consideration of the visual and acoustic privacy of neighbours in the vicinity of the site and future residents of the development by means of appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping.

As discussed by Council's Urban Designer and with regard 3.4.2 of MDCP 2013, the proposal provides insufficient spatial separation between the northern and southern building proposed on the site, resulting in direct lines of sight and overlooking between properties. The application proposes to mitigate overlooking by reliance upon a combination of landscaping and operable screens, however these cause conflict with solar access requirements and may contribute to view loss.

The proposal is also unresolved with regard to overlooking of 10 Ponsonby Parade from the terrace associated with Unit 8 on the upper floor of the northern building, with no fixed screening along the eastern side elevation to prevent overlooking of the adjoining dwelling. In this regard, it is noted that the Seniors Living Policy identifies that terraces should be oriented to the front and/or rear, and that dwellings should be designed so that they do not overlook neighbours private open space.

The proposed development does not have appropriate regard to the visual and acoustic privacy design principles.

- **Clause 35 (Solar access and design for climate)**

Clause 35 of SEPP HSPD prescribes that development should ensure adequate daylight to the main living areas of neighbours and residents and adequate sunlight to substantial areas of private open space, and involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

In regards to solar access to adjoining properties, the application is yet to demonstrate that reasonable solar access is retained to neighbouring properties, as the solar access diagrams provided to support the application are incomplete and relate to a superseded proposal. Particular concern is raised in relation to overshadowing of the private open space of 16 Ponsonby Parade during the morning in mid-winter.

In regards to solar access to the units proposed, it is noted that clause 50 of SEPP HSPD prescribes that development for the purpose of in-fill self-care housing cannot be refused on the basis of solar access if 70% of dwellings receive a minimum of 3 hours of direct sunlight to living rooms and areas of private open space for a minimum of 3 hours between 9am and 3pm in mid-winter

Based on the information provided to Council, 70% of units do not receive compliant levels of sunlight in mid-winter, as follows:

- Unit 01: Non-compliant - a minimum of 3 hours of sunlight is not received to the private open space, as no sun is obtained at 12pm.
- Unit 02: Non-compliant - no solar access is received to either the living room or private open space.
- Unit 03: Non-compliant - only 1 hour of solar access is achieved to the living room and private open space.
- Unit 04: Compliant.
- Unit 05: Compliant.
- Unit 06: Compliant. However, should the proposed screens be closed to prevent overlooking from Unit 08, the rear private open space will not receive adequate sunlight.
- Unit 07: Compliant. However, should the proposed screens be closed to prevent overlooking from Unit 08, the rear private open space will not receive adequate sunlight.
- Unit 08: Non-compliant. A minimum of 3 hours of sunlight is not received to the living room, as no sun is obtained at 12pm. Reliance upon a skylight is not supported in this instance, as it is not oriented to the sun and is likely to be overshadowed by the surrounding elevated solar panels.
- Unit 09: Compliant.

Only 5 of the 9 (55%) apartments proposed achieve appropriate levels of solar access, and of those 5 units, two are further compromised by landscaping and screens required to mitigate overlooking.

Whilst it is appreciated that the units are oriented towards available views to the south, the obtainment of views is not considered to outweigh compliance with minimum solar access and general amenity provisions. It is considered that solar access could be improved by virtue of greater spatial separation between the two building proposed on site, and an overall reduction to FSR.

- **Clause 41 (Standards for hostels and self-contained dwellings)**

Clause 41 of SEPP HSD prescribes that a consent authority must not consent to a development application for the purpose of a self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.

The proposed development was supported by an Access Report to confirm that the proposed development is capable of achieving consistency with the standards prescribed by Schedule 3 of SEPP HSPD. Whilst it is noted that the Access Report does not relate to the most recent version of the plans before Council, none of the changes proposed fundamentally impact upon the conclusions reached in this report, and should the application be approved, conditions can be imposed to ensure consistency with all matters prescribed.

- **Clause 50 (Standards that cannot be used to refuse development consent for self-**

contained dwellings)

In addition to the solar access requirements discussed above, clause 50 of SEPP HSPD prescribes a range of criteria that if met, cannot be used as grounds for the refusal of development proposed for the purpose of in-fill self-care housing. The proposed development is inconsistent with the following matters:

- (b) Density and scale (if expressed as a ratio is 0.5:1 or less). As the development has a FSR calculation in excess of 0.5:1, the proposal can be refused in this regard. As discussed with regard to clause 4.4 of MLEP 2013, the proposal is recommended for refusal in relation to the proposed FSR calculation.
- (f) Private open space (if 15 square meters of private open space, with dimensions of not less than 3m, is not provided for ground floor dwellings). The size of the terrace associated with Unit 02 is 11 square metres, with a minimum dimension of 2.4m. This unit also lacks any direct sunlight in midwinter. This is considered to contribute to concerns relating to proposed amenity, which forms part of the reasons as to why the application is recommended for refusal.

Overall, the proposal falls short of the requirements and objectives of SEPP HSPD, and the proposal is recommended for refusal in this regard

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	8.5m	8.6m	100mm	No*
Floor Space Ratio	0.45:1	0.59:1	281.65m ²	No*

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The proposed development reaches a maximum height of 8.6m, as measured vertically from ground level (existing) to the highest point of the building in accordance with the building height definition of MLEP 2013. As such, the proposal is non-compliant with the 8.5m maximum building height development standard prescribed by clause 4.3 of MLEP 2013.

However, the application has been lodged under the provisions of SEPP HSPD, which contains separate building height development standards; specifically that the height of the development shall not exceed 8m as measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. Clause 5(3) of SEPP HSPD provides that where there is an inconsistency between the provisions of SEPP HSPD and any other environmental planning instrument, such as MLEP 2013, the provisions of SEPP HSPD are to prevail.

Further, clause 50 of SEPP HSPD provides that the consent authority must not refuse a seniors housing development comprising self-contained dwellings on the basis of building height if all buildings are 8m or less in height measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. The proposal reaches a maximum height of 8m as measured in accordance with the building height definition of SEPP HSPD and as such, the proposal cannot be refused in this regard.

See further discussion with regard to Clause 40 of SEPP HSPD.

4.4 Floor space ratio

The proposed development has a gross floor area of 1192m² and a FSR of 0.59:1, inconsistent with the 0.45:1 maximum FSR development standard prescribed by this clause.

Are the provisions of MLEP 2013 inconsistent with the provisions of SEPP HSPD?

Clause 50(b) of SEPP HSPD prescribes that the consent authority must not refuse a development on the grounds of density and scale if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. Whilst the 0.5:1 FSR prescribed by clause 50(b) of SEPP HSPD is not a maximum FSR, the provisions are still inconsistent with clause 4.4 of MLEP 2013, as the consent authority could not refuse a development with a FSR of 0.50:1 or less, irrespective of the provisions of MLEP 2013. As above, clause 5(3) of SEPP HSPD provides that where there is an inconsistency between the provisions of SEPP HSPD and any other environmental planning instrument, including MLEP 2013, the provisions of SEPP HSPD are to prevail.

Whether or not a 'must not refuse' provision of an EPI overrules a prescribed development standard in a LEP is discussed in *Maham Group Pty Ltd v Blacktown City Council* [2019] NSWLEC 1168 and in *Koutsos & Anor v Manly Council* [2016] NSWLEC 1121, where the Court found that the 'must not refuse' provisions of SEPP ARH did result in inconsistency with the height limit of the relevant LEP, allowing the court to determine whether the variation to the standard is appropriate without the need for a written objection under clause 4.6 of the LEP. However, it is noted that in the case of Maham, the Commissioner also had the benefit of a clause 4.6 to rely upon, if the position was ultimately challenged.

In this instance, it is considered that clause 4.6 request is not required. This position is shared by the applicant, and no clause 4.6 request has been provided. Should the Panel ultimately disagree with this position, the lack of a clause 4.6 request may also be included as a reason for the refusal of the subject

application.

Is a clause 4.6 request to vary clause 50(b) of SEPP HSPD required?

As discussed in *Saha Builders Pty Ltd v Ku-ring-gai Council* [2019] NSWLEC 1497, a request under the provisions of clause 4.6 of MLEP 2013 to vary clause 50(b) of SEPP HSPD is not required, as follows:

As the density and scale standard at cl 50(b) of SEPP Seniors is a standard that, if met, cannot be used to refuse development consent, it is not subject to the terms of cl 4.6(2) of LEP 2015 because the exceedance of the standard does not constitute the contravention of a development standard. By exceeding the FSR standard of 0.5:1 at cl 50(b) of SEPP Seniors, the applicant merely risks the respondent raising a contention in relation to the GFA proposed and a determination based on FSR. The standards under cl 50 are not provisions under which requirements are fixed as an upper limit in respect of any aspect of the development, but are requirements that merely fix a threshold for an aspect of the development below which consent cannot be refused. This is further demonstrated by the explanation in the note to cl 50, "The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent", although the note does not form part of the instrument (s 35(2)(c) of the Interpretation Act 1987).

I accept the applicant's submission that a written request to vary a development standard under cl 4.6 of LEP 2015 is not required for a FSR above the standard in cl 50(b) of SEPP Seniors.

Is the proposed FSR nonetheless acceptable?

As the proposal exceeds the FSR prescribed by clause 50(b) of SEPP HSPD, the suitability of the bulk and density of the development is subject to merit assessment. The relevant objectives of the maximum FSR prescribed by clause 4.4 of MLEP 2014 are used as a guide in the merit assessment of the bulk and density of the development, as follows:

- *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The application was referred to the DSAP and Council's Urban Designer, with each party raising concerns with regard to the bulk and scale of the development and the associated FSR non-compliance. Whilst the proposal was amended throughout the assessment process with reductions to the FSR calculation and refinement of the facade, Council's Urban Designer remains of the opinion that the bulk and scale of the development does not appropriately respond to the existing and desired streetscape character, with a lack of appropriate relief along both front facades to break down the width of the proposal, particularly the Ponsonby Parade facade. Overall, despite the incorporation of the transparent lobby that divides the southern building, the width of this relieving element (2.3m-3.0m) is insufficient, particularly when more than 50% of the width is obstructed by the solid lift core and further compromised by protruding eaves.

It is also questioned whether the placement of the large canopy tree forward of this relieving element helps or hinders the proposal, as when mature, the tree will completely screen any relieving properties afforded by the recessed transparent lobby and the building will appear as one continual structure when seen from Ponsonby Parade. A greater recess could facilitate landscaping between the structures (as opposed to in front of the recess), which would give the appearance of two buildings separated by landscaping, as opposed to one building softened by landscaping.

It is noted that the requirement to divide or break down medium density development to achieve

compatibility with a low density residential streetscape is addressed in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council [2003] NSWLEC 268* and *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, which prescribe the need to emulate or reflect the rhythm and voids of surrounding built form, with sections of buildings separated by generous breaks or landscaping.

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

Comment: As discussed with regards to clause 3.4.3 (Maintenance of Views) of MDCP 2013, the potential impacts upon views associated with the proposal are unresolved.

- *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: Whilst the scale of development and the subdivision pattern along Ross Street is more varied, the siting and massing of buildings along Ponsonby Parade is more uniform, with clear breaks between adjoining dwellings. As above, whilst the proposed facade treatment works towards this outcome, the spacing/recess in the centre of the front facade, with only 1.8m between the projecting eave elements, is not large enough to achieve the desired effect. This is highlighted in the Character Analysis Ponsonby Parade Plan (DA12, revision B) provided by the Applicant, particularly the south-west view, where the break between the built form is not visually discernible.

- *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: As above, the application has not demonstrated that an appropriate result is achieved with regard to view sharing, with unresolved adverse impacts upon properties up slope.

Whilst not a matter raised in the FSR objectives of MLEP 2013, concern is raised with regard to the scale of the proposed development upon the internal amenity of the site. With limited spatial separation between units, the proposal is heavily reliant upon screens which, when utilised, reduce the amount of direct sunlight received to areas of outdoor open space. As such, occupants of certain units would have to compromise on either privacy or sunlight when using their outdoor space. Furthermore, the scale of the upper building and the reduced setbacks between buildings result in overshadowing of the lower building for a considerable portion of the day in mid-winter, such that even north-facing areas of private open space do not receive compliant levels of solar access.

Overall, the bulk and scale of the proposal is not acceptable in the context of the subject site and the proposed development is recommended for refusal in this regard.

6.2 Earthworks

The proposal is consistent with the objectives of Clause 6.2 (Earthworks) of MDCP 2013, as follows:

- 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. If approved, a condition could be included to require 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. If approved, conditions can be included 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. If approved, a condition could be included to require 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: If approved, conditions can be imposed to ensure that impacts arising from the development are minimised.

6.4 Stormwater management

The consent authority can be satisfied that the proposed development is consistent with the matters prescribed by this clause, as follows:

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

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

affecting on-site infiltration of water.

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

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

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

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

6.8 Landslide risk

The application was supported by a detailed geotechnical assessment which provides a series of recommendations to ensure an acceptable level of risk. In consideration of the geotechnical report and with regard to the matters prescribed by clause 6.8(3) of MLEP 2013, the consent authority can be satisfied that the proposed 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 the development is designed, sited and will be managed to minimise the risk associated with the geotechnical hazard. As such, the consent authority can be satisfied of the matters prescribed by clause 6.8(4) of MLEP 2013.

6.12 Essential services

The consent authority can be satisfied that occupants of the proposed development will have access to all essential services, consistent with the provisions of clause 6.12 of MLEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 2023m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings	9	200%	No
	Dwelling Size: 75m ² - 95m ²	84m ² - 148m ²	-	Yes
4.1.2.1 Wall Height	West (NW): 7.1m	6.2m - 7.5m	400m	No
	West (SW): 6.9m	5.1m - 6.2m	-	Yes
	East (NE): 7.0m	6.8m - 7.5m*	500mm	No
	East (SE): 7.1m	6.3m - 7.6m	500mm	No

4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.6m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6m	6.5m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West (NW): 2.37m	3.3m - 4.0m	-	Yes
	West (SW): 2.30m	3.7m - 4.0m	-	Yes
	East (NE): 2.33m	5.2m	-	Yes
	East (SE): 2.37m	3.1m - 4.0m	-	Yes
	Windows: 3m	>3.0m	-	Yes
	6m	6.5m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (1112.65m ²)	45% 913m ²	17.9% 199.65m ²	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (319m ²)	89% (816.8m ²)	-	Yes
	3 native trees	13 trees	-	Yes
4.1.5.3 Private Open Space	12m ² per dwelling	11m ² - 49m ²	1m ²	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.6m or 14%	-	Yes
Schedule 3 Parking and Access	12.6 residential spaces	18 spaces	-	Yes
	3 visitor spaces	1 space	2 spaces	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
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	No	No
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Clause 3.1.1 of MDCP 2013 states the following:

Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

As discussed in detail with regard to FSR, concern is raised in relation to the bulk and scale of the proposal, particularly as viewed from Ponsonby Parade. The proposed massing of the development is not considered to appropriately reflect the inter-relationship between buildings along Ponsonby Parade, with inadequate articulation to break down the horizontal nature of the Ponsonby Parade facade.

Whilst the spatial separation to neighbouring properties is appropriate, and far exceeds the minimum setbacks of MDCP 2013, the width of the proposal is not reflective of the scale of the predominant building form in the locality, and in this regard, the proposal is also considered to be inconsistent with the following provisions of this control:

- i. complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii. ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*

3.4.1 Sunlight Access and Overshadowing

In relation to overshadowing of private open space of adjacent properties, clause 3.4.1.1 of MDCP 2013 prescribes that new development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties between 9am and 3pm in midwinter and that where there is no winter sunlight available to these areas of open space in midwinter, the calculations should relate to the equinox in March and September. In relation to sunlight to windows of living areas, clause 3.4.1.2 of MDCP 2013 prescribes that the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 4 hours from 9am to 3pm in midwinter, with no reduction permitted if these windows/glazed areas currently enjoy less than the minimum amount prescribed.

To undertake the assessment of these controls, one needs to compare the existing levels of solar access received to the resultant levels associated with the proposed development. This comparative assessment is not undertaken in a vacuum that only limits the consideration of solar access to that arising from development at the subject site, but also requires consideration of other nearby and adjoining development that may also overshadow the properties in question.

The shadow diagrams provided are limited to the shadows cast by the existing and proposed development at the subject site, and do not consider the shadows cast by other nearby or adjacent development. As such, Council cannot determine whether the overshadowing of adjoining properties is compliant or acceptable, with particular concern regarding the impact to 16 Ponsonby Parade that occurs at 9am, noting that this area is likely to be overshadowed by the building at 9 Ross Street from midday and by itself at 3pm.

Furthermore, as discussed with regard to solar access and SEPP HSPD, the shadow diagrams are not reflective of the proposal currently before Council, and the absence of shadows cast by adjoining development also questions the extent of solar access afforded to the dwellings proposed in this application. Amended shadow diagrams were specifically requested by Council during the assessment process and were not forthcoming.

Whilst the generous side setbacks to the adjoining properties are acknowledged, the proposal is non-compliant with the Wall Height control and considerably exceeds the FSR prescribed by MLEP 2013, and the 'cannot be refused' FSR prescribed by SEPP HSPD. Council cannot be satisfied that these non-compliances do not attribute to unreasonable impacts upon solar access currently enjoyed by adjoining properties, and as such, the application is recommended for refusal in this regard.

3.4.2 Privacy and Security

Whilst the proposal has generally been designed to minimise impacts upon the privacy of adjoining properties, with the incorporation of screens and landscaping to mitigate overlooking, concerns remain with regard to two separate aspects of the development, as follows:

1. Overlooking of 10 Ponsonby Parade: Unit 08, being the eastern unit at the top floor of the northern building, comprises a 48m² terrace to the east of the internal floor space, oriented to the north, south and east. Whilst the terrace is bounded by a 1.5m wide planter box, no

information is provided with respect to the plantings proposed. The application appears to be relying upon the presence of an existing jacaranda tree located along the common boundary to mitigate overlooking of 10 Ponsonby Parade to the east. However, this deciduous tree does not provide screening all year round, and is an exempt species that can be removed at any time without consent from Council. Further, it appears that the application has ignored any potential impacts upon the health of the tree associated with excavation within 4m of the tree on this basis, as the tree is not considered in the Arborist Report provided to accompany the application. In consideration of views said to be maintained over this terrace, conditions cannot be imposed to require screens or plantings of the height required to restrict overlooking, as these would act to obstruct views from properties up slope.

2. Overlooking between Units: The spatial separation between the northern and southern buildings at the subject site is insufficient to afford appropriate levels of privacy for future occupants of the development. To address the reduced spatial separation proposed, the application has been amended to include operable screens and planter boxes to mitigate overlooking between properties. However, the efficacy of these measures is questioned in circumstances where:
 - a. roll down privacy screens proposed to the north of the terraces of the down slope (southern) units will limit solar access to the areas of private open space such that compliance with the minimum solar access requirements will not be achieved,
 - b. plantings proposed to the north of the terraces of the down slope (southern) units will limit solar access to the areas of private open space such that compliance with the minimum solar access requirements will not be achieved,
 - c. plantings proposed to the south of Unit 08 will reduce views available of the harbour from within this unit and properties up slope.

Overall, the proposed development remains unresolved with regards to conflicting amenity issues and adequate visual privacy between properties is not achieved.

3.4.3 Maintenance of Views

Properties along Ross Street enjoy views of Middle Harbour and Middle Head in a south-easterly direction. The views are obtained over down slope properties, with those views currently enjoyed from Units 2, 5 and 7 at 14 Ross Street and the dwelling at 9 Ross Street partially gained over the subject site. As concerns were raised in relation to impacts upon views in the previous development application (the application was refused on this basis), the applicant was encouraged to erect height poles at lodgement to demonstrate the likely impact of the proposal upon views. The applicant did not erect height poles at lodgement, and as such, height poles were requested during the assessment process.

Upon review of the height poles, the applicant amended the proposal without request from Council, as the impact upon views enjoyed from dwellings at 14 Ross Street was considered to be fatal to the application. An additional height pole was subsequently erected to demonstrate the further amended proposal. The height pole certification is attached to this document.

The following assessment of the potential impact upon nearby properties has been undertaken with regard to the four-step View Sharing planning principle developed in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

2/14 Ross Street

Step One

Occupants of the dwelling at 2/14 Ross Street currently enjoy views of Middle Harbour and Middle

Head in a south-easterly direction. The views encompass Chinamans Beach, a portion of Balmoral Beach and Middle Head.

Step Two

The views are obtained across the side boundary from balconies on the eastern elevation of the dwelling in both a seated and standing position. The balconies are located adjacent to the primary living room and master bedroom. No other views are available to occupants of this dwelling.

Step Three

The impact of the development upon this view is demonstrated in the image attached, below. The upper floor of the proposed development will obstruct a portion of Spit Hill in the far right of the image, and landscaping may obstruct a the view to Chinamans Beach and the foreground water interface. Should the application be approved, conditions could be imposed to limit the maturity height of landscaping in the north-east corner of the site. Subject to such limitations, the impact upon the views currently enjoyed from 2/14 Ross Street is considered to be negligible.



2/14 Ross St: View from balcony adjacent to living room

Step Four

Despite contravention of wall height controls and FSR, the proposed impact upon views currently enjoyed from 2/14 Ross Street is not unreasonable.

5/14 Ross Street

Step One

Occupants of the dwelling at 2/14 Ross Street currently enjoy views of Middle Harbour and Middle Head in a south-easterly direction. The views encompass Chinamans Beach, a portion of Balmoral

Beach and Middle Head.

Step Two

The views are obtained over the front boundary from the front south-facing balcony and the living room/dining room windows on the southern elevation. Views are also obtained over the side boundary from a balcony on the eastern side of the dwelling. Both balconies are located adjacent to the primary living/dining room. No other views are available to occupants of this dwelling.

Step Three

The impact of the development upon this view is demonstrated in the image attached, below. The timber height pole depicting the eastern elevation of the upper floor and eave is shown to the right of the water view. Based upon this height pole, the enclosed floor space of the upper floor of the development will have negligible impact upon this primary water view, but will result in the permanent obstruction of views to the right of the pole, which are currently heavily filtered by vegetation.



5/14 Ross St: View from balcony adjacent to living room

However, the proposal comprises a large terrace to the eastern side of the upper floor, in the area to the left of the timber height pole. As a height pole was not erected to demonstrate the impact of this area, the applicant provided a photomontage to demonstrate the likely impact, below.



5/14 Ross St: View from balcony adjacent to living room (Montage)

As evident in the photomontage, the proposed terrace will obstruct a portion of the water views currently available. This impact will be compounded by landscaping within the 1.5m wide planters proposed around the perimeter of the terrace, and by any future use or furnishings on the terrace, to a point where the entirety of the water view may be lost. The impact associated with the fixed built form is considered to be minor, however the impact associated with proposed plantings and the future use of the terrace is considered to be severe.

Step Four

The development as a whole considerably exceeds the floor space ratio prescribed by MLEP 2013 and the 'cannot be refused' FSR prescribed by SEPP HSPD. Whilst the terrace does not contribute to the FSR calculation, the terrace could be relocated elsewhere on site within an area of proposed floor space to significantly reduce the impact upon views currently enjoyed by 5/14 Ross Street. The conversion of the proposed terrace area to a non-trafficable roof would mitigate the potential impact and appease the concerns of the affected property owner. In light of the FSR exceedance, the impact upon views currently enjoyed by 5/14 Ross Street is considered unreasonable.

7/14 Ross Street

Step One

Occupants of the dwelling at 5/14 Ross Street currently enjoy filtered views of Middle Harbour and Middle Head in a south-easterly direction.

Step Two

The views are obtained across the front boundary from the front south-facing balcony and the kitchen/dining room window on the southern elevation in a seated and standing position. The balcony is located adjacent to the primary living/dining room. Views of the North Sydney and Chatswood skylines are also available from the front south facing balcony.

Step Three

The impact of the development upon this view is demonstrated in the image attached, below. The timber height pole depicting the eastern elevation of the upper floor and eave is just evident to the

left of the pine tree in the centre of the image. Based upon this height pole, the enclosed floor space of the upper floor of the development will impact upon a heavily filtered portion of the view to the right of the pole, however the primary view corridor to the left will be preserved. As such, the resultant impact is considered to be minor.



7/14 Ross St: View from kitchen/dining room window

However, as discussed with regard to 5/14 Ross Street, the impact associated with the plantings proposed around the perimeter of the terrace and the future use of the terrace may further erode this view, potentially eliminating this view corridor in its entirety. This impact will be severe.

Step Four

Similarly to 5/14 Ross Street, the potential unknown extent of impacts upon the views currently enjoyed from 7/14 Ross Street are unreasonable.

9 Ross Street

Step One

Occupants of the dwelling at 9 Ross Street currently enjoy views of Middle Harbour and Middle Head in a south-easterly direction.

Step Two

The views from 9 Ross Street are obtained from the dining room and balcony in the south-east corner of the upper floor over the common side boundary. The views are currently enjoyed from both a seated and standing position. Views of the North Sydney and Chatswood skylines are also available from the south-west facing windows of the upper floor living room.

Step Three

The impact of the development upon the Middle Harbour view is demonstrated in the images, below. For ease of view, the height poles have been emphasised by a yellow dashed line. The height poles demonstrate that the majority of the view corridor is maintained in a standing position, with the obstruction of approximately half of the view corridor in a seated position.

Noting that *Tenacity* outlines that the expectation to retain views over side boundaries and from a seated position is often unrealistic, and as the views are largely maintained from a standing position, the impact is considered to be moderate.



9 Ross St: View from balcony/dining room (standing)



9 Ross St: View from dining room (seated)

It is noted that the clear glass balustrade seen in the images in this report is subject to conditions of consent requiring the use of frosted glazing. If this condition was to be complied with, the water view would be entirely obstructed and the proposed development would not be visible from the seated position.

Step Four

It is acknowledged that the overall development considerably exceeds the floor space ratio prescribed by MLEP 2013 and the 'cannot be refused' FSR prescribed by SEPP HSPD. However, the portion of the development attributing to the impact upon 9 Ross Street is sited with generous (4m) setbacks to the common side boundary, and the western elevation is sited well below the prescribed building height standard and wall height control. The impact is considered to be reasonable in these circumstances.

Overall, the application has not demonstrated that disruptions to views from adjacent development have been reasonably minimised, and view sharing between properties has not been established.

4.1.1.1 Residential Density and Dwelling Size

Clause 4.1.1.1 of MDCP 2013 prescribes the maximum residential density for land identified in Residential Density Areas on the Minimum Residential Density Map of MDCP 2013. The subject site is located within area D6, with a maximum density of 1 dwelling per 600m², being 3.4 dwellings across the subject site. The proposed development is inconsistent with this density, however this is not surprising in circumstances such as this, where the proposed land use is not anticipated in the zone.

Clause 4.1.1.1 of MDCP 2013 also prescribes a series of minimum internal areas for dwellings, being

75m² for 2 bedroom, 2 bathroom dwellings and 95m² for 3 bedroom, 2 bathroom dwellings. The proposed development far exceeds these minimum requirements with 2 bedroom, 2 bathroom units ranging from 84m² to 113m² and 3 bedroom, 2 bathroom units ranging from 121m² to 148m².

Whilst the proposal is not recommended for refusal in this regard, the extent of departure from the minimum dwelling size requirements is considered to highlight the potential for floor space reductions to address Council's concerns regarding bulk and scale, without detrimentally effecting the amenity of the units proposed.

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

Minor elements of the proposed development are inconsistent with the maximum Wall Height control prescribed by clause 4.1.2.1 of MDCP 2013. The elevations of the proposal are considered individually, as follows:

Western elevation of the northern building (NW): The height of the western elevation of the northern building ranges from 6.2m to 7.5m. Whilst the majority of the elevation is maintained below the 7.1m maximum wall height prescribed, the south-western corner of the upper building extends 400mm beyond the maximum prescribed. This portion of the building does not attribute to excessive bulk and scale, and is setback from both street frontages and the adjoining development to the west. However, at this time, the applicant has not demonstrated that acceptable levels of solar access are maintained to the adjoining dwelling at 16 Ross Street, or that reasonable levels of solar access are afforded to Unit 03, which are directly impacts by this portion of the development.

Western elevation of the southern building (SW): The height of the western elevation of the southern building ranges from 5.1m to 6.2m, and is maintained below the 6.9m maximum wall height prescribed. Furthermore, the setback to the western boundary far exceed the minimum side setback prescribed.

Eastern elevation of the northern building (SE): The height of the eastern elevation of the northern building reaches a maximum height of approximately 6.8m to 7.5m, with a minor encroachment of the 7.0m maximum wall height prescribed. The wall heights are approximated in relation to the eastern elevation of the northern building as, despite amendments to the upper floor of the northern building, an amended eastern elevation was not provided to support the application. Whilst an amended elevation is obviously required, the wall height is likely to be supportable, as the non-compliance relates to a portion of the building that is setback well from the eastern side boundary, and as the north-eastern corner of the upper floor (which is relevant to the view loss assessment) is maintained below the maximum prescribed.

Eastern elevation of the southern building (SE): The height of the eastern elevation of the southern building ranges between 6.3m and 7.6m, with a minor encroachment of the 7.1m maximum wall height prescribed. Whilst the encroachment occurs at the front south-eastern corner of the building, the non-compliant element is setback between 6.9m to 11.9m from the eastern side boundary and is softened by the corner balcony element.

Despite minor areas of non-compliance, the height of the development is consistent and compatible with surrounding built form and the desired character of the area. Furthermore, the minor encroachments do not attribute to impacts upon views from adjoining properties or the public domain. However, concern is raised in circumstances where the application has not adequately demonstrated the solar access impacts resulting from the non-compliant built form, and at this time, the consent authority cannot be satisfied that adequate solar access is provided to proposed areas of private open space or reasonably maintained to adjoining dwellings. As such, consistency with the objectives cannot be confirmed and the proposed variations cannot be supported.

4.1.3 Floor Space Ratio (FSR)

See discussion with regard to clause 4.4 of MLEP 2014.

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

Front Setbacks

The subject site has dual frontages to both Ponsonby Parade and Ross Street. Whilst it is acknowledged that the properties fronting Ponsonby Parade immediately to the east and west of the subject site have setbacks greater than 6m, the proposed 6.5m minimum setback is consistent and compatible with the setback of other development along Ponsonby Parade, and the 6m minimum setback is considered to be reasonably applied. The dominant facade of the development is setback 7.5m from Ponsonby Parade, with only elements of articulation forward of this point, consistent with the provisions of this control. It is also noted that neither DSAP nor Council's Urban Designer have raised concerns with regard to the proximity of the proposal to either street frontage.

With the exception of ancillary entrance structures, which do not detract from consistency with the objectives of this control, the proposal is consistent with the minimum front setbacks prescribed.

Side Setbacks

The proposal meets and exceeds the minimum side setbacks prescribed by this control.

4.1.5 Open Space and Landscaping

The site is located within OS3 of the Residential Open Space Areas Map of MDCP 2013, and in accordance with the provisions of clause 4.1.5.1 of MDCP 2013, a minimum of 55% of the site area is to be total open space. The proposal is inconsistent with this requirement, with only 45% of the site meeting the definition of total open space. Despite the total open space shortfall, the proposal provides well in excess of the minimum landscaped area requirements prescribed by 4.1.5.2 of MDCP 2013, with 89% of the total open space area proposed as landscaping. Furthermore, the proposed landscaping solution is generally supported by Council's Landscape Officer.

In accordance with clause 50(c) of SEPP HSPD, development for the purposes of self-contained seniors housing dwellings cannot be refused on the grounds of landscaping if 30% of the site is to be landscaped. 45% of the total site area is landscaped area, as defined by SEPP HSPD, and as such, the proposal cannot be refused in this regard.

Note: The definition of 'landscaped area' differs between MLEP 2013 and SEPP HSPD, which is why the figures noted throughout this report may differ.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Schedule 3 of MDCP 2013 prescribes the following parking requirements in relation to the proposed development:

- 1 space per dwelling = 9 spaces, plus
- 0.2 spaces per 2 bedroom dwelling = 0.3 spaces, plus
- 0.5 spaces per 3 bedroom dwelling = 3.5 spaces.
= 12.8 spaces (13 spaces rounded up), plus
- 0.25 visitor spaces per dwelling = 2.25 spaces (3 spaces rounded up)

With 18 residential spaces and 1 visitor space proposed, the proposed development is inconsistent with

the visitor parking requirement prescribed by clause 4.1.6 of MDCP 2013. However, the visitor parking shortfall is supported in circumstances where the residential requirement is satisfied and where ample on-street parking is available along both side of Ponsonby Parade.

Furthermore, in accordance with clause 50(h) of SEPP HSPD, the proposal must not be refused on the basis of parking if at least 0.5 spaces per bedroom is provided. The proposed development provides 0.76 spaces per bedroom, and as such, the proposal must not be refused with regard to parking.

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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$55,419 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,541,900.

ADEQUACY OF INFORMATION

The application is lacking critical information required to assess the application, and a number of documents provided have been superseded and are no longer relevant to the application. This matters include:

- The Landscape Plans were not amended to reflect the further amended architectural plans, in particular, do not include plantings to the perimeter of the upper floor planter boxes.
- The BASIX Certificate supplied at lodgement does not relate to the twice amended proposal now before Council.
- The Access Report was not updated to reflect the amended architectural plans.
- The Solar Access Diagrams are incomplete and were not updated to reflect the further amended architectural plans.
- The Eastern Elevation was not updated to reflect changes made to the eastern end of the upper floor of the northern building.
- Internal elevations were not provided (ie: the northern elevation of the southern building and the southern elevation of the northern building).

The absence or inadequacy of supporting documentation is discussed in *SHMH Properties Australia Pty Ltd v City of Sydney Council* [2018] NSWLEC 66, as follows:

The absence or inadequacy of documents required by Sch 1, cl 2 and 2A of the EPA Regulation to accompany a development application does not necessarily make the application invalid, but it does make the development application incomplete and, in a particular case, the absence or inadequacy of the documents may be of such significance as to prevent the consent authority from performing its statutory duty under the EPA Act when determining the application (see Currey v Sutherland Shire

Council (2003) 129 LGERA 223; [2003] NSWCA 300 at [35]; Cranky Rock Road Action Group Inc v Cowra Shire Council (2006) 150 LGERA 81; [2006] NSWCA 339 at [73]-[78], [88] and McGovern v Ku-ring-gai Council (2008) 72 NSWLR 504; [2008] NSWCA 209 at [198]-[200]].

The absence of information and the inconsistencies in the information presented to Council are considered to warrant the refusal of the subject application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

The application has been amended in an attempt to address concerns raised by Council and adjoining property owners. Whilst these amendments work towards a more appropriate outcome, the proposal is still unresolved, with a number of areas of inconsistency and a lack of relevant, up to date information.

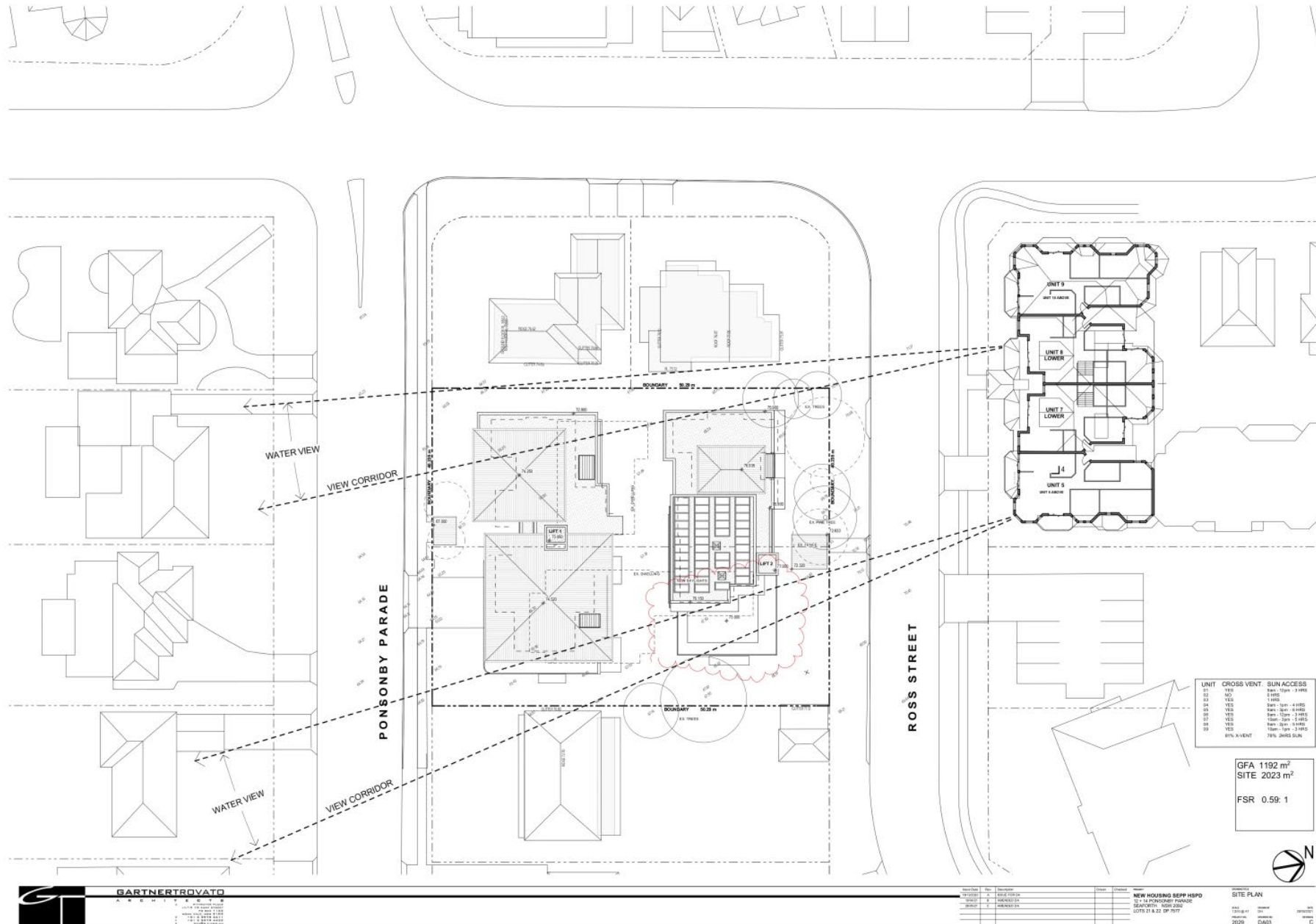
Should the applicant be willing to continue to work with Council in response to the concerns raised in this report, a section 8.2 application may be lodged in response to the refusal of the subject application.

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 DA2021/0008 for the Demolition works and construction of a seniors living development over basement car parking on land at Lot 22 DP 7577, 14 Ponsonby Parade, SEAFORTH, Lot 21 DP 7577, 12 Ponsonby Parade, SEAFORTH, for the reasons outlined as follows:

1. The bulk and scale of the proposed development is excessive within the low density residential setting, and attributes to unacceptable impacts upon the public domain, the amenity of adjoining properties and the amenity of the dwellings proposed. In particular, the form and massing of the proposal is inconsistent with the design principle of clause 33 (Neighbourhood amenity and streetscape) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (SEPP HSPD)*, the Seniors Living Policy, the objectives of clause 4.4 (Floor Space Ratio) of *Manly Local Environmental Plan 2013 (MLEP 2013)* and the design requirements of clause 3.1.1 (Streetscape(Residential Areas)) of *Manly Development Control Plan 2013 (MDCP 2013)*.
2. The application does not address overshadowing of adjoining properties and inadequate solar access is achieved to the dwellings proposed on site, inconsistent with the provisions of clause 35 (Solar access and design for climate) of SEPP HSPD, the Seniors Living Policy and clause 3.4.1 (Sunlight Access and Overshadowing) of MDCP 2013.
3. The proposal fails to ensure adequate visual and acoustic privacy is maintained for adjoining properties and achieved between dwellings proposed on site, inconsistent with the provisions of clause 34 (Visual and acoustic privacy) of SEPP HSPD, the Seniors Living Policy and the requirements and objectives of clause 3.4.2 (Privacy and Security) of MDCP 2013.
4. The proposal will unreasonably obstruct views enjoyed by properties up slope of the development, resulting in inconsistency with the requirements and objectives of clause 3.4.3 (Maintenance of Views) of MDCP 2013.
5. The application is inconsistent with the provisions of clause 50 of the *Environmental Planning and Assessment Regulation*, in so far as the application is not supported by the information listed in Schedule 1 relevant to the amended proposal before Council.





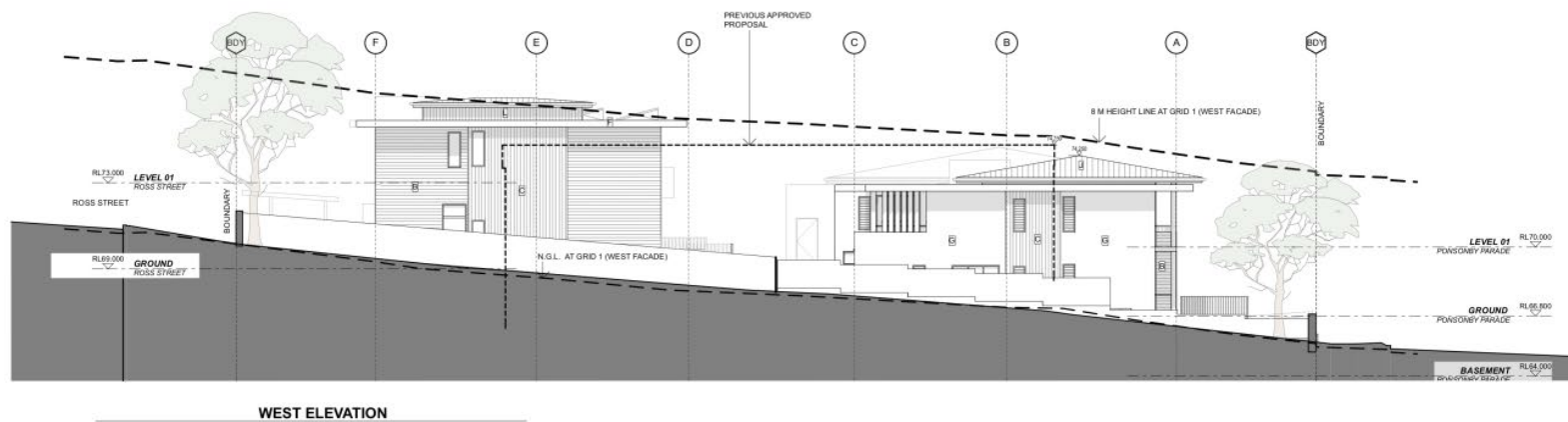
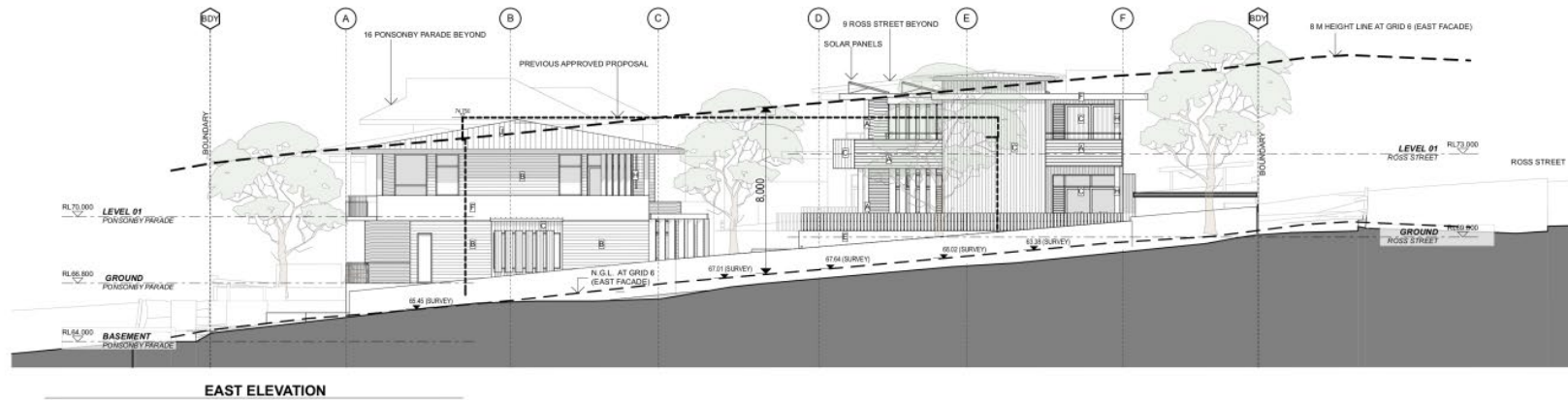
NORTH ELEVATION



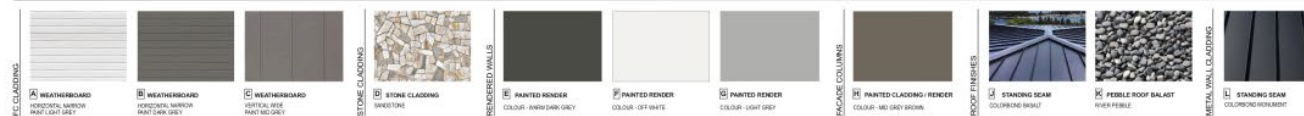
SOUTH ELEVATION

EXTERNAL FINISHES
NOTE: FINISHES AND IMAGES SHOWN ARE INDICATIVE OF DESIGN INTENT ONLY





EXTERNAL FINISHES
NOTE: FINISHES AND IMAGES SHOWN ARE INDICATIVE OF DESIGN INTENT ONLY





Design + Sustainability Advisory Panel Meeting

DA2021/0008 - 12 & 14 Ponsonby Parade SEAFORTH

PANEL COMMENT AND RECOMMENDATIONS

General

The site is zoned R2 Low Density Residential under the provisions of MLEP 2013 and seniors housing is prohibited within the zone. As such, the application is made under the provisions of SEPP HSPD.

The application proposes the demolition of both existing dwellings and the construction of a two-storey seniors housing development, comprising 9 in-fill self-care apartments, over basement carparking.

Specifically, the proposal comprises:

- 1 x 2-bedroom apartments,
- 8 x 3-bedroom apartments,
- Basement carparking for 19 vehicles

Vehicular access is to be gained via Ponsonby Parade, with pedestrian access to both Ponsonby Parade and Ross Street.

Strategic context

- R2 Low Density zone, where large detached two storey dwelling houses are the dominant building typology. Concern remains in relation to the bulk and scale of the proposal and consistency with the objectives of the R2 zone, specifically "to provide for the housing needs of the community within a low-density residential environment".
- The width of the garage presenting to Ponsonby Parade exceeds the 6.2m maximum width prescribed by clause 4.1.6.1 of MDCP 2013.
- The application nominates a FSR of 0.6:1, exceeding the 0.45:1 FSR prescribed by clause 4.4 of MLEP 2013. In accordance with clause 50 of SEPP HSPD, Council may, if appropriate, refuse the proposal in relation to density and scale as the proposal exceeds 0.5:1 FSR.

Recommendations

1. The increased FSR of 0.6:1 from 5:1 is not insignificant. Nevertheless, the proposal could be supported based on improvements to achieve design excellence and consideration for an FSR greater than 0.5: 1 which could be conditioned, perhaps by a deferred commencement.
2. The potential height non-compliance at the living room clerestory is insignificant in the context of the relatively low building form of the entire development and for the enhanced amenity of roof lighting, the minor breach is supportable.



Urban context: surrounding area character. Scale, built form and articulation, Landscape context, Façade treatment

- This is a development over a double block which sits within a residential precinct of large bulky houses. By contrast, it is a relatively low, long and lean form in a landscaped setting. The architectural composition of the proposal is not out of character with the area.
- The width is uncharacteristic. Potential to maximise central break on both frontages by reorienting the circulation cores to address the street, or to open them through the depth of each building.
- privacy between the terraces of Apartments 8 and 6 and 1; and Apartments 9 and 7 and 3, is compromised by their close proximity. The proposed pergola over the terraces of apartments 1 and 3 assists in reducing downward looking. It is recommended that trees with canopies at the level of Apartments 6, 7 8 and 9 be introduced to provide additional screening;

Recommendations

3. Greater articulation of the built form could be achieved if the building entries were notched into the residential blocks and consideration for the entries to become transparent "slots" between the two storey forms either side provide stronger articulation from the street.
4. Improved privacy to be provided between the dwellings with landscaping features

Landscape

- Generally, commend landscape layout and large area of deep soil areas and total landscape area of 47%. Commend addition of 11 endemic trees species including 5 large species. Large endemic canopy trees selected will assist in meeting GANSW Urban canopy targets and provide more shade
- A major issue is that we could not recommend approval without more detailed information on the landscape plans and details. The landscape plan is rudimentary and does not specify plant numbers and sizes leading the final outcome to be uncertain. Numbers and spacings of plants in plan are very minimal and the outcome would be "spotty" or "sparse" in the early years not taking into account plant failures. Likewise, little information is provided on landscape details or materials and also on the resolution of the landscape areas over the basement podium

Recommendations

5. Given the large landscape site area we would suggest the inclusion of more small endemic trees species to further green the project without impacting views.
6. Provide landscape Plans and Details by a *suitably qualified professional* (Landscape Designer or Landscape Architect) as required by Council for Development Applications. Documentation should include greater plant numbers/densities than shown on the current plans and a greater diversity of species and a higher percentage of natives. Pot sizes need to be specified and include large pot sizes for trees (min. 100L). More information on landscape details, materials and finishes, and also on the resolution of the landscape areas over the basement podium with levels indicated and sections provided. Ensure setdown for planting areas on podium is minimum 300mm for Ground covers, 600mm for shrub planting and 1000mm for trees.

Note Council Requirements are:

A Landscape Plan, prepared by a suitably qualified professional, must be submitted with all development applications, except where there are no external works.

Unit Design and Amenity

- Potential to come in straight of Ponsonby (to avoid a dog leg) with ramp continuing inside building.
- Further information is required to delineate common and private space (to ensure collective maintenance of landscaping).



Sustainability and resilience

- No NatHERS certificates or stamped plans were provided. Therefore, the design of the units in accordance with compliance requirements could not be assessed.
- The solar access to the rear block is compromised by the small building separation.
- Units 2, 8 and 9 are not connected to rainwater when all other ground floor units are?
- The solar array could potentially be in excess of common area demands during the daytime. There is an opportunity to connect part of the array to units 8 and/or 9

Recommendations

7. Preference for all units to be connected to rainwater.
8. Power from solar panels to be distributed to units, potentially the northern top floor units, to maximise onsite use (as opposed to sending it back to the grid).

Car parking

- The basement car park could be more compact in arrangement, particularly because of the individual garages being provided for each unit. The garage footprint could be reduced by providing a security door at the base of the ramp and eliminating individual garage doors to unit car spaces. This would also allow 2 accessible parking spaces/shared area and reduce the building footprint. The garbage door should likewise open out to a dedicated path connected to the footpath, not via the garage driveway.
- the basement fire exit door at lift 2 should be re-designed to avoid potential conflict with car swept paths.

Recommendations

9. Inclusion of a security at the entry of the car park to allow replanning of the basement to reduce carparking footprint

PANEL CONCLUSION

The Panel supports the proposal with minor amendments to address the design issues raised above.

The design is generally of good quality, and the increased FSR could be supported if the following were addressed, as detailed above:

- Articulation of the façade
- Improved privacy between the dwellings
- Provision of a detailed landscape plan from a suitably qualified professional
- Inclusion of more small endemic trees in the landscape plan
- Connection of all units to rainwater reuse
- Connection of some of the solar panels direct to some of the units
- Reconsideration of the car park design

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/0497 - 87-88 NORTH STEYNE, MANLY - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/468050
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

[Click or tap here to enter text](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0497 for alterations and additions to a Residential Flat Building at Lot CP SP 5403, 87-88 North Steyne, Manly subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0497
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot CP SP 5403, 87 - 88 North Steyne MANLY NSW 2095
Proposed Development:	Alterations and additions to a Residential Flat Building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 5403
Applicant:	Corona Projects Pty Ltd

Application Lodged:	17/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/05/2021 to 07/06/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 79.2%
Recommendation:	Approval

Estimated Cost of Works:	\$ 300,000.00
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EXECUTIVE SUMMARY

The application seeks consent for the replacement of the existing balustrades to the residential flat building.

The existing building height of 26m exceeds the building height control by 13m. Whilst the proposed works result in a technical height variation of 79.2%, there is no increase to the existing non-compliant building height.

Despite the height of buildings breach, the works are contained within the existing building envelope, below the maximum roof height, and do not result in additional bulk. An assessment of the development standard breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

The proposed variation to the height of buildings development standard exceeds 10% and the proposal relates to a residential flat building (Class 2). As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

One submission was received in response to the notification of the application, which is addressed within the assessment.

No further assessment issues are raised, and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the replacement of the existing concrete balustrades with new glass balustrades.

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 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot CP SP 5403 , 87 - 88 North Steyne MANLY NSW 2095

Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of North Steyne.</p> <p>The site is generally regular in shape with a frontage of 28.04m along North Steyne, a depth of 49.81m and a secondary frontage of 28.52m along Whistler Street. The site has a surveyed area of 1316m².</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a residential flat building in a landscaped setting.</p> <p>The site is generally flat.</p> <p>The site contains no significant trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a range of detached and semi-detached dwellings and residential flat buildings.</p>
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Map:



SITE HISTORY

A search of Council's records has revealed the following relevant applications:

- A Pre-lodgement Meeting **PLM2020/0031** was held on 05/03/2020 for the alterations and additions to the existing residential flat building. The proposal included extensive refurbishment, including the increase the building height development standard.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) 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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 24/05/2021 to 07/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Simon Gerard Harrison	3 / 57 Whistler Street MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

- Traffic impact of construction vehicles
Comment:
Conditions are included requiring the preparation and implementation of a Construction Traffic

Management Plan to minimise the disruption resulting from the development.

REFERRALS

Internal Referral Body	Comments																	
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>																	
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS																	
	Discussion of reason for referral																	
	The proposal has been referred to Heritage as the subject property contains a heritage item																	
	I2 - All stone kerbs - (former) Manly municipal area																	
	Details of heritage items affected																	
	Details of the item as contained within the Manly inventory is as follows:																	
	<u>Statement of significance:</u> Stone kerbs are heritage listed.																	
	<u>Physical description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.																	
	Other relevant heritage listings																	
	<table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td></td><td></td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No			
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RAIA Register of 20th Century Buildings of Significance	No																	

Internal Referral Body	Comments		
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for changing the balustrades on the balconies of the existing residential flat building from a solid wall to glass. The mapping of the stone kerb heritage item run through the North Steyne frontage of this property, however there is no stone kerb present within the property grounds. The listing also runs along the rear boundary of the site however the kerbing here has been replaced with concrete. Thus the proposal is considered to not impact upon this heritage item.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		
	Further Comments		
	COMPLETED BY: Brendan Gavin, Principal Planner		
	DATE: 17 June 2021		

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

Comment:

The proposal does not include any works listed under (1)(a) above.

As per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

SEPP (Infrastructure) 2007Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

Comment:

The proposed works are located above ground level and will not adversely impact the natural environment or cultural heritage.

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

Comment:

The proposal is appropriately designed and sited to minimise impacts in relation to the above matters.

14 Development on land within the coastal use area

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed works are appropriately designed and sited above ground level to minimise impacts in relation to the above matters.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 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 proposal is unlikely to result in increased risk of coastal hazards on the site and surrounding land.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	13m	23.3m	79.2%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	13m
Proposed:	23.3m
Percentage variation to requirement:	79.2%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, 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 development standard 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 cl 4.6(3). There are two separate matters for consideration contained within cl 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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *"Compatibility with the character and amenity of the area. The proposed balcony balustrades do not change the floor plates and internal building configuration, and will be commensurate in height and location of the existing concrete balcony balustrade. The glass balustrade will also increase the natural light into the living areas of each unit as an added amenity. The proposal complements the character of the locality with similar neighbouring apartments having already adopted the use of glass balustrade, as seen in 84-85 North Steyne and 89 North Steyne, thus the proposal aligns appropriately with the distinct building character of the neighbourhood.*
- *Achievement of an appropriate and supportable bulk and scale for the building. The height of the proposed balcony balustrade is lower than the height of the existing approved residential flat building, and will be in the same location as the existing."*

Comment:

The proposed glazed balustrading will improve the internal amenity of the units within the building and will not result in any unreasonable visual or amenity impacts to surrounding land.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

cl 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 R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(1) The objectives of this clause are 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 works are located below the existing roof level and do not alter the building height. The proposal maintains consistency with surrounding developments and the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed balustrade replacement will not result in any additional bulk or scale.

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 works will not result in any unreasonable impact on views to, from or between residential development and public spaces.

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 glass balustrades will maintain the existing level of sunlight access to surrounding public and private land.

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

Comment:

N/A

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposal maintains the existing residential use.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal maintains the existing residential flat building use.

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

Comment:

N/A

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposal includes appropriate redevelopment of the existing building.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

The proposal does not include any change of use of the existing building.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

Council's Heritage Officer raised no objections to the proposal.

6.8 Landslide risk

The site is mapped as Landslip Risk Area G2 and the proposal is for replacement of the existing balustrades. As such, no geotechnical investigation is necessary in this case.

6.9 Foreshore scenic protection area

The proposed replacement of the existing balustrades will improve the overall appearance of the building, and will not adversely impact visual aesthetic amenity or views to and from the Pacific Ocean or Manly foreshore.

Manly Development Control Plan

Built Form Controls

There are no Development Controls to under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed glass balustrading will improve the appearance of the building in accordance with this control.

3.3.1 Landscaping Design

No change is proposed to the existing landscaping.

3.4.1 Sunlight Access and Overshadowing

The proposed balustrade replacement will not cause any material additional overshadowing.

3.4.3 Maintenance of Views

The proposed balustrade replacement will not unreasonably impact any views.

4.1.8 Development on Sloping Sites

The site is mapped as Landslip Risk Area G2 and no geotechnical investigation is necessary in this case.

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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$3,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$300,000.

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 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

The application seeks consent for the replacement of the the existing balustrades.

The key planning issues considered within the assessment are the proposed variation to the height of buildings development standard and the resulting visual impact of the works.

Notwithstanding the proposed building height variation of 79.2%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

One submission was received in relation to the impact of construction traffic on the surrounding roads, and is addressed via conditions of consent.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0497 for Alterations and additions to a Residential Flat Building on land at Lot CP SP 5403, 87 - 88 North Steyne, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Proposed Typical Floor Plan	Rev. B, 4 May 2021	Archi Spectrum
DA08 Proposed East Elevation	Rev. B, 4 May 2021	Archi Spectrum
DA09 Proposed West Elevation	Rev. B, 4 May 2021	Archi Spectrum
DA10 Proposed South Elevation	Rev. B, 4 May 2021	Archi Spectrum
DA11 Proposed North Elevation	Rev. B, 4 May 2021	Archi Spectrum
DA12 Balustrade Details	Rev. B, 4 May 2021	Archi Spectrum

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

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. Prescribed conditions (Demolition):

(a) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (ii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is

being carried out, but must be removed when the work has been completed.

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

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

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

(c) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

Reason: Legislative Requirement.

3. Prescribed Conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General requirements (Demolition):**

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
- o 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

5. General Requirements

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of

any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable

cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$300,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website

at www.northernbeaches.nsw.gov.au

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

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

7. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

8. **Balustrade Design**

The glass balustrading is required to comply with Clause D2.16 of the Building Code of Australia and AS1288-2006 with regard glass selection, installation and interlinking rails where applicable. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant safety.

9. **Waste Management Plan**

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

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

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

10. **Compliance with standards (Demolition):**

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

Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

11. Compliance with Standards

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

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

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

12. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work

Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. Removing, Handling and Disposing of Asbestos

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

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

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

14. Installation and Maintenance of Sediment Control

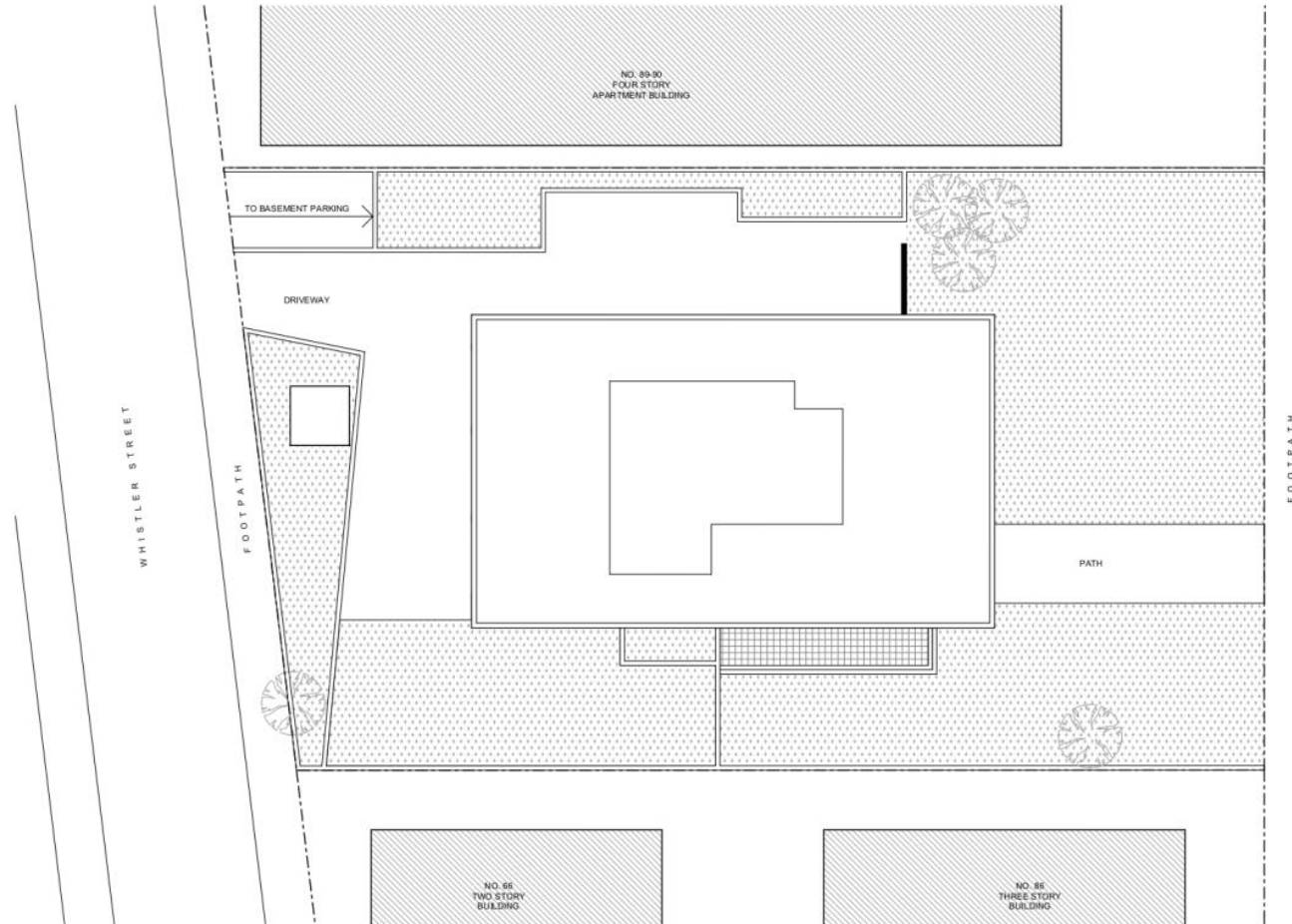
Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom’s ‘Managing Urban Stormwater: Soils and Construction’ (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored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

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

15. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.



Site Plan
SCALE 1:200

NORTH STEYNE

B	04.05.2021	Revised DA Issue to Council
A	14.04.2021	Robinson Strata Management
ISSUE	DATE	DESCRIPTION

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 **Corona Projects**

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coronaprojects@gmail.com www.coronaprojects.com.au

PROJECT:
**Alteration of Existing
Balconies**
88 North Steyne, Manly

CLIENT:
Robinson Strata Management
88 North Steyne, Manly

SHEET TITLE:
Existing Site Plan

SCALE: 1:200 @ A3 SHEET SIZE: DWG NO: REVISION:
DRAWN: SL A3 DA01 b



B	04.05.2021	Revised DA Issue to Council
A	14.04.2021	Robinson Strata Management
ISSUE	DATE	DESCRIPTION



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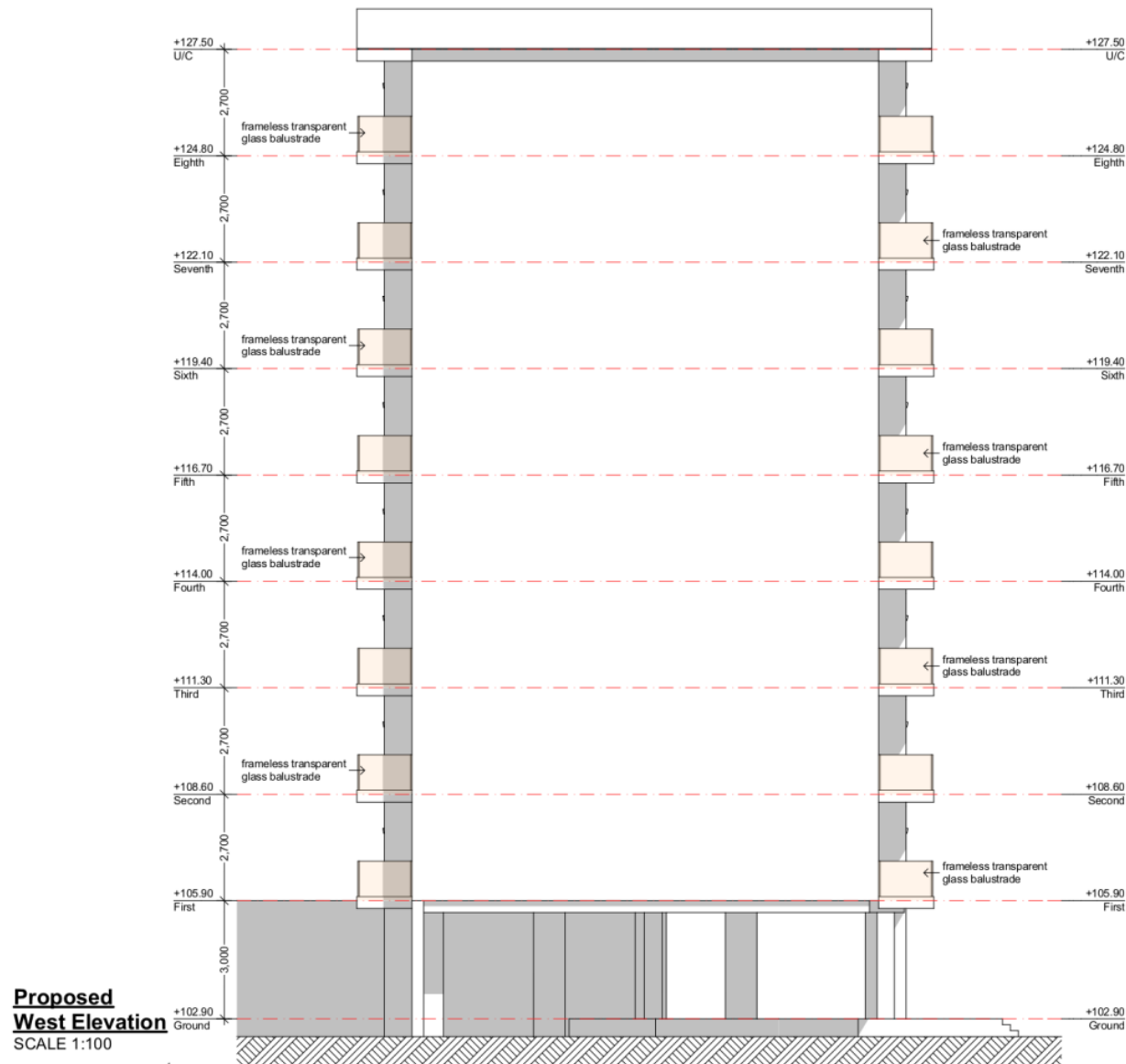


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PROJECT:
Alteration of Existing
Balconies
88 North Steyne, Manly

CLIENT:
Robinson Strata Management
88 North Steyne, Manly
SHEET TITLE:
Proposed East Elevation

SCALE: 1:100 @ A3 SHEET SIZE: DWG NO: REVISION:
DRAWN: SL A3 DA08 b



B 04.05.2021 Revised DA Issue to Council
A 14.04.2021 Robinson Strata Management
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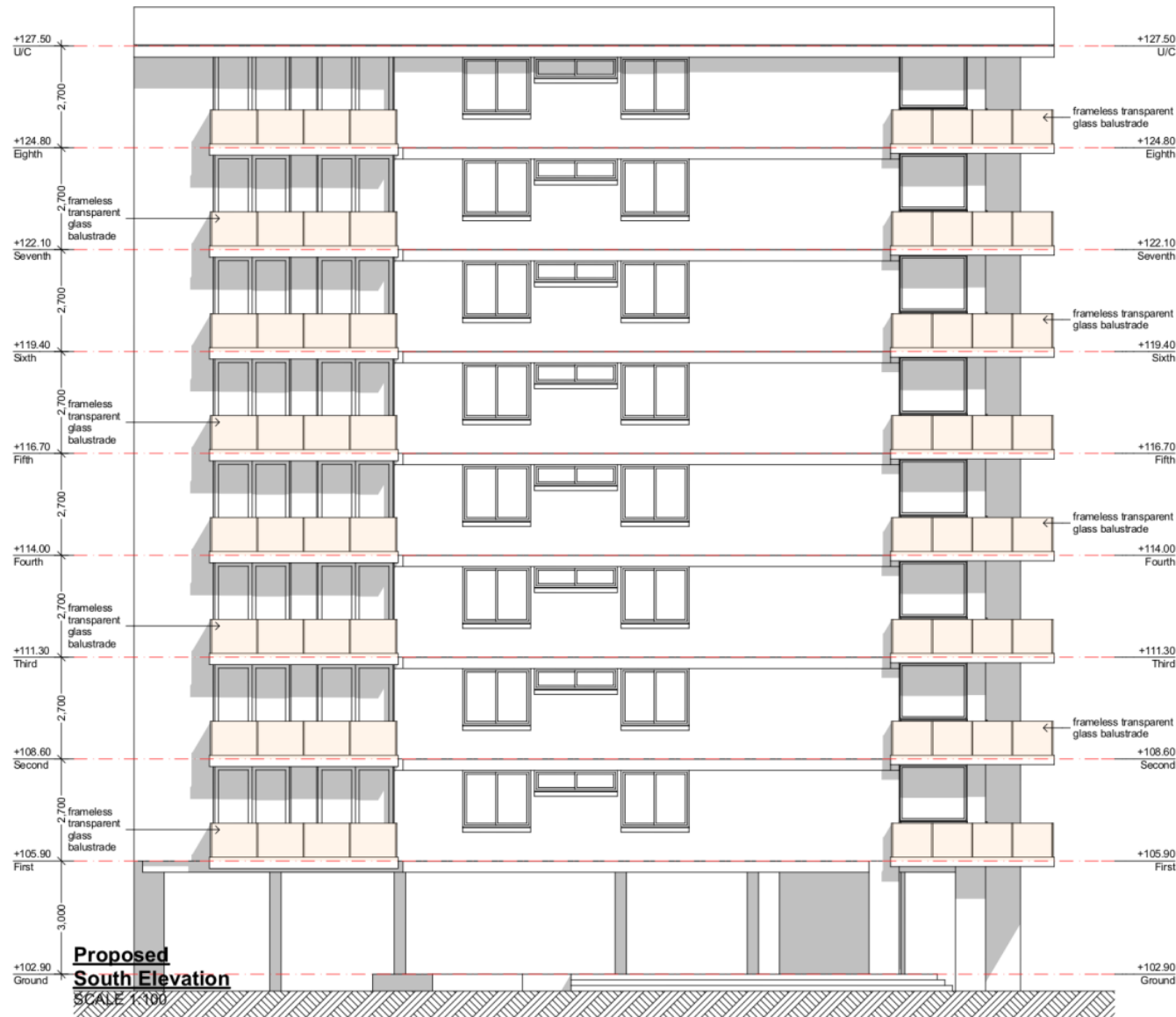
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PROJECT:
Alteration of Existing
Balconies
88 North Steyne, Manly

CLIENT:
Robinson Strata Management
88 North Steyne, Manly
SHEET TITLE:
Proposed West Elevation

SCALE: 1:100 @ A3 SHEET SIZE: DWG NO: REVISION:
DRAWN: SL A3 DA09 b



B 04.05.2021 Revised DA Issue to Council
A 14.04.2021 Robinson Strata Management

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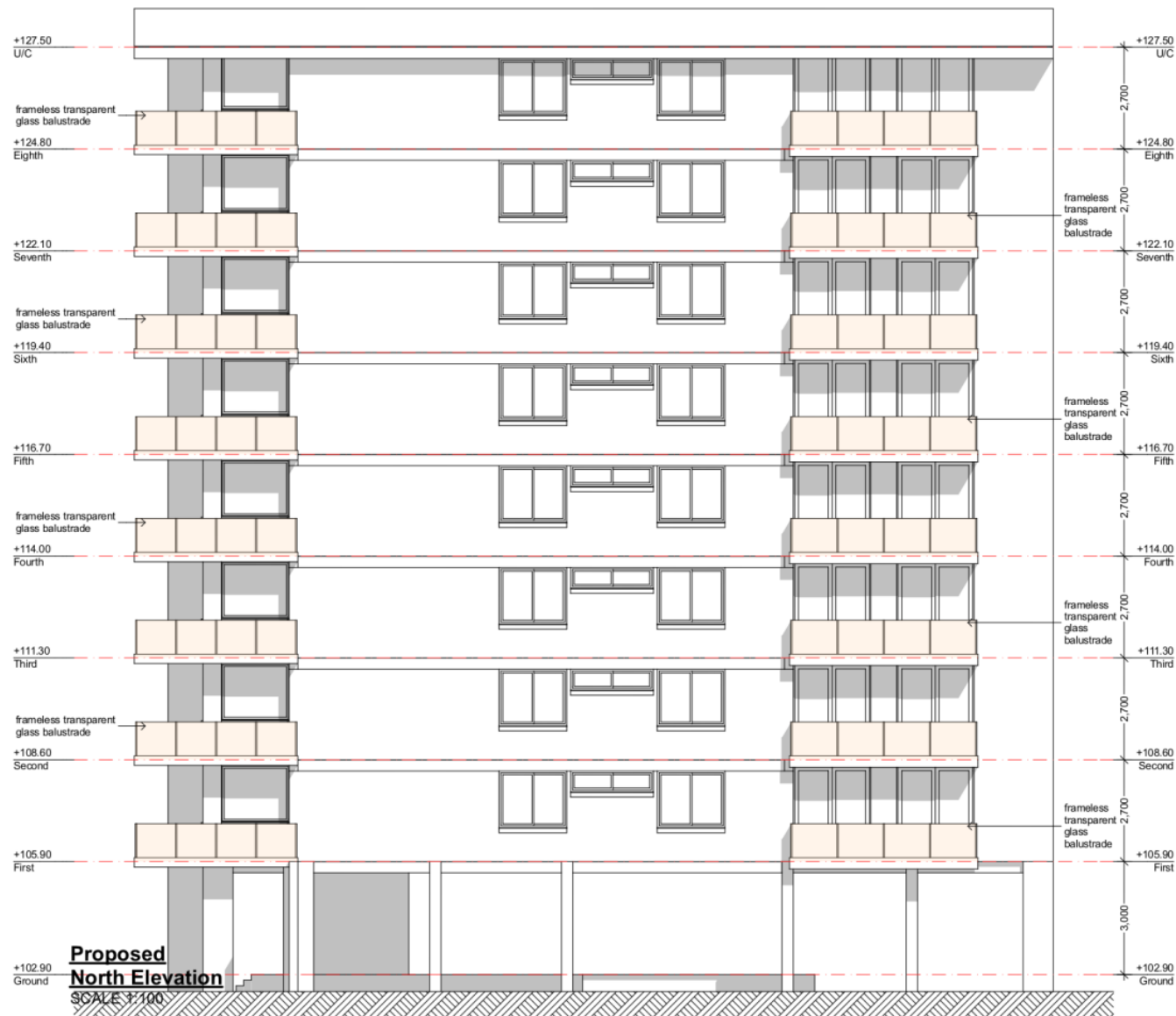
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PROJECT:
Alteration of Existing Balconies
88 North Steyne, Manly

CLIENT:
Robinson Strata Management
88 North Steyne, Manly

SHEET TITLE:
Proposed South Elevation

SCALE: 1:100 @ A3 SHEET SIZE: DWG NO: REVISION:
DRAWN: SL **A3 DA10 b**



B 04.05.2021 Revised DA Issue to Council
A 14.04.2021 Robinson Strata Management

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PROJECT:
**Alteration of Existing
Balconies**
88 North Steyne, Manly

CLIENT:
Robinson Strata Management
88 North Steyne, Manly

SHEET TITLE:
Proposed North Elevation

SCALE: 1:100 @ A3 SHEET SIZE: DWG NO: REVISION:
DRAWN: SL **A3 DA11 b**



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18 June 2021

The General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

CLAUSE 4.6 VARIATION – BUILDING HEIGHT
CLAUSE 4.3 MANLY LOCAL ENVIRONMENTAL PLAN 2013
ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING
87-88 NORTH STEYNE, MANLY

1. BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for alterations and additions to a residential flat building at **87-88 North Steyne, Manly**. The specific purpose of the alterations is to allow more natural light into the living spaces of each individual unit as well as creating an aesthetically pleasant façade that will modernise the apartment and facilitate wider views, particularly adding amenity to the balconies facing Manly Beach.

The proposed works include: -

- Demolition of all the existing concrete and metal balustrades for all 24 apartment units, as well as the installation of new frameless glass balustrades for all balconies (900mm in height), supported by stainless steel posts.

The proposed balcony balustrades will be commensurate in height and location with the existing balcony balustrades, therefore will not increase the existing building height. The applicable development standard for the height of buildings in the R3- Medium Density Residential Zone is **13m**. The highest point of the proposed balcony balustrades on the eighth floor will exceed the 13m limit by **9.8m** which represents 75% when expressed as a percentage however, the existing building height is **25.6m** high which is 96% over the development standard. The proposed balustrades will be commensurate in height and location as the existing concrete balcony balustrades.

This building height is identified as a development standard which requires a variation under Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP) to enable the granting of consent to the development application.

Environmental Planning Grounds Relied Upon

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of: -

- Compatibility with the character and amenity of the area. The proposed balcony balustrades do not change the floor plates and internal building configuration, and will be commensurate in height and location of the existing concrete balcony balustrade. The glass balustrade will also increase the natural light into the living areas of each unit as an added amenity. The proposal complements the character of the locality with similar neighbouring apartments having already adopted the use of glass balustrade, as seen in 84-85 North Steyne and 89 North Steyne, thus the proposal aligns appropriately with the distinct building character of the neighbourhood.
- Achievement of an appropriate and supportable bulk and scale for the building. The height of the proposed balcony balustrade is lower than the height of the existing approved residential flat building, and will be in the same location as the existing.

The request will now further expand on the identified environmental planning grounds.



Figure 1 – Photomontage of the proposed glass frame balustrades.

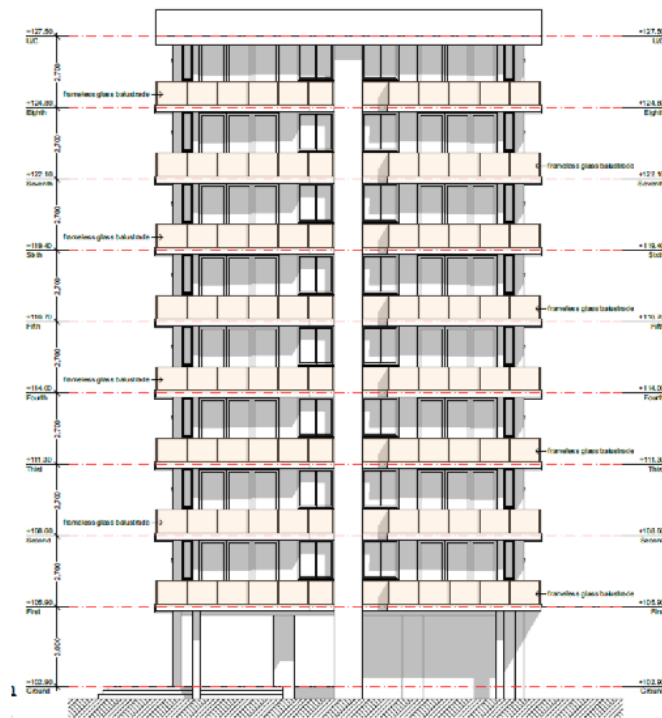


Figure 2 – Proposed East Elevation

2. IS THE STANDARD A DEVELOPMENT STANDARD?

Subject to Clause 4.3 of the Manly Local Environmental Plan 2013 (the LEP), Clause 4.3(2) provides:

- 2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- b) the proportion or percentage of the area of a site which a building or work may occupy,

- c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- d) the cubic content or floor space of a building,
- e) the intensity or density of the use of any land, building or work,
- f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- h) the volume, nature and type of traffic generated by the development,
- i) road patterns,
- j) drainage,
- k) the carrying out of earthworks,
- l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- m) the provision of services, facilities and amenities demanded by development,
- n) the emission of pollution and means for its prevention or control or mitigation, and
- o) such other matters as may be prescribed."

The height of buildings control falls under subsection (c); therefore, the control is a development standard and Clause 4.6 of the Manly Local Environmental Plan 2013 is applicable.

3. CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

- 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.

In the case of *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states: -

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The land is located in the R3 – Medium Density Residential zone. The objectives of the R3 zone are: -

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.

The resultant development will remain a residential flat building which is the predominant building form associated with R3 Medium density zone. The proposal for alterations and additions to the residential flat building are consistent with the third and fifth objectives. The first, second, and fourth objective are not relevant as they apply to redevelopments. The proposed alterations are very minor

in nature and the bulk and scale of the existing residential flat building will not be altered under this application.

The proposed balcony balustrades with a variation of 9.8m is as per existing approved residential flat building. The proposal will not increase the overall building height or height of balustrades for each individual unit.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1): -

- 1) The objectives of this clause are 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,
 - b) to control the bulk and scale of buildings,
 - 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),
 - 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,
 - e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Objective (a) and (b) is concerned with compatibility with the topographic landscape, building height and character of the area. In this regard, it is noted that the existing building is higher than 13m (25.6m) and the height of the proposed balustrades will be 22.8m which is 2.8m below the ridge height of the roof.

As the height of the proposed balustrade is less than the height of the existing dwelling, the resulting development will be visually compatible with the existing residential flat building and therefore the character of the area. The proposed glass balustrades will be commensurate in height and location of the existing balustrades. The quantum of change overall is considered to be minor as there will be no increase in bulk or scale to the existing residential flat building, therefore the proposal will be visually subservient to the existing and neighbouring buildings.

Objective (c) is concerned with the disruption of views to neighbouring properties and between public spaces. The proposed glass balustrade which will surround the balcony edges will create an aesthetically pleasant façade that will modernise the apartment and facilitate wider views, particularly adding amenity to the balconies facing Manly Beach. The proposed glass balustrade will not distract from the scenic amenity of Manly Beach and its surrounds. It may improve the appearance of the building which is important as it is in close proximity to the beach's shoreline, making the apartment appear modern and sleeker, blending in with the newer apartments on the street.

As the development will be occurring on the property, specifically the individual balconies per unit, the neighbouring properties views to Manly Beach will be retained.

Objective (d) relates to maintaining adequate solar access to private open space areas and habitable rooms. Currently the balconies are used by many residents as suitable clothes drying areas. The current concrete balustrade surrounding each balcony will not allow for the same permeation of sunlight as the proposed glass balustrades. Glass balustrades will also increase the natural light into the living areas of each unit as an added amenity.

The proposed works do not interfere with local amenity in terms of shadow impact, privacy or overlooking or unreasonable bulk and scale. The general bulk and scale of the building is already established – only a small component of the residential flat building will be changed. The residential flat building forms a part of the existing local character. The proposal does not change the general built form of the residential flat building.

Objective (e) is not applicable as the subject site is not in a recreation or environmental protection zone.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is the onus of the Council to form an opinion of satisfaction that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

For the reasons detailed in this request, I am of the opinion that Council may form the necessary opinion of satisfaction that there are sufficient environmental planning grounds to support a variation.

By contrast, a compliant proposal would not allow the upgrade of the lift in the manner intended.

Further, given that the development satisfies the objectives of the zone and the development standard, numerical compliance is considered unreasonable and unnecessary in the circumstances of the case.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

According to recent caselaw, Council is required to be satisfied that there are sufficient environmental planning grounds to support a variation to a development standard. Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and need not be site specific. The term 'environmental planning grounds' is not defined and may be interpreted with wide scope.

In addition to the environmental planning grounds detailed under Preconditions 1 and 2, I provide the following comments: -

- Even though environmental planning grounds need not be site specific, in this instance the existing residential flat building is over the 13m height limit. There is inevitable difficulty in strict compliance with the building height standard which must be taken into account when considering the nature of the proposed departure.
- A compliant proposal would unreasonably prevent the installation of balcony balustrades on the fifth to eight floor which is required for safety reasons when residents occupy the balcony space.
- To ameliorate the visual impact of the height variance, the selected frameless glass balustrade aligns with the distinct building character of the neighbourhood like 84-85 North Steyne and 89 North Steyne.

For the above reasons, it is considered there are sufficient environmental planning grounds to justify a variation to the building height development standard.

In the 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C, outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not

“satisfied” because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are “sufficient environmental planning grounds to justify contravening the development standard” is something that can be assessed on a case-by-case basis and is for the consent authority to determine for itself.

The more recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant’s written document itself, and in the Commissioner’s assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner’s approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority’s obligation is to be satisfied that “the applicant’s written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard.” He held that this means (emphasis added):

“the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant’s written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary”.

However, in the judgement of *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, there was further clarification of the construction of Clause 4.6. The Court asserted that:-

“... in order for a consent authority to be satisfied that an applicant’s written request has “adequately addressed” the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).”

This is consistent with a previous judgment in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, where on appeal of a commissioner’s decision, the Court affirmed at [78]

that “The request cannot ‘adequately’ address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters”.

Accordingly, in regard to the proposed variation to the building height, it is considered that this Clause 4.6 request has in fact demonstrated sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (Initial Action Pty Ltd v Woollahra Municipal Council (2018). Refer also to Section 5 below.

Additionally, under (Initial Action Pty Ltd v Woollahra Municipal Council (2018) at [24], the Chief Judge stated that “The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole”. It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

According to the relevant case law, there are other common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in *Wehbe v Pittwater Council* (2007).

The five tests under *Wehbe* are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

Test	Comments
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	<p>The objectives of the development standard are satisfied. Refer to discussion under Precondition 2.</p> <p>The objectives of the standard are concerned with the achievement of compatibility with the character, amenity and landform of the area. I conclude that the proposed building height is appropriate as it results in a built form that is compatible with the character, amenity and landform area.</p>

	<p>The residential flat building will retain its compatible contextual relationship the site and neighbouring properties.</p> <p>The application demonstrates that objectives of the standard are achieved through the qualitative design outcomes rather than a strict numerical approach.</p>
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development however the objective is achieved and strict compliant is unreasonable and unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	Not applicable — the development standards of maximum building height cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions. The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land	The zoning of the land is appropriate for the development standard.

should not have been included in the particular zone.	
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5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. (Initial Action Pty Ltd v Woollahra Municipal Council (2018)).

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the discussion concerning objectives for development within the zone in which the development is proposed to be carried out. The objectives and comments are provided under Precondition 2 at Page 6.

The resulting development continues to improve the amenity for the residents in a medium-density residential environment and the built form is compatible with established local character and amenity.

We maintain that the variation to the building height does not result in development that is incompatible with the environmental character of the locality. The proposal demonstrates harmony with the relevant zone objectives, the objectives of the standard and satisfies the public interest test.

6. CONCLUSION

The purpose of the application is to allow for improved amenity to the balconies facing Manly Beach. presentation of the site to the street and improve aesthetic quality of the streetscape.

The alterations and additions to the residential flat building necessitate a height increase beyond the prescribed 13m however, the proposal will be commensurate in height and location of the existing balcony balustrades. The numerical extent of the non-compliance is 75%, as per existing balcony balustrade.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



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