

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 7 FEBRUARY 2024**

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



**Peter Robinson**  
**Executive Manager Development Assessment**

**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 February 2024

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
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<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS .....</b>	<b>5</b>
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4.2	DA2023/0281 - 3 / 43 A Ethel Street, SEAFORTH - Demolition works and construction of an attached dual occupancy .....	47
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4.4	DA2023/1458 - 49 Pittwater Road, MANLY - Demolition works and construction of a studio with associated landscaping .....	183
4.5	DA2023/1232 - 397 Condamine Street, ALLAMBIE HEIGHTS - Alterations and additions to a childcare centre .....	216
<b>5.0</b>	<b>NON PUBLIC MEETING ITEMS .....</b>	<b>269</b>
	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.	
5.1	DA2022/2199 - 19 Sydney Road, MANLY - Demolition works and construction of shop top housing .....	269
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5.3	Proposed Delegation to Council's Chief Executive Officer (General Manager) for variations to a development standard in excess of 10% of Height of building and Floor space ratio for class 2-9 buildings. ....	391

## **ACKNOWLEDGEMENT OF COUNTRY**

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

### **1.0 APOLOGIES & DECLARATIONS OF INTEREST**

Nil

### **2.0 MINUTES OF PREVIOUS MEETING**

#### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 13 DECEMBER 2023**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 13 December 2023 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2023/0720 - VISTA AVENUE, BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO RECREATION FACILITY OUTDOORS
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2024/023493
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plan &amp; Elevations</a>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is the council.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0720 for Alterations and additions to Recreation Facility Outdoors at Lot 1432 and Lot 1431 in DP752038, Vista Avenue, BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0720
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<b>Responsible Officer:</b>	Krystal Narbey (Consultant Planner - GAT & Associates)
<b>Land to be developed (Address):</b>	0 Vista Avenue, Balgowlah (Bareena Park Tennis Club)
<b>Proposed Development:</b>	Alterations and additions to commercial development - Alterations and additions to Recreation Facility Outdoors.  Specifically: The installation of lighting to three (3) of the existing five (5) tennis courts, with a total of eight (8) lighting poles, and an extension of operational hours for the use of the premises, commonly referred to as the Bareena Park Tennis Club.
<b>Zoning:</b>	RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council (Local Planning Panel)
<b>Land and Environment Court Action:</b>	N/A
<b>Owner:</b>	Northern Beaches Council
<b>Applicant:</b>	Eugene Du Plessis on behalf of Bareena Park Tennis Club (lessee)

<b>Application Lodged:</b>	13/06/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	21/06/2023 to 19/07/2023 and; 26/09/2023 to 24/10/2023 and; 27/12/2023 to 25/01/2024.
<b>Advertised:</b>	27 December 2023
<b>Submissions Received:</b>	Total Submissions: 235 (197 unique) Supporting submissions: 192 (170 unique) Objecting submissions: 42 (27 unique)
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 216,794.05
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## EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of a development application which seeks the installation of eight (8) 7.0m high lighting structures consisting of twelve (12) lights, to three (3) tennis courts, and an extension of operational hours for the use of the premises, at the site known as 0 Vista Avenue, Balgowlah Heights (Lot 1431 and 1432 in DP 752038).

The site is Council owned land and as such the proposed development is subject to Council's Management of Council related DA's policy. In accordance with the management statement prepared for this application to manage perceived and known risks, the DA has been externally assessed by an independent planning consultant, and exhibited for 28 days, as well as being referred to the Northern Beaches Local Planning Panel (NBLPP) for determination.

The subject site is zoned RE1 (Public Recreation) under the Manly Local Environmental Plan 2013. Development for the purpose shown on the Land Zoning Map (Public Recreation), including any development that is ordinarily incidental or ancillary to development for that purpose is permitted with consent. The proposal relates to installation of lighting to existing recreational and community facilities (tennis courts and associated buildings) at the premises, commonly referred to as the Bareena Park Tennis Club. Other general site works include the planting of four (4) new street trees fronting Vista Avenue with additional privacy screening fixed to the existing court enclosure; power pole upgrades; sign for user conduct and; garden lighting along the southern access path. Minor excavation is required to facilitate the erection of the lighting structures.

The application was notified to surrounding properties in accordance with the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2021 and Council's Community Participation Plan between 21/06/2023 to 19/07/2023; Re-notified between 26/09/2023 to 24/10/2023 to enable exhibition of Council's Conflict of Interest Management Strategy and; between 27/12/2023 to 25/01/2024 in response to submitted amended documentation and additional information.

A total of 235 submissions were received, with 197 unique submissions identified.

Concerns raised in the submissions related to:

- Noise impact
- Light intrusion/spillage
- Loss of on-street car parking
- Availability of other courts that accommodate night-time play
- Validity of the submissions in support of the proposal
- 10:00pm (originally proposed closing time) is too late for a residential area
- The application has been refused twice for the installation of lighting
- Bandicoot population and impact to night-time wildlife

Submissions in support raised the following:

- Ensures long term viability of the club
- Promotes community health and engagement
- Promotes use of the facility in winter months that is complementary to the existing hours available during summer months

In response to the submissions and concerns raised during assessment, Council requested additional information to be submitted by the applicant. In response, the applicant submitted amended plans and supporting documentation including an acoustic assessment; parking study; updated plan of management; obtrusive light assessment; updated survey plan; and amended statement of environmental effects. The amended and supporting documentation resolved the key concerns raised by Council, with particular respect to amenity and parking impacts. Additionally, the specified LED Sports Lights (*being a newer technology compared to previous applications for lighting*) and operational policies, including hours of



operation, stipulated within the Plan of Management have satisfactorily addressed the management and reduction of impacts raised by submissions.

This assessment finds that the matters raised by Council and the community have been reasonably resolved. Having regard to the matters for consideration under Section 4.15 of the EP&A Act, it is recommended that Development Application DA/2023/0720 be approved, subject to conditions of consent. The proposed development is not considered to result in any unacceptable impacts to adjoining properties and is deemed suitable for the site.

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development (as amended) relates to the erection of eight (8) lighting structures to an existing recreational and community facility, the 'Bareena Park Tennis Club', with extended operating hours. The proposed times of operation of the recreational and community facility (inclusive of court lighting to courts 1, 2 and 3) are as follows:

- **Monday – Sunday:** 7:00am - 9:00pm

Other general site works include the planting of four (4) new street trees fronting Vista Avenue with additional privacy screening fixed to the existing court enclosure; power pole upgrades; a sign regulating visitor/member conduct and; garden lighting along the southern access path. Minor excavation is required to facilitate the erection of the lighting structures (i.e. footings).

The submitted Plan of Management (titled: *The Bareena Tennis Club Revised Plan of Management*), delegates the use, care, control and management of the facilities to the Bareena Park Tennis Club, as the operational proponent (lessee) of the premises.

### 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 Development Control Plan 2013 – Part 3.3 Landscaping
- Manly Development Control Plan 2013 – Part 3.4 Amenity
- Manly Development Control Plan 2013 – Part 3.10 Safety and Security
- Manly Development Control Plan 2013 – Part 5.4 Environmentally Sensitive Lands
- Manly Development Control Plan 2013 – Schedule 3, Part A1 Requirements for Vehicles

The recreational and community facility is adjacent to low-density residential dwellings resulting in the potential for issues with acoustic amenity, light spillage and availability of parking. A Request for Additional




Information was issued to the applicant on the 18/10/23, seeking further assessment of acoustic, lighting and parking impacts. It is considered the information provided adequately addresses these concerns to ensure minimal environmental impact on nearby residences as a result of the proposal (as amended).

## SITE DESCRIPTION

<p><b>Property Description:</b></p>	<p>0 Vista Avenue, Balgowlah Heights (Lot 1431 and 1432 in DP 752038)</p> <div data-bbox="523 609 1334 976"> <p>Subject site as viewed from Vista Avenue Source: GAT &amp; Associates site inspection 22<sup>nd</sup> September 2023</p> </div> <div data-bbox="523 1052 1334 1464"> <p>Subject site as viewed from Vista Avenue – Relationship between 33 Vista Avenue and Courts 1, 2 and 3 Source: GAT &amp; Associates site inspection 22<sup>nd</sup> September 2023</p> </div> <div data-bbox="510 1601 1347 1937"> <p>Subject site as viewed from the western side (looking eastward) of Courts 1, 2, 3 Source: GAT &amp; Associates site inspection 22<sup>nd</sup> September 2023</p> </div>
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	 <p>Relationship between Courts 1, 2, 3, the access pathway, and 33 Vista Avenue (looking eastward)  <i>Source: GAT &amp; Associates site inspection 22<sup>nd</sup> September 2023</i></p>
<p><b>Detailed Site Description:</b></p>	<p>The subject site (Bareena Park Tennis Club building and Courts 1, 2 and 3) consists of two (2) allotments located on the western side of Vista Avenue. To the north is Bareena Park, located on the corner of Curban Street and Vista Avenue. To the south are six (6) residential dwellings fronting Vista Avenue, and the Balgowlah Bowling Club fronting Bareena Drive.</p> <p>The site is generally regular in shape with a frontage of 45.06m along Vista Avenue and a depth of 89.915m. The site has a total surveyed area of 4,051.40m<sup>2</sup>.</p> <p>The site and facilities are located within the RE1 Public Recreation zone and accommodate five (5) existing Tennis Courts, with community buildings (clubhouse). The development is only relevant to Courts 1, 2 and 3 on the eastern side, closest to Vista Avenue.</p> <p>The site distinctly declines in slope from the south towards the north. Tennis Courts 1,2 and 3 are level with one another, though notably stepped down from the southern side of the site. The community building (tennis clubhouse) is elevated above Courts 1, 2 3, and is accessed via tiered stairs and associated planter boxes and retaining walls.</p> <p>The site is adjacent to Bareena Park. The lots relevant to the development are sparsely vegetated with low shrubs and lawn, however, the premises overall is densely vegetated in the north-western corner (adjacent to Courts 4 and 5).</p>

**Map:**





### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by Bareena Park to the north, located on the corner of Curban Street and Vista Avenue. To the south are six (6) residential dwellings fronting Vista Avenue, and the Balgowlah Bowling Club (zoned RE2 Private Recreation) fronting Bareena Drive. Surrounding development, including the eastern side of Vista Avenue is otherwise characterised as low-density residential development consisting predominantly of single and two-storey detached dwelling houses, reflective of the R2 Low Density Residential zone.

### SITE HISTORY

A search of Council's records has revealed the following relevant history (with respect to lighting):

#### DA 68/1999 - Refused

Development is described as the installation of lights on 3 tennis courts.

#### DA 60/2008 - Refused

Development is described as the installation of tennis court lighting on courts 4 and 5 (the western two courts elevated above the existing clubhouse building, to the west) with illumination until 10:30pm. The application was pursuant to the former Manly Local Environmental Plan 1988.

The application was refused on the 16 June 2008 on the following grounds:

- Inconsistent with Objective 4(d)(1) of the MLEP88.
- Inconsistent with Open Space Zone objectives 1(a) of Clause 10 of the MLEP88.
- Detrimental impact on the amenity of the area in relation to:
  - Additional noise resulting from the night use of the courts and clubhouse;
  - Noise from people/cars leaving the club;
  - Impact on the privacy of surrounding residential properties;
  - Possible increase in anti-social behaviour;



- Reduced security in surrounding residential properties;
- Reflected light spillage onto adjoining residential properties;
- Additional demand for street parking in the evenings.
- The site is considered unsuitable for the proposed use.
- The proposal is contrary to the public interest.

A Section 82A was lodged and subsequently withdrawn by the applicant.

Additional applications include:

**DA 140/1999 – Approved**

Described as enclosure of part of terrace to the club and refurbish.

**DA 1010/1998 – Determination Unspecified.**

Alterations and additions to toilets and shower.

The land has been used for recreational and community purposes for an extended period of time.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Northern Beaches Community Participation Plan 2019.

As a result of the public exhibition process council is in receipt of 235 submissions from:

Name(s):	Address:
Details Withheld	Details Withheld (x6)
Ms Linda Denise Paris Mr Thomas Martin Pope	34 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Ms Samantha Jane Varano	121 Woodland Street BALGOWLAH NSW 2093
Mr Simon James	19 Cutler Road CLONTARF NSW 2093
Mr Stuart Trueman	34 Cutler Road CLONTARF NSW 2093
Dr James Kyung-Wook Choi	85 Cutler Road CLONTARF NSW 2093
Andrew Cloke	7 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Fiona Houghton	20 Cutler Road CLONTARF NSW 2093
Andrew Thomas Healy	3 / 186 Woodland Street BALGOWLAH NSW 2093
Andrew Mcnee	43 West Street BALGOWLAH NSW 2093
Mr Richard Andrew Binch	5 / 57 A Ethel Street SEAFORTH NSW 2092
Mrs Paula Jean Marlow	1 / 5 Jackson Street BALGOWLAH NSW 2093
Mr Anthony Kutra	35 Edgecliffe Esplanade SEAFORTH NSW 2092
Ms Anne Elizabeth Howard	4 Tobruk Avenue ALLAMBIE HEIGHTS NSW 2100
Tony Reynolds	Address Unknown
Ms Lucy Vivien Tessa Elliott	97 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Ms Valerie Anne Allen and Mr Rodney Harold James Allen	6 Crowea Place FRENCHS FOREST NSW 2086
Mrs Ai Lin Clements	4 / 31 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Christopher Cecil Thorp	38 Bungalow Avenue BALGOWLAH NSW 2093
Samuel Moore	25 Barrabooka Street CLONTARF NSW 2093
Mr Bryan Geoffrey Dalton	23 Cutler Road CLONTARF NSW 2093



Name(s):	Address:
Mr Ross William Mcclean	67 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Brendon James Quinn	25 Curban Street BALGOWLAH HEIGHTS NSW 2093
Ms Lorraine Joy Spanton	7 / 38 The Crescent FAIRLIGHT NSW 2094
Carmella Farrenberg	Address Unknown
Mr Glen John Richardson	69 Birkley Road MANLY NSW 2095
Mr Craig Gregory Oliver	21 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Jindong Yang	55 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Samuel Stephen James Ayliffe	Suite 10 37-38 East Esplanade MANLY NSW 2095
Mrs Sarah Jane Woodward	24 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Mark Nissen	Address Unknown
Mrs Virginia Lizelle Stack	202 Whale Beach Road WHALE BEACH NSW 2107
Chris Gotham	10 Elfrida Street MOSMAN NSW 2088
Mr Derek Arthur Owen Jones	60 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mr Luka Damic	4 Ethel Street BALGOWLAH NSW 2093
Mrs Tanya Middleton	41 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Ms Wendy Leigh Robertson	7 Willawa Street BALGOWLAH HEIGHTS NSW 2093
William Dekker	2 / 31 Clarke Street NARRABEEN NSW 2101
Mrs Tiffany Isobel Egan	50 Cutler Road CLONTARF NSW 2093
Jian Wang	90 Cutler Road CLONTARF NSW 2093
Tennis NSW	Sydney Olympic Park 1 Tennis Centre SYDNEY OLYMPIC PARKNSW 2127
Mr Jeffrey Bruce Carroll	56 / 8 Koorala Street MANLY VALE NSW 2093
Ms Joanne Marie Bushby	21 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Nick Grant	26 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Paul Gavin White	100 A Seaforth Crescent SEAFORTH NSW 2092
Mr Mikael Peter Dahlgren	10 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Lindsay Michael Hamilton	7 A Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Mr Peter Willis Fysh	4 / 1 - 3 Griffin Street MANLY NSW 2095
Ms Helen Lorraine Brasher	4 / 85 - 87 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Stephen Sears Baldwin	13 Valley Road BALGOWLAH HEIGHTS NSW 2093
Mr Francis Peter Bannon	2A/138 North Steyne MANLY NSW 2095
Miles Andrew Tissington	16 A Gladys Avenue FRENCHS FOREST NSW 2086
Mr William Hugh Griffith	21 Baranbali Avenue SEAFORTH NSW 2092
Mrs Gillian Eileen Mursell	45 Wood Street MANLY NSW 2095
Mrs Carol Townley	25 White Street BALGOWLAH NSW 2093
Mr Simon Geoffrey Townley	25 White Street BALGOWLAH NSW 2093
Kwok Cho Tang	Address Unknown
Mr Ashley Stuart McPhee	72 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Roy Maxwell Easton	64 / 1337 Pittwater Road NARRABEEN NSW 2101
Murray Raymond Hamer	1 Moore Street CLONTARF NSW 2093
Chin Teng	Address Unknown
Mrs Noni Elaine Lawrence	1 / 5 Cove Avenue MANLY NSW 2095
Mr David Brian Milton	49 Malvern Avenue MANLY NSW 2095



Name(s):	Address:
Mrs Kerrie Ann Patten	1 Cecil Street FAIRLIGHT NSW 2094
Ms Margaret Teresa Lang	8 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
Mr Neil Lindsey Ewin	52 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Leonie Anne Lake	1 Iluka Avenue MANLY NSW 2095
Mr Kanagasabapathy Ainkaran	2 / 28 Dalwood Avenue SEAFORTH NSW 2092
Peter Ashton	Address Unknown
Mr Mark Richard Ellis	469 Sydney Road BALGOWLAH NSW 2093
Mr David John Mortimer	3 / 85 - 87 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Matthew Holt	40 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093
Mr Mark James Leslie	2 Hilltop Crescent FAIRLIGHT NSW 2094
Mr Ross William McLean	4 / 67 Wanganella Street BALGOWLAH NSW 2093
Mr Giles Anthony Swindley	26 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Ms Michele Mckenzie	26 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Colin Carmichael Henson	4 Farrar Street BALGOWLAH HEIGHTS NSW 2093
Mr Mark Gregory Forrest	9 Beaconview Street BALGOWLAH HEIGHTS NSW 2093
Karyn Chapman	6 Farrar Street BALGOWLAH HEIGHTS NSW 2093
Darren Melaniuk	2 / 2 West Street BALGOWLAH NSW 2093
Mr Brian Ronald Bignell	6 Stratford Drive BELROSE NSW 2085
Ms Sally Grace Treeby	22 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Mrs Catriona Jan Corbett	16 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mr Graeme Douglas Clark	15 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Robert Menzies	26 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mrs Linda Muriel Pearce	3 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mrs Sarah Reynolds	10 Acacia Road SEAFORTH NSW 2092
Mrs Angela Fong- Clark	15 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Tommy Logtenberg	7 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Mrs Leisa Anne Barry	32 / 29 The Crescent MANLY NSW 2095
Mr Damian Joseph Kernahan	51 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Anne Hutchison	18 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Rebecca Warren	7 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Mr John Collis Barry	153 Seaforth Crescent SEAFORTH NSW 2092
Mr Andrew James Creber	17 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mrs Gillian Christine Pearce	50 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Brian Gregory Fitzgerald	440 / 25 Wentworth Street MANLY NSW 2095
Mr Nicholas James Robertson	7 Willawa Street BALGOWLAH HEIGHTS NSW 2093
Mrs Susan Maree Davison	5 Suffolk Avenue COLLAROY NSW 2097
Mr John Gerard Doyle	30 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093
Mr Andrew David Cheong	17 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Susanna Elizebeth Cronje	34 / 1 Lauderdale Avenue FAIRLIGHT NSW 2094
Mrs Roshani Tara Ainkaran	2 / 28 Dalwood Avenue SEAFORTH NSW 2092
Mr Jeffery Grant Sturrock	1 Boyer Road BEACON HILL NSW 2100
Mrs Elizabeth Ann O'brien	32 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Caroline Anne Becker	66 Ponsonby Parade SEAFORTH NSW 2092





Name(s):	Address:
Ms Claire Frances Newey	14 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mrs Sarah Jean Robertson	11 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mrs Heather Munro Rudkin	17 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mr Sherif Hassanein	53 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Wesley William Dening	5 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mrs Beverley Jill Prior	103 / 8 - 28 The Corso MANLY NSW 2095
Mr Graham John Younger Clements	18 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mr Shane James Mason	15 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mr Neil James Arckless	11 Willawa Street BALGOWLAH HEIGHTS NSW 2093
Toby Daniel	14 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mr Paul Jonathan Chasemore	21 Barrabooka Street CLONTARF NSW 2093
Ross Douglas	Address Unknown
Mr Benedict John Coutts Sarson	16 Brisbane Street FAIRLIGHT NSW 2094
Mrs Nicole Louise Larcombe	3 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mrs Pauline Lesley Gazzard	2 B Edgecliffe Esplanade SEAFORTH NSW 2092
Mr Alexander Michael Paul Beaumont	3 / 7 Reddall Street MANLY NSW 2095
Ms Claire Gabriel Darcy	69 Condamine Street BALGOWLAH HEIGHTS NSW 2093
Chris Coghlan	Address Unknown
Amanda McLean	6 Adrian Place BALGOWLAH HEIGHTS NSW 2093
Mrs Wendy Grabe	38 The Drive FRESHWATER NSW 2096
Mrs Jennifer Louise Springhall	43 Peronne Avenue CLONTARF NSW 2093
Mrs Elizabeth Forrest	9 Beaconview Street BALGOWLAH HEIGHTS NSW 2093
Mrs Lisa Caroline Leigh Young	24 Beatrice Street CLONTARF NSW 2093
Nancy Mclean	15 Hoover Place CROMER NSW 2099
Mr Matthew Edward Granville Lang	8 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
Ms Carole Carter	38 Kempbridge Avenue SEAFORTH NSW 2092
Toby Carter	38 Kempbridge Avenue SEAFORTH NSW 2092
Paul Maurice Howard	4 Tobruk Avenue ALLAMBIE HEIGHTS NSW 2100
Ms Rosalind Joy Lock	5 / 15 White Street BALGOWLAH NSW 2093
Mr Mario Alfonso Contreras Roman	3 / 66 West Street BALGOWLAH NSW 2093
Mr Joseph Stewart Harvey	C/- Hobbs Jamieson Architecture 2/536 Sydney Road SEAFORTH NSW 2092
Mr Matthew Ian Crossley	6 Glen Street FRESHWATER NSW 2096
Aashild Nilsen Walker	54 Bungalow Avenue BALGOWLAH NSW 2093
Soeren Iversen	603 / 4 Sylvan Avenue BALGOWLAH NSW 2093
Ms Kelly Louise Hooper	38 Condamine Street BALGOWLAH HEIGHTS NSW 2093
Ms Belinda Ellen Sanderson	68 Condamine Street BALGOWLAH NSW 2093
Mr Stephen John Titus	2B Craig Avenue MANLY NSW 2095
Rebecca Demmery	23 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Jennifer Nissen	Address Unknown
Nevena Krups	18 Woodland Street BALGOWLAH HEIGHTS NSW 2093



Name(s):	Address:
Ms Lana Squires	1 / 8 Rickard Street BALGOWLAH NSW 2093
Miss Sheridan Bowes	98 Cutler Road CLONTARF NSW 2093
Rachael Olivia Balfour Scott	61 Harbord Road FRESHWATER NSW 2096
Yolanda Chang	5 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mrs Michelle Alexandra Oliver	21 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Anjelina Francesca Kirwan	13 Lone Pine Place NORTH BALGOWLAH NSW 2093
Mr Larry John Kirwan	13 Lone Pine Place NORTH BALGOWLAH NSW 2093
Mrs Carolyn Gai Gibbons	14 A Gordon Street CLONTARF NSW 2093
Ms Rachel May Keeling	11 Hogan Street BALGOWLAH HEIGHTS NSW 2093
Mr Russell Keeling	11 Hogan Street BALGOWLAH HEIGHTS NSW 2093
Mrs Mary Frances Celestine Deveza Singson	89 A Campbell Parade MANLY VALE NSW 2093
Mrs Monica Mae Leffler	83 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Tim Barry	Address Unknown
Mr Jason Peter Jungblut	8 Arabanoo Street SEAFORTH NSW 2092
Mr Luke Laurence Brennan	17 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Dr Joanne Stow	32 Arthur Street FAIRLIGHT NSW 2094
Mrs Lyndall Jane Mcilvain	50 Robertson Road NORTH CURL CURL NSW 2099
Mr David Ian Marlborough	19 / 3 Corrie Road NORTH MANLY NSW 2100
Liam Barry	67 Wood Street LANE COVE NSW 2066
Lucinda Jane Teresa Haremza	22 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Mark William Hayward	1 A Austin Street FAIRLIGHT NSW 2094
Mr Ross Stanley BirchMrs Karen Lisa Birch	119 Woodland Street BALGOWLAH NSW 2093
Mrs Emily Margaret Washbrook	51 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Susan Claire Cummins	58 Cutler Road CLONTARF NSW 2093
Mrs Jane Mcphee	72 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Rachel Jane Swieconek	C/- Robson Rebuild PO Box 321 FIVE DOCK NSW 2046
Mr Graham James Rattue Mrs Noreen Rattue	22 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Julie Hutchings	36 A Oxford Falls Road BEACON HILL NSW 2100
Mrs Sarah Roberts	31 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Sharmila Normington	28 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Mr Daniel Normington	28 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Mr Jeremy Nicholas Elliott	97 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Ms Sally Elizabeth Fisk	305 / 2 Sylvan Avenue BALGOWLAH NSW 2093
Mr David Peck	6 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mr Anson Douglas Blackwood Sewell	80 Wood Street MANLY NSW 2095
Mr Alexander James Granville Lang	2 / 2 Dudley Street BALGOWLAH NSW 2093
Mr Simon Stephen Roberts	31 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Manish Jitendra Patel	23 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Ms Jennifer Ann Doherty	31 A Amiens Road CLONTARF NSW 2093



Name(s):	Address:
Mrs Greer Anne Couston	25 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Ms Tina Frances Morrison	6 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Michael John Cummins	58 Cutler Road CLONTARF NSW 2093
Diana Rampton	26 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Rebecca Jane Hollis-Patel	23 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Meg Clare Cherry	8 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Warren Raymond Barry	1 Peronne Avenue CLONTARF NSW 2093
Nicole Wheat	Address Unknown
Mr Mark Anthony Simmonds	33 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Megan Holbeck	Address Unknown
Mr Shaun Daniel Austin Mrs Danielle Marie Austin	27 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr David Paul Simmonds	33 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Richard Benjamin Heath	1 Kanangra Crescent CLONTARF NSW 2093
Mr James Philip Smealie	68 Westmoreland Avenue COLLAROY NSW 2097
Mr David Leslie Griffin	13 / 8 Koorala Street MANLY VALE NSW 2093
Mr Mark David Woolven	8 Curban Street BALGOWLAH HEIGHTS NSW 2093
Peter Edward Drummond Charlton	29 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Caroline Anne Charlton	29 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Peter Smith	Address Unknown
Mr Ian Thurlbeck Humphrey Mrs Susan Denise Humphrey	36 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Bronwyn Heather Harrison	11 Bungaloe Avenue BALGOWLAH HEIGHTS NSW 2093
Ms Barbara Podhorecka	11 / 2 Cove Avenue MANLY NSW 2095
Mr Stuart Robert Menogue	46 Bungaloe Avenue BALGOWLAH NSW 2093
Mr Haydn James Alfred Miller	1 / 7 Boyle Street BALGOWLAH NSW 2093
Mr Austin Thomas Whitehead	61 Bungaloe Avenue BALGOWLAH HEIGHTS NSW 2093
James Gerrish	36 Curban Street BALGOWLAH HEIGHTS NSW 2093
Brett Pettersen	Address Unknown
Mr Sean Ian Innes	18 Barrabooka Street CLONTARF NSW 2093
Mr Peter Leonard ScottSmith	28 Woodland Street BALGOWLAH HEIGHTS NSW 2093

Of the 235 submissions received, there were 192 in support and 42 in objection. Following re-notification, several submissions were duplicated with 197 unique submissions identified.

The following is a summary of the issues and comments received within the submissions:

Concerns raised in the submissions related to:

- Noise impact
- Light intrusion/spillage
- Loss of on-street car parking
- Availability of other courts that accommodate night-time play
- Validity of the submissions in support of the proposal
- 10:00pm (originally proposed closing time) is too late for a residential area
- The application has been refused twice for the installation of lighting
- Bandicoot population and impact to night-time wildlife



The above issues and comments raised are addressed as follows:

- **Noise impact**

Comment: The proposal (as amended) provided an acoustic assessment (*prepared by RWDI Australia Pty Ltd, dated 11 December 2023*) to assess the impact of extending the operating hours to 9:00pm all days of the year; an assessment against the relevant standards pertaining to sound transmission; recommendations to reduce noise and preventative measures and; certification that the noise impact complies with relevant acoustical standards. Currently, the premises operates until sunset during summer months (being around 8:10pm) without artificial lighting, with reduced use as a result of earlier sunset in winter months. Consequently, the proposed hours of operation seek less than an additional hour from the current operational hours in summer, though it is appreciated operating until 9:00pm is an increase of approximately 4 hours through winter months.

The recommendations of the acoustic assessment have been incorporated into the plan of management, being:

- No social events or coaching during evenings (after 7pm);
- Signs will be installed within and around the tennis courts reminding players and spectators to keep noise to a minimum.

Additionally, the plan of management incorporates the following policies and procedures:

- Automatic lights off at 9:00pm;
- No coaching after 7pm, nor on weekends;
- No squads after 6pm;
- No more than 12 players on Courts 1, 2 or 3 ('the three courts') after 8pm;
- No music or spectators permitted;
- Guidelines for acceptable member behaviour will be emailed following court hiring (booking);
- Complaints will be managed by the club secretary;
- Preservation of existing motion-activated security cameras and lighting to monitor behaviour.

The proposal (as amended) was referred to Council's Environmental Health Team, confirming that the extension of hours is unlikely to negatively impact the neighbouring residents to an unacceptable level with regard to the Industrial Noise Policy setting for the evening period, subject to conditions. As recommended in the acoustic report and incorporated into the updated plan of management, the lights will be automatically set to turn off at 9:00pm, which is acceptable.

Appropriate conditions of consent are provided as part of the recommendation that the subject application be approved.

- **Light intrusion/spillage**

Comment: The proposal (as amended) provided an obtrusive light assessment (*prepared by ShineOn, undated*) to assess the potential for obtrusive light as set out in Australian Standard 4282-2019, and included an Illuminance Report, Light Specification Sheet and Lighting Design Certificate. The lighting specification and design reduces light spillage by incorporating improved LED technology lights, with rear shields and 4,000k colour temperature. Similarly the new pathway lighting will be non-intrusive LED solar powered garden lighting.

In order to mitigate potential light impacts to native wildlife (including long-nosed bandicoots which have been recorded near the subject site), the lighting design is to be assessed by a suitably qualified ecologist and certified as complying with the principles of the National Light Pollution Guidelines for Wildlife (Department of Environment and Energy, May 2023).





Appropriate conditions of consent are provided as part of the recommendation that the subject application be approved.

- **Loss of on-street car parking**

Comment: The proposal (as amended) provided a parking and travel survey (*prepared by Du Plessi + Du Plessi Architects, November 2023*) to assess the parking implications of the premises operating until 9pm. Subject to appropriate conditions of consent, Council's Traffic Engineer is satisfied that parking concerns have been addressed.

- **Availability of other courts that accommodate night-time play**

Comment: The availability of other courts and recreational services does not render the property unsuitable for the proposed development.

- **Validity of the submissions in support of the proposal**

Comment: The validity of submissions received does not render the property unsuitable for the proposed development, nor derogate from the assessment of the development. Per Council's Community Participation Plan, all submissions received during notification are considered as part of the assessment.

- **10:00pm (originally proposed closing time) is too late for a residential area**

Comment: The proposal (as amended) has adequately mitigated amenity impacts to enable operations until 9:00pm throughout the year. 9:00pm is approximately 50 minutes more than the current hours facilitated by the club during the summer months.

Subject to appropriate conditions of consent, Council's Environmental Health officer is satisfied that operating to 9:00pm is reasonable.

- **The application has been refused twice for the installation of lighting**

Comment: Previous applications were pursuant to repealed environmental planning instruments. The proposal (as amended) has satisfactorily addressed the issues raised in relation to the key issues of amenity and traffic impacts. The submitted plan of management reasonably addresses amenity and safety concerns. Appropriate conditions of consent are provided as part of the recommendation that the subject application be approved.

- **Bandicoot population and impact to night-time wildlife**

Comment: Subject to appropriate conditions of consent, Council's Natural Environment (Biodiversity) officer is satisfied that impacts to wildlife are minimised.

## REFERRALS

Internal Referral Body	Comments
Environmental Health	<p><b><i>Supported, with conditions</i></b></p> <p><b>Comments concerning the application as originally submitted:</b></p> <p>Environmental Health is concerned with:</p>



Internal Referral Body	Comments
	<p>1. Light spill and glare 2. Noise from players and tennis balls.</p> <p>It appears no acoustic impact assessment has been carried out, while noise was addressed within the SEE, Environmental Health would like to review a report by an appropriate qualified and experienced person showing the noise impacts and mitigation measures proposed from this intensification of the use outside day time hours.</p> <p>We consider the proposals impact as "industrial" development within a "Residential" area. As such we consider any additional noise from 9pm to potentially adversely impact on residential amenity; and similarly with the impact of proposed elevated lighting.</p> <p><b>Updated comments relating to the additional information submitted:</b></p> <p>Environmental Health has reviewed the amended Plan of Management, Noise Impact Report dated 11 December 2023 and the amended master plans. The extension of hours is unlikely to negatively impact the neighbouring residents to an unacceptable level with the Industrial Noise Policy setting the evening period from 6:00pm - 10:00pm therefore Environmental recommends approval subject to conditions.</p> <p>The lights will be automatically set to turn off at 9:00pm which Council thinks is reasonable.</p> <p>The proposal is therefore supported.</p>
Traffic Engineer	<p><b>Supported, with conditions</b></p> <p><b>Comments concerning the application as originally submitted:</b></p> <p>Additional information is required regarding the parking availability within the area and Travel Mode surveys for both staff and customers of the Club.</p> <p><b>Updated comments relating to the additional information submitted:</b></p> <p>The Parking &amp; Travel Survey report prepared by Bareena Park Tennis Club, dated November 2023 and the Amended Plans, Drawing No. A02 &amp; A04, issue D, designed by DU PLESSIS ARCHITECTS, dated 11/12/2023 have been reviewed by the Traffic team.</p> <p>All the Council's comments [dated 13/10/2023] on the first version of the documents have been addressed in the Parking &amp; Travel Survey report. It is noted that parking analysis has been undertaken, demonstrating that there is adequate parking availability within the area to cater for the club's parking demands.</p> <p>Travel Mode surveys have been included in the Parking &amp; Travel Survey report, demonstrating that there is a lower parking demand</p>



Internal Referral Body	Comments
	<p>for the proposal. The survey shows that many members live close to the tennis courts, and more than half of the customers walk or cycle to the courts.</p> <p>All the Council's comments [dated 13/10/2023] on the first version of the documents have been addressed.</p> <p>Subject to conditions, the application can be supported from a traffic perspective.</p>
Natural Environment Flood	<p><b>Supported, without conditions</b></p> <p>The proposal seeks consent for the installation of lights on existing Bareena Park Tennis Club tennis courts 1- 3.</p> <p>The works are located outside of the identified Medium Flood Risk Precinct (Flood Planning Area). Therefore, the flood controls outlined in Section 5.4.3 Flood Prone Land from the Manly DCP 2013 are not applicable.</p> <p>The proposal is therefore supported.</p>
Natural Environment Biodiversity	<p><b>Supported, with conditions</b></p> <p>The comments in this referral relate to Manly LEP Clause 6.5 Terrestrial Biodiversity.</p> <p>A total of eight poles to accommodate 12 LED back shield lights are proposed in order to allow for the extended use of three tennis courts located in Bareena Park. The proposal has been submitted with a Biodiversity Statement (Du Plessis + Du Plessis, March 2023) in consideration of the National Light Pollution Guidelines for Wildlife (Department of the Environment and Energy, January 2020).</p> <p>In order to mitigate potential light impacts to native wildlife (including long-nosed bandicoots which have been recorded near the subject site), the lighting design is to be assessed by a suitably qualified ecologist and certified as complying with the principals <i>[sic]</i> of the National Light Pollution Guidelines for Wildlife (Department of Environment and Energy, May 2023).</p> <p>The proposal is therefore supported.</p>
Development Engineering	<p><b>Supported, with conditions</b></p> <p><b>Comments concerning the application as originally submitted:</b></p> <p>The proposal includes the construction of lighting poles for the existing tennis courts. The portion of the site where the proposed poles are to be located appears to be adjacent to an existing Council stormwater pipeline that traverses the site. In accordance with Council's Water Management for Development Policy, Section 6.7 Submission of Information, the applicant must accurately locate, confirm dimensions including depth, and plot to scale Council's stormwater pipelines and associated infrastructure on the development application site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor (evidence of methodology used for locating stormwater</p>



Internal Referral Body	Comments
	<p>system should be provided). It is recommended that a Closed Circuit Television Pre construction Dilapidation Survey be undertaken at the same time. Once the information is obtained, the proposal is to be designed to ensure compliance with Section 6.1 and in particular Section 6.1.1 and 6.1.1.1.2.</p> <p>Details demonstrating compliance must be submitted for assessment.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address the impact on Council's stormwater system in accordance with clause 3.7 of the DCP.</p> <p><b>Updated comments relating to the additional information submitted:</b></p> <p>The Council stormwater pipe has been located on the DA plans and is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p> <p>The proposal is therefore supported.</p>
Building Assessment	<p><b><i>Supported, without conditions</i></b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>The proposal is therefore supported.</p>
Landscape Officer	<p><b><i>Supported, with conditions</i></b></p> <p>The development proposal is as illustrated in plans and as described in reports. A Landscape Plan is submitted proposing the installation of four street trees within the Vista Avenue road verge and Landscape Referral raise no concerns subject to imposed conditions.</p> <p>The proposal is therefore supported.</p>
Property and Commercial Development	<p><b><i>Supported, without conditions</i></b></p> <p>Property has no comment to make regarding the proposal.</p> <p>The proposal is therefore supported.</p>



External Referral Body	Comments
Ausgrid	<p><b>Supported, with conditions</b></p> <p>Ausgrid's response under clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007.</p> <ul style="list-style-type: none"> <li>Ausgrid Underground Cables are in the vicinity of the development</li> </ul> <p>Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways. It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).</p> <ul style="list-style-type: none"> <li>Ausgrid Overhead Powerlines are in the vicinity of the development</li> </ul> <p>The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.</p> <p>The “as constructed” minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual.</p> <p>Ausgrid does not object to the proposed development.</p>

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.



Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2021 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&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to residential amenity impacts (noise and light spillage); parking survey; updated technical plans and plan of management to confirm the proposed hours of operation.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2021 requires the 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.</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><b>(i) Environmental Impact</b> 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><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b></p>



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

#### 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)

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

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 relates to the remediation of land. Clause 4.6 states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and, if it is contaminated, the consent authority is satisfied that the land is suitable for the purpose. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

In this instance, the installation of lighting structures, new street trees, and related minor works do not require any further consideration in regard to site contamination. The land is considered to be suitable for the continuation of the existing land use.

##### State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to the clearing of vegetation in non-rural areas. No trees are required to be removed to facilitate the proposed development. Council's Landscape Officer has reviewed the proposal and recommended conditions of consent to ensure the feasibility and longevity of the four (4) proposed street trees.

##### State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2, Division 5, Subdivision 2 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 relates to development that is likely to affect an electricity transmission or distribution



network. Ausgrid has reviewed the proposal and raises no objection provided the design submission complies with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.

### 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.

### Compliance Assessment

Clause	Compliance with Requirements
2.1 Land use zones (RE1 Public Recreation)	Yes.
4.3 Height of Buildings	N/A.
4.4 Floor Space Ratio	N/A.
5.10 Heritage Conservation	N/A.
5.21 Flood Planning	Yes.
5.23 Public Bushland	N/A.
6.1 Acid Sulfate	N/A.
6.2 Earthworks	Yes.
6.5 Terrestrial Biodiversity	Yes.

### RE1 Public Recreation - Zone Objectives

The objectives of the zone are:

- *To enable land to be used for public open space or recreational purposes.*

Comment: The proposed development continues to provide for land that is used for recreational purposes.

- *To provide a range of recreational settings and activities and compatible land uses.*

Comment: The proposed development continues to provide for a recreational setting and activity, which is compatible with the surrounding land uses, with reasonable mitigation measures incorporated to ensure impacts to adjacent residential land uses are minimised.

- *To protect and enhance the natural environment for recreational purposes.*

Comment: The proposed development continues to provide for land that is used for recreational purposes. The natural environment is enhanced with the inclusion of four (4) new street trees. There is no removal of any existing natural resource within the site.

- *To protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean*

Comment: The proposed development is not visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek or Pacific Ocean.





- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment: The topography of the site and surrounding development positions the proposed court lighting at the lowest part of the site, thereby locating development appropriately within the landform and landscaping. The development will not adversely impact surrounding land uses.

## MANLY DEVELOPMENT CONTROL PLAN 2013

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	N/A	N/A
3.2 Heritage Conservation	N/A	N/A
3.3 Landscaping	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	N/A	N/A
3.6 Accessibility	N/A	N/A
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	N/A	N/A
3.9 Mechanical Plant Equipment	N/A	N/A
3.10 Safety and Security	Yes	Yes
5.4 Environmentally Sensitive Land	Yes	Yes
Schedule 3 – Parking and Access	No	Yes

### Detailed Assessment

#### **Part 3.3 Landscaping**

The provision of four (4) street trees is supported, subject to conditions of consent to modify the selected species to Callistemon 'Hannah Ray'. This will encourage more appropriate tree planting and improve upon the landscaped features and native vegetation within Vista Avenue, per the objectives of the DCP.

#### **Part 3.4 Amenity**

The provision of lighting structures will accommodate approximately one (1) additional hour of use in summer, and approximately four (4) hours in winter. Council's Environmental Health Officer reviewed the proposed development (as amended). The extension of hours is unlikely to negatively impact the neighbouring residents to an unacceptable level with the Industrial Noise Policy setting the evening period (from 6:00pm - 10:00pm). The proposed development (as amended) seeking lighting to operate until 9:00pm is acceptable, subject to conditions, which will ensure minimal impact to the amenity of neighbours.

The lights will be automatically set to turn off at 9:00pm (per the recommendations of the acoustic report and as implemented within the amended plan of management), which satisfactorily ensures a reasonable level of amenity to surrounding residences.



The submitted Obtrusive Light Assessment adequately identifies and assesses the lighting specifications required to ensure that the lighting meets the requirements of relevant standards to minimise glare. The “Caravel Mk2 LED Sports Lights with rear shields” have been modelled within the assessment, and were found to have appropriate light distribution:

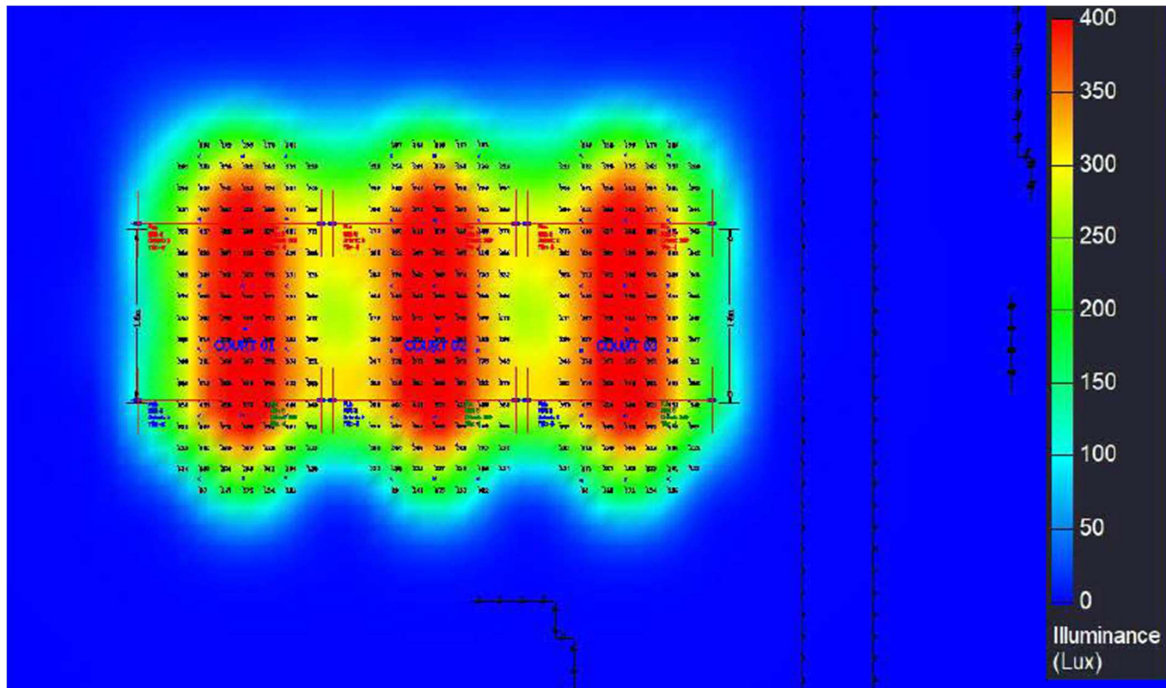


Figure 1 – modelled light distribution across the 3 courts

Similarly the new pathway lighting will be non-intrusive LED solar powered garden lighting.

In order to mitigate potential light impacts on native wildlife (including long-nosed bandicoots which have been recorded near the subject site), the lighting design is to be assessed by a suitably qualified ecologist and certified as complying with the principles of the National Light Pollution Guidelines for Wildlife (Department of Environment and Energy, May 2023). This will form a condition of consent to ensure the objectives of the DCP are met.

Additionally, the Plan of Management has satisfactorily addressed the management and reduction of amenity (noise, glare and security) impacts raised by submissions. The plan of management incorporates the following policies and procedures that are integrated into the conditions of consent:

- Automatic lights off at 9:00pm;
- No coaching after 7pm, nor on weekends;
- No squads after 6pm;
- No more than 12 players on Courts 1, 2 or 3 ('the three courts') after 8pm;
- No music or spectators permitted;
- Guidelines for acceptable member behaviour will be emailed following court hiring (booking);
- Complaints will be managed by the club secretary;
- Preservation of existing motion-activated security cameras and lighting to monitor behaviour.

### Part 3.10 Safety and Security

As above, safety and security concerns have been addressed within the Plan of Management.

### Part 5.4 Environmentally Sensitive Lands



The presence of the long-nosed bandicoot was recorded by one of the submissions received, and the installation of lighting will be subject to relevant conditions of consent to ensure minimal impact to wildlife.

### **Schedule 3, Part A1: Requirements for Vehicles**

The proposal (as amended) provided a parking and travel survey (*prepared by Du Plessi + Du Plessi Architects, November 2023*) to assess the parking implications of the premises operating until 9pm. Subject to appropriate conditions of consent, Council's Traffic Engineer is satisfied that parking concerns have been addressed:

- It is noted that parking analysis has been undertaken, demonstrating that there is adequate parking availability within the area to cater for the club's parking demands.
- Travel Mode surveys have been included in the Parking & Travel Survey report, demonstrating that there is a lower parking demand for the proposal. The survey shows that many members live close to the tennis courts, and more than half of the customers walk or cycle to the courts.

### **7.12 CONTRIBUTIONS**

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

A monetary contribution of \$2,167.94 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1.0% of the total development cost of \$216,794.00.

### **CONCLUSION**

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

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

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 objectives of the Environmental Planning and Assessment Act 1979

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.

### **PLANNING CONCLUSION**

This proposal, for the installation of lighting to tennis courts 1, 2 and 3 and associated minor works has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the site being Council owned land. To manage the conflict of interest, the assessment has been undertaken by an external planner.



The concerns raised in the objections have been addressed under the relevant sections of this report and resolved by the submission of additional information in the form of an acoustic report, obstructive light report, parking study, and plan of management. Relevant conditions of consent have also been incorporated into the draft conditions (as attached) to ensure the amenity and management outcomes are achieved.

The critical assessment issues relating to acoustic amenity, light spillage and parking have been assessed in this report, and determined to have been resolved by reasonably mitigating amenity impacts.

This report concludes with a recommendation that the NBLPP approve the development application.

It is considered that the proposed development satisfies the appropriate controls, results in an acceptable amenity outcome, and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel as the consent authority, grants Development Consent to DA2023/0720 for the installation of lighting to three (3) of the existing five (5) tennis courts, with a total of eight (8) lighting poles, and an extension of operational hours for the use of the premises, commonly referred to as the Bareena Park Tennis Club, on land at Lot 1432 and Lot 1431 in DP752038.

## 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
A.01 Title Page Site Analysis	Issue D 11.12.2023	Du Plessi + Du Plessi Architects
A.02 Site Plan	Issue D 11.12.2023	Du Plessi + Du Plessi Architects
A.03 Courts #1-3 Light Pole Plan	Issue D 11.12.2023	Du Plessi + Du Plessi Architects
A.04 Courts #1-3 Light Pole Elevation	Issue D 11.12.2023	Du Plessi + Du Plessi Architects
A.05 Landscape Plan	Issue D 11.12.2023	Du Plessi + Du Plessi Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Assessment	11 December 2023	RWDI Australia Pty Ltd
Obtrusive Light Assessment including Specification Sheet and the Obtrusive Light Compliance Report	14/12/2023	ShineOn
Bareena Park Tennis Club: Plan of Management (6 pages)	Undated	President – Ross Mclean

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



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

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	June 2023	Du Plessi + Du Plessi Architects

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Response Ausgrid Referral	19/06/2023

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

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

3. **Height of Lighting Structures**

The proposed lighting structures from the existing ground level to the top of the lighting protection antennae are restricted to a height of 7.0m.

Reason: To ensure the height of the lighting structures is consistent with the submitted documentation.

4. **Community Notice and Public Information Signs**

Separate development consent is required for any new signage that exceeds a surface area of 3.5m<sup>2</sup>, is greater than 5.0m in height above ground level, or results in more than one sign fronting a road frontage.

No consent is granted for signage that is illuminated or outside the boundaries of the site.

Reason: To ensure signage is consistent with the submitted documentation.

5. **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.

## 6. 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.
  - (i) 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.
- (ii) 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.
- (iii) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (iv) 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

### 7. Policy Controls

#### Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,167.94 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 2022. The monetary contribution is based on a development cost of \$216,794.00.

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 2022 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](http://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.

### 8. Security Bond

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

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





All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the 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](http://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

9. **Street Tree Planting**

Street tree planting shall be installed in accordance with the approved Landscape Plan, and the following conditions:

- (a) all street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.
- (b) all street trees shall be planted into a prepared planting hole 1m x 1m x generally 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways/crossovers, and shall generally be centralised within the road verge.
- (c) the selected species shall be Callistemon 'Hannah Ray'.

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

Reason: To maintain environmental and streetscape amenity.

10. **On-Street Work Zone**

The applicant shall lodge an application for a work zone (if required) for the frontage of the site to Council for consideration and approval. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Application forms for work zones are available on Council's website. Applications shall be lodged at least 4 weeks prior to work commencing.

An application must be lodged with Council for consideration and approval for a work zone for the frontage of the site. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Applications must be lodged at least four (4) weeks prior to work commencing.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.

11. **Utilities Services**

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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



Reason: To ensure that services have been provided as required by this Consent.

12. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

15. **Works on Land Owned or Managed By Council**

No encroachments are to be carried out on Land owned or managed by Council outside the leased area by the Tennis Club.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council outside the leased area.

Reason: To protect the land owned or managed by Council.

16. **Installation and Maintenance of Sediment and Erosion Control**

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. 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.

**17. Public Liability Insurance – Works on Public Land**

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

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

**18. Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Structural details prepared by a suitably qualified Structural Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

**19. Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/generalinformation/engineeringspecifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The pre-construction / demolition Dilapidation Report must be submitted to Council for acceptance and the acceptance submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

**20. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit (if required) where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**21. Road Reserve**



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

Reason: Public safety

22. **Wildlife Protection**

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

Reason: To protect native wildlife.

23. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

24. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials for construction of the development through adjacent land owned or managed by Council outside the area leased by the Tennis Club, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

25. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services Business Unit to resolve the matter to Council's satisfaction.

Reason: To protect and/or restore any damaged public asset.

26. **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:

- i Work Health and Safety Act;



- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- i 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.

27. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority during works.

Cabling is to be trenched on the outside of the court fences.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- o Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- o At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- o At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

29. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety.

30. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation not included in landscape plan and/or watercourses, are to remain undisturbed during the construction works.

All storage, stockpiling and parking of vehicles must be within the existing hard stand area or designated area outside Tree Protection Zones. Tree protection measures are to be in place should construction works impinge on canopy trees or their root plate zones.

Reason: To protect wildlife habitat.



31. **Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zones of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either of all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

The arboricultural works listed above are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

32. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- a) a general decline in health and vigour,
- b) damaged, crushed or dying roots due to poor pruning techniques,





- c) more than 10% loss or dieback of roots, branches and foliage,
- d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- e) yellowing of foliage or a thinning of the canopy untypical of its species,
- f) an increase in the amount of deadwood not associated with normal growth,
- g) an increase in kino or gum exudation,
- h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

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

33. **Post-Construction Stormwater Assets Dilapidation Report (Council Stormwater Assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineeringspecifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Protection of Council's infrastructure.

34. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Protection of Council's infrastructure.

35. **Lighting compliance**

Prior to the issue of Occupation Certificate, the Principal Certifier must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 2560 Sports Lighting, and 4282:2019 Control of the obtrusive effects of outdoor lighting.

The following is to be submitted to Council and the Principal Certifier prior to the issue of an Occupation Certificate:

- A 10-year warranty for the lights is to be obtained and submitted to Council;
- The Certification that the design is compliant with Australian Standards AS2560 and AS4282;



In addition, the lights are to be automatically set to turn off at 9:00pm each day.

The Principal Certifier must be satisfied that all back shields, as per the approved Specification Sheet within the Obtrusive Light Assessment prepared by ShineOn, have been installed, and that the colour temperature is 4,000k.

Reason: To protect public health and amenity.

New lighting must be consistent with the principles of the National Light Pollution Guidelines for Wildlife (May 2023) and designed to ensure that light spillage into non-target areas is minimised. Plans are to be certified by a suitably qualified ecologist as complying with this condition and written evidence provided to the Principal Certifier prior to issue of any Construction Certificate.

Reason: To mitigate potential light pollution impacts on wildlife.

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

37. **Lease Agreement**

The lease agreement between Bareena Park Tennis Club and Northern Beaches Council is to be updated to reflect the approved hours of operation. A copy of this updated lease agreement shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate and prior to the lighting being used in any capacity.

Reason: To ensure the development is consistent with the lease agreement.

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

38. **Usage of Lighting**

The proposed operation for the lighting structures to Courts 1, 2 and 3 are restricted to the following timeframe:

- 7:00am – 9:00pm.

The lights are to be automatically set to turn off at 9:00pm each day.

A maintenance regime must be implemented to ensure that the maintenance factors used in the lighting design calculations, as outlined within the Light Design Certificate provided in the Obtrusive Light Assessment prepared by ShineOn, are realised in practice.

Reason: To protect public health and amenity.

39. **Plan of Management**

Compliance with the recommendations within the amended Plan of Management prepared by Ross Mclean, Bareena Park Tennis Club, including management and use of the number of players per tennis court and operating hours.

Reason: To ensure noise and light impacts are managed



40. **Street Tree Maintenance**

A minimum 12 months maintenance period applies for the applicant to ensure establishment of the street trees. It is the responsibility of the applicant that should street trees planting under this consent fail, they are to be replaced. The street trees planted under this consent are to be mulched, watered and fertilised as required following planting.

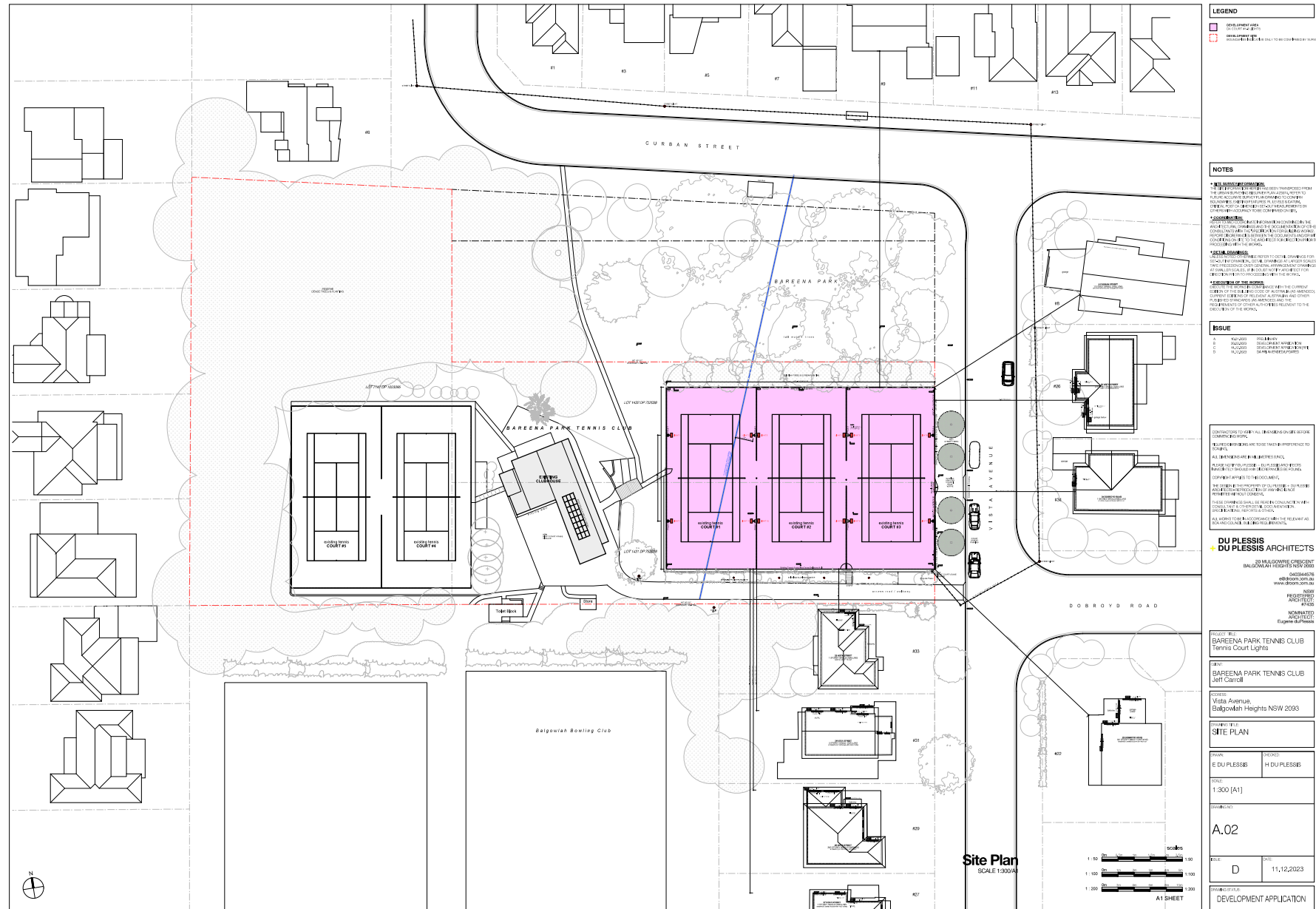
Reason: Streetscape amenity.

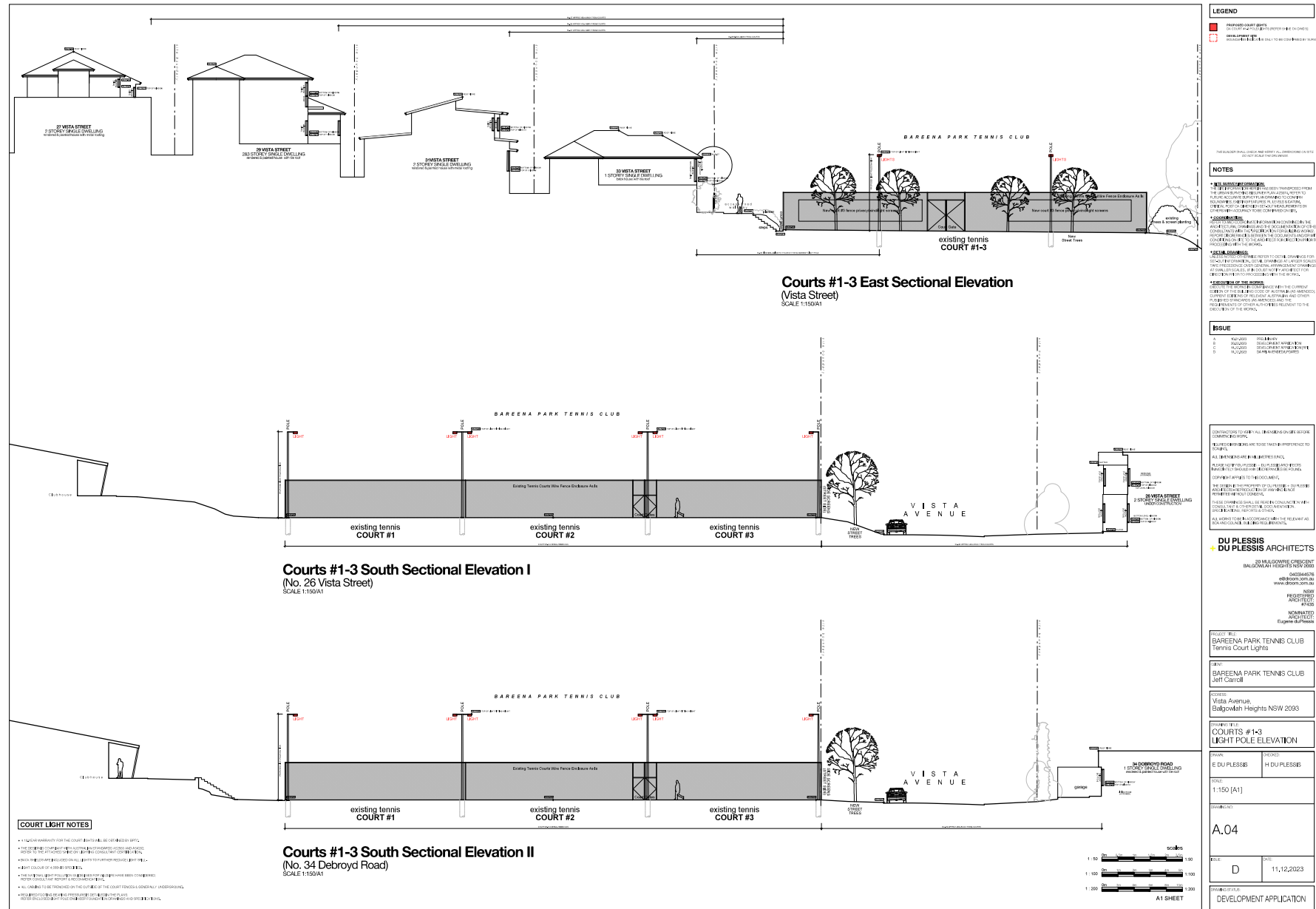
**FINAL DECLARATION**

Consultant Name: GAT & Associates

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.









ITEM 4.2	DA2023/0281 - 3 / 43 A ETHEL STREET, SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF AN ATTACHED DUAL OCCUPANCY
AUTHORISING MANAGER	Daniel Milliken
TRIM FILE REF	2024/023485
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan & Elevations

## 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.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0281 for Demolition works and construction of an attached dual occupancy on land at Lot 19 DP 7532, 3 / 43 A Ethel Street, SEAFORTH subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0281
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 19 DP 7532, 3 / 43 A Ethel Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Demolition works and construction of an attached dual occupancy
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	James Norman Gibbins Anne-Marie Gibbins
<b>Applicant:</b>	Anna Jane Williams

<b>Application Lodged:</b>	21/03/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	30/11/2023 to 14/12/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	19
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 2,060,555.26
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition and construction of an attached dual occupancy development at 3/43A Ethel Street, Seaforth.

The application is referred to the Northern Beaches Local Planning Panel (**NBLPP**) due to the development application receiving more than 10 submissions, with a total of 19 unique submissions received.

Concerns raised in the objections predominantly relate to view loss, bulk and scale, privacy, traffic and

construction impacts (use of the Right of Way).

The proposal maintains an appropriate visual relationship with surrounding development and will not result in unreasonable amenity impacts to surrounding properties, notwithstanding the proposed Manly Development Control Plan (**MDCP**) built form non-compliances.

The proposal does not seek any variations to development standards under the Manly Local Environmental Plan (**MLEP**) 2013.

The report concludes with a recommendation that the NBLPP grant **approval** to the development application, subject to conditions.

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of a **dual occupancy (attached)** development.

Specifically, the works incorporate the following:

- Demolition of the existing dwelling house and associated structures
- Construction of a three storey attached dual occupancy, which each dwelling including:
  - 4 bedrooms;
  - Private open space;
  - Decking/balconies;
  - Enclosed double garage;
- Associated landscaping; and
- Retaining walls.

### AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 28 July 2023 outlining concerns that would not allow for Council to support the application in its current form.

The issues raised included:

- Building and wall height non-compliance
- View Sharing
- Privacy
- Owners consent
- Internal Referral - Development Engineers (Stormwater management)

The applicant lodged amended plans and additional information to address concerns raised on 9th and 10th November 2023. The proposed amendments can be summarised as follows:

- Height of the building reduced from RL75.190 to RL74.870 to match the roof ridge RL of the existing dwelling house.
- Lower roof and parapet have been lowered by 150mm.
- North facing first floor deck reduced. Increasing the side setbacks to 2 metres.
- The eastern and western privacy screen on the north facing decks have been increased in length by 2.5 metres.

The proposed amended package was re-notified to the neighbouring properties from 30 November 2023 - 14 December 2023.

#### **Owners Consent**

The subject site is currently accessed from a shared driveway from Ethel Street, with the subject site benefiting from a Right of Way (ROW) over the adjoining properties at Nos. 41 and 43 Ethel Street, Seaforth. Owner's consent from the owner of a ROW is not required for a proposed development that relies on the use of a ROW, where the proposal does not require physical works on the ROW. Given no works are proposed in the ROW, owners consent is not required in this circumstance.

#### **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 - 6.1 Acid sulfate soils  
Manly Local Environmental Plan 2013 - 6.2 Earthworks  
Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
Manly Local Environmental Plan 2013 - 6.12 Essential services  
Manly Development Control Plan - 3.4.2 Privacy and Security  
Manly Development Control Plan - 3.4.3 Maintenance of Views  
Manly Development Control Plan - 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 - 4.1.4 Setbacks (front, side and rear) and Building Separation  
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)  
Manly Development Control Plan - 4.1.8 Development on Sloping Sites  
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 19 DP 7532 , 3 / 43 A Ethel Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment with dual access from Ethel Street via a ROW and Magarra Place.</p> <p>The site is irregular in shape with a frontage of 13.79m to Magarra Place (Unmade road) and 13.71m to the ROW to the North. The site has a surveyed area of 1004.9m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes steeply, with a drop of 19m from the northern boundary to the south.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



## SITE HISTORY

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

**DA2022/0464** - Alterations and additions to a dwelling house including secondary dwelling. (Withdrawn by applicant)

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to built form, owner's consent and stormwater management.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b></p>



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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 3 November 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/11/2023 to 14/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 19 submission/s from:

Name:	Address:
Ms Susan Schwandl	5 Magarra Place SEAFORTH NSW 2092
Deborah Kenyon	Address Unknown
Mrs Audrey May Fakes	3 Magarra Place SEAFORTH NSW 2092
Mr Franco Anthony Totino	303 Mona Vale Road TERREY HILLS NSW 2084
Sylvia Westerhof	1 / 43 Ethel Street SEAFORTH NSW 2092

Name:	Address:
Mrs Catherine Ann Murphy	3 Ponsonby Parade SEAFORTH NSW 2092
Mrs Wendy Ivy Goodall	9 / 33 - 37 Ethel Street SEAFORTH NSW 2092
Mrs Beverley Ronda Hamann	1 / 43 A Ethel Street SEAFORTH NSW 2092
Gail Bower	13 / 33 - 37 Ethel Street SEAFORTH NSW 2092
Pamella Ann Macleod	2 / 43 Ethel Street SEAFORTH NSW 2092
Ivor Dacic	8 Old Sydney Road SEAFORTH NSW 2092
Mrs Zoe Economides	3 / 41 Ethel Street SEAFORTH NSW 2092
Mrs Elizabeth Josephine Molinia	2 / 43 A Ethel Street SEAFORTH NSW 2092
Peek A Boo Cottage	1 B Magarra Place SEAFORTH NSW 2092
Mr Stephen Dale Parry Ms Marie Armande Kanyaro	2 / 45 Ethel Street SEAFORTH NSW 2092
Ethos Urban	173 Sussex Street SYDNEY NSW 2000
Mr Ciro Carl Romano Mrs Mary Louise Romano	120 Lady Davidson Circuit FORESTVILLE NSW 2087
Mr Murray Charles Bailes Mrs Jane Frances Bailes	11 / 52 Fairlight Street FAIRLIGHT NSW 2094
Michael Ioannou Ms Faye Genevieve Stirling	3 / 43 Ethel Street SEAFORTH NSW 2092

The following issues were raised in the submissions and each have been addressed below:

- **Building Height;**
- **Bulk and Scale;**
- **Solar Access;**
- **View Loss;**
- **Privacy (visual and acoustic);**
- **Built form non-compliance;**
- **Excavation;**
- **Drainage and landslide;**
- **Construction impacts on adjoining properties (Impact on ROW);**
- **Assessment of three applications concurrently;**
- **Height pole accuracy.**

The matters raised within the submissions are addressed as follows:

- **Building Height**  
Comment:  
A number of submissions raised concerns with the height of the proposed development. The amended proposal complies with the Height of Building development standard under clause 4.3 of the MLEP 2013.

- **Bulk and Scale**

Comment:

Concern is raised with regard to the bulk and scale of the proposal, with submissions noting that the development is non-compliant with various development controls. This matter is discussed in detail throughout the report. The development seeks to vary a number of controls including; setbacks and wall height. The extent of these non-compliances is quantified and assessed in detail later in this report, with the breaches being assessed against the underlying Objectives of the relevant controls under the MDCP 2013.

- **Solar Access**

Comment:

Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposal complies with the requisite provisions of clause 3.4.1 of the Manly DCP.

- **View Loss**

Comment:

Concern was raised with regard to loss of water views from private open space from the adjoining northern properties. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *'Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140'* in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the amended proposal does not cause unreasonable view loss to and from public and private open spaces.

- **Privacy (visual and acoustic)**

Comment:

Concern was raised about privacy impacts (acoustic and visual) from the proposed dwellings particularly the first floor outdoor living areas (labelled as Deck 01 in plan). The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP 2012. To ensure this overlooking is restricted to a reasonable level, a condition requiring privacy screens to the northern edge is recommended to the first floor north facing decks.

- **Built form non-compliance**

Comment:

Concern is raised in regards to the extent of built form (wall height, setbacks, number of storeys) non-compliance proposed under this application. This matter is addressed in detail elsewhere within this report (refer to clause 4.1 of Manly DCP 2013 section of this report). Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objectives of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Excavation and Geotechnical report.**

Comment:

Concern was raised in regards to potential impacts from excavation works including vibration,

soil stability and waste disposal. The proposal provides excavation that is no deeper than one storey at any point on the site, and that is across a relatively minor area of the site and therefore deemed to be a reasonable extent of excavation.

- **Stormwater management**

Comment:

The submissions raised concerns with regard to management of Stormwater and potential associated impacts. Council's Development Engineer is satisfied with the amended stormwater design, subject to conditions.

- **Construction impacts on adjoining properties (Impact on ROW)**

Comment:

Submissions have been received raising concern with regard to potential impacts to adjacent buildings and ROW during construction. Submissions were raising concern with regard to potential impacts on adjoining properties as result of the build as well as access issues within the right of way. Conditions of consent are recommended to require the preparation of pre and post construction dilapidation reports for all adjoining buildings and assets. Further conditions are also recommended to require further geotechnical assessment and the preparation of a detailed construction management plan, inclusive of vibration minimisation measures, prior to the issuance of any construction certificate. Council's traffic engineer has reviewed the proposal with particular attention drawn to the existing ROW and access to and from the site during construction and for the life of the development. Suitable access will be retained, subject to relevant traffic conditions.

- **Assessment of three applications concurrently**

Comment:

Submissions have been received requesting that the current Development lodged at 3/43A and 4/43A and 6/43A be assessed cumulatively/together. The subject development application and development application at 4/43A Ethel Street, Seaforth (DA2023/0275) are being considered on their merits by the same Council officer and will be reported to the same NBLPP meeting. Given the different scope of application and time of lodgement, the current application at 6/43A Ethel Street can be considered independently.

- **Height Pole Accuracy**

Comment:

Concern is raised with regard to the accuracy of the height poles erected on site. Survey confirmation of the location and height has been provided which confirms the location and heights are consistent with the envelope of the original development.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<b>Supported, no conditions</b>
Landscape Officer	<b>Supported, with conditions</b> Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the

Internal Referral Body	Comments
	<p>following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable</li> </ul> <p>A Landscape Plan and Arboricultural Impact Assessment are submitted with the application. The Landscape Plan does not meet the requirements under 3.3.1 and 4.1.5 including 4.1.5.2. It is noted that existing trees of high retention value are impacted by the development and no tree replacement to offset the canopy loss is proposed. Existing trees within the lower slopes proposed for retention are low retention value trees that do not provide canopy offset, and conditions shall be imposed for amended Landscape Plans to document appropriate canopy offset planting, as well as appropriate screen planting to boundaries. The amended Landscape Plans are to be submitted by a qualified professional and in accordance with Council's DA Lodgement Requirements.</p> <p>Four existing trees identified in the Arboricultural Impact Assessment as trees 1, 2, 4 and 5, within the property are recommended for removal that are impacted by the development works, and should the application be approved, removal is unavoidable. Two of these are high retention value trees (trees 1 and 2 - Cheese Trees) and these shall be replaced within the property. Existing trees of high retention value additionally are located within adjoining property (trees 6, 7 and 9) and the road reserve (trees 10, 11, 12 and 13), and conditions of consent shall be imposed for protection.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported, with conditions</b></p> <p>The proposal seeks approval for demolition works and construction of an attached dual occupancy.</p> <p>The comments on this referral relate to the following applicable controls:</p> <ul style="list-style-type: none"> <li>• Planning for Bushfire Protection 2019</li> </ul> <p>The proposal has been submitted with an Arboricultural Impact Assessment that has concluded that a total of 4 trees will have to be removed to accommodate the proposed works.</p> <p>A bushfire Report has been submitted with the application. The assessment has awarded the property a BAL-Low hazard rating and defensible spaces are already present for the purposes of Asset Protection Zones.</p> <p>The proposal has been assessed for potential impacts to native flora and fauna along the southern boundary and wildlife corridor. The development is unlikely to impact the corridor and no significant impacts would take place. The proposed development would take place in previously disturbed areas of the site.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p><b><i>Supported, with conditions</i></b></p> <p>The submitted stormwater design including OSD has been assessed and the design has not included the entire site for the calculation of the permissible site discharge (PSD). As a result the post development flows for the proposal have not included the bypass flows and as a result the PSD is exceeded. In this regard, the design is to be amended to determine the PSD for the entire site and the post development flows must not exceed the PSD. This will require the flow from the OSD tank to be reduced and may also require the volume of the proposed OSD tank to be increased. A review of the section through the tank indicates that the tank levels are inconsistent with the Architectural plans and will need to be amended to suit.</p> <p>The submitted Geotechnical report appears to refer to different Architectural plan numbers and dates and does not refer to the stormwater plan. It is considered that an addendum be provided by the Geotechnical Engineer to ensure the recommendations remain unaltered after the amended and additional plans are considered.</p> <p>The proposed garage design and levels are acceptable and the existing right of way will allow vehicles to enter and exit the site in a forward direction.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address stormwater and geotechnical issues in accordance with clauses 3.7 and 4.1.8 of the DCP.</p> <p><b>Planner Comment:</b> The geotechnical report has been updated to reflect the correct plan revision.</p>
Traffic Engineer	<p><b><i>Supported, with conditions</i></b></p> <p><b><u>Proposal description:</u></b> Demolition works and construction of an attached dual occupancy.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>Plans (Master Set), Revision B – designed by Your Beautiful Home, dated 13/03/2023, and</li> <li>The <i>Statement of Environment Effects</i> prepared by BBF Town Planners dated March 2023.</li> </ul> <p><b><u>Parking requirement and design:</u></b></p> <ul style="list-style-type: none"> <li>The Manly DCP applies to the subject site. Under the DCP, two (2) parking spaces per dwelling are required for a semi-detached dwelling. As four (4) parking spaces (in</li> </ul>



Internal Referral Body	Comments
	<p>the form of double garages) have been provided, the proposal comprising two residential dwellings provides adequately for the parking needs generated by the development.</p> <ul style="list-style-type: none"> <li>• The double garages' layout appears to be compliant with Australian Standards AS2890.1:2004 Off-Street Parking requirements. The garages doorway width of 5.2m have been proposed, however the garages' internal area has not been dimensioned on the architectural plans. The plans should be accompanied by dimensioned internal area widths. This will be conditioned.</li> <li>• It is noted that the driveway of 5.785m in width is present which can provide vehicle access to each dwelling.</li> <li>• No plots for access to and from garages have been provided. Swept path plots will be conditioned to demonstrate that access to garages is possible as required by AS2890.1.</li> <li>• Under the DCP, a secure storage area capable of accommodating at least two adult-sized bicycles are required for each dwelling house. Bicycle parking spaces are not presented in the architectural plans. This will be conditioned.</li> <li>• It is noted that the primary point of access to the site is via a shared driveway from Ethel Street, with the site benefitting from a right of carriageway over adjoining properties. The northernmost part of the site is burdened by a right of carriageway benefitting other properties that also rely upon the shared access arrangement. The development continues to rely on this existing access arrangement, and the application does not propose any works to the shared driveway beyond the confines of the subject site.</li> </ul> <p><b><u>Traffic Impact</u></b></p> <ul style="list-style-type: none"> <li>• The proposal will generate minimal vehicular traffic during the peak, and it will not have any unacceptable implications in terms of road network capacity performance.</li> </ul> <p><b><u>Conclusion</u></b></p> <p>Subject to conditions, the application can be supported from a traffic perspective.</p>

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

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1357730M dated 14 March 2023).

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

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

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

#### SEPP (Transport and Infrastructure) 2021

##### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.

- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

**SEPP (Biodiversity and Conservation) 2021**

**Chapter 6 – Water catchments**

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

**Part 6.2 Development in regulated catchments - Division 2 Controls on development generally**

**6.6 Water quality and quantity**

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

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

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

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

Comment:

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

**6.8 Flooding**

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

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

*(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*

*(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

**6.9 Recreation and public access**

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

*(a) the likely impact of the development on recreational land uses in the regulated catchment, and*

*(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

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

*(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*

*(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*

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

Comment:

The proposed development will not have any impact upon public access along the foreshore. The proposed works are located entirely within the subject site.

**6.10 Total catchment management**

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

Comment:

The proposal has been reviewed by Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse

environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

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

## Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.3m	Yes
Floor Space Ratio	FSR:0.45:1 (452.2sqm)	FSR: 0.449:1 (451.9sqm)	Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### 6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur. The proposed development does not excavate not below 5 metres Australian Height Datum

## 6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

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

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

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

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

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

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

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **6.4 Stormwater management**

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

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

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, 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.

#### **6.9 Foreshore scenic protection area**



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

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed development is designed and sited such that it does not result in detriment to the visual amenity of the harbour or foreshore. The subject site is not within the immediate vicinity of the foreshore, and is not visible from the foreshore, so does not impact upon the foreshore.

## 6.12 Essential services

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

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

Comment:

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

## Manly Development Control Plan

### Built Form Controls

<b>Built Form Controls - Site Area: 1004.9sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: D5 500sqm per dwelling (2)	2 dwellings per 972sqm not including access handle (486qm per dwelling)	2.8%	No
	Dwelling Size: 90sqm	225sqm per dwelling	-	Yes
4.1.2.1 Wall Height	East: 7.4m	5.67m - 8.1m	-	Yes
	West: 7.4m	5.67m - 8m	-	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1m	-	Yes

	Pitch: maximum 35 degrees	3 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.89m - 2.7m (based eastern wall height)	1.5m (Window seat) 2m	up to 18.7%	No
	1.89m - 2.66m (based western wall height)	1.5m (Window seat) 2m	up to 18.7%	No
	Windows: 3m	2m	33.3%	No
4.1.4.4 Rear Setbacks	8m	25m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (552.7sqm) of site area	56.8% (570.7sqm)	-	Yes
	Open space above ground 25% of total open space	74.7% (426.8sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	10.8% (62sqm)	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	<18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	12m	100%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	Dwelling 1 - 2 Dwelling 2 - 2	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### **3.4.2 Privacy and Security**

#### Description of non-compliance

Council has received a number of submissions which raise privacy issues in objection to the proposed development.

#### **3.4.2.1 Window Design and Orientation**

This control requires the use of narrow, translucent or obscured glass windows to maximise privacy, where necessary and that when building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

The provisions of this development control prescribe that when located close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

In plan, the proposed windows off the internal stair access (labelled W1.06 and W2.06) will have a direct line of the site to adjoining properties to the east and west. In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this window to be lifted to a minimum sill height of at least 1.6m above finished floor level or be fitted with obscured glazing.

All other windows along both sides of the dwelling are appropriately offset, incorporate raised sill heights or comprise screens to prevent overlooking between adjoining dwellings.

#### **3.4.2.2 Balconies and Terraces**

This control stipulates that architectural or landscape screens must be provided to balconies and terraces to limit overlooking of nearby properties. If an architectural screen is proposed, these must be fixed in position and suitably angled to protect visual privacy. Further, a recessed design of balconies

and terraces can also be used to limit overlooking and maintain privacy.

The proposed first floor deck to the northern side of the dwelling would be a primary living area for occupants of each dwelling. Given that the decks are at first floor level, high useability of the area and surrounding development a condition has been imposed as part of the recommendation for a privacy screen to be erected along the northern edge of each deck. The proposed condition is as follows:

***Privacy Screen***

*A 1.65m metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the deck located off the kitchen at first floor level for both dwellings as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.*

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

*Reason: In order to maintain privacy to the adjoining properties.*

Merit consideration:

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

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

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

Comment:

For the reasons as detailed above, and subject to the conditions, the proposed development results in a reasonable level of privacy between the subject site and adjoining properties.

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

Comment:

As detailed above, the conditioned privacy screen affixed to the balconies will increase privacy between properties to the north. This privacy mitigation does not adversely or unreasonably comprise access to light and air.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

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

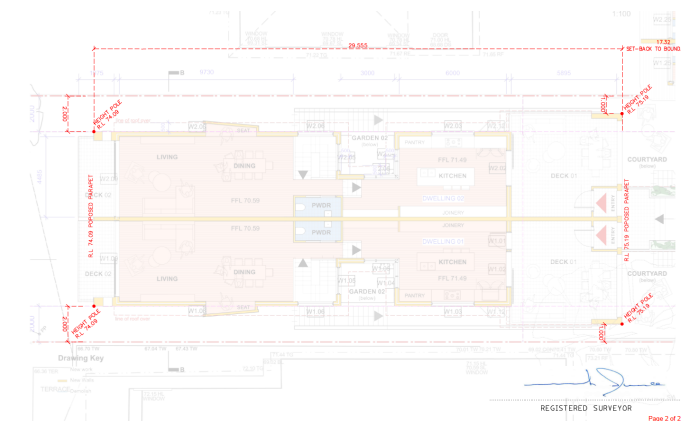
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal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

### 3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received a number of submissions raising view loss as a concern.

To assist Council in its assessment of the application, on 28 July 2023 a request was made for the Applicant to erect height poles to reflect the envelope of the original proposal. The Applicant subsequently erected height poles with certification of the height and location of the poles provided by a Registered Surveyor (Refer to plan prepared by Waterview Surveying Services dated 30 August 2023). The poles have not been relocated to reflect the amended proposal.

The location of the height poles is shown below:



**Image 1- Survey confirmation of height poles (dated 30 August 2023)**

Note: For ease of reference the photos contained below include the height poles indicating the height of the proposal.

#### Merit consideration:

The development is considered against the Objectives of the Control:

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

#### Comment:

The proposed development will not result in a unreasonable loss of views from neighbouring

properties. The proposal maintain adequate view sharing between properties.

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

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

### **1. Nature of the views affected**

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

#### Comment to Principle 1:

#### **No. 3/43 Ethel Street, Seaforth**

The nature of the views affected from this apartment are Middle Harbour, Middle Head, City, Spit Bridge and the land-water interface to the south as pictured below.

#### **No. 2/43 Ethel Street, Seaforth**

Views affected from this property are Middle Harbour, Middle Head and the land-water interface to the south as pictured below.

#### **No. 1/43 Ethel Street, Seaforth**

Views affected from this property are skyline views as pictured below.

#### **No. 3/41 Ethel Street, Seaforth**

Views affected from this apartment are Middle Harbour, Middle Head, City Spit Bridge and the land-water interface to the south and south-west as pictured below.

#### **No. 1/41 Ethel Street, Seaforth**

Views affected from this apartment are Middle Harbour and the city to the south-west as pictured below.

#### **No. 2/45 Ethel Street, Seaforth**

Views affected from this property are skyline views as pictured below.

### **2. What part of the affected property are the views obtained**

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

views. *The expectation to retain side views and sitting views is often unrealistic*".

Comment to Principle 2:

**No. 43 Ethel Street, Seaforth (all apartments)**

Existing views are obtained over the rear boundaries of each apartment, from living rooms and balconies off living rooms from a standing and sitting position. The views are filtered through existing development and vegetation over the top of the subject site.

**No. 1/41 Ethel Street, Seaforth**

The views from this apartment are obtained over the western side boundary from the living room and rear yard. The views are filtered through existing development and vegetation.

**No. 3/41 Ethel Street, Seaforth**

The views from this apartment are obtained over the rear boundary from the living room and living room balconies from a standing and sitting position.

**No. 2/45 Ethel Street, Seaforth**

Views affected from this apartment are taken from living room and rear yard from a standing and sitting position over the southern rear boundary. The views are filtered through existing development and vegetation.

**3. Extent of impact**

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

Comment to Principle 3:

**No. 3/43 Ethel Street, Seaforth**

Apartment 3 is located on the second floor (upper level) of the **adjoining** residential flat **building** to the north of the subject site. Photos 1, 2 and 3 demonstrate the current view that is obtained from this dwelling directly to the south over the rear boundary from the living room and balcony off the living room. The proposed development will lead to a moderate loss of harbour views and views of The Spit. A fully compliant proposal would result in a similar extent of view loss from this outlook. The views of Middle Harbour and Middle Head to the south-east are gained from the living room and balcony off the living room and will be retained in full (Photo 4). The extent of view loss of view over the south east of the subject site is deemed negligible. City views are not impacted by the proposed development.





Photo 1 - Living room standing (3/43 Ethel Street)



Photo 2 - Balcony standing (3/43 Ethel Street)



Photo 3 - Balcony standing (3/43 Ethel Street)



Photo 4 - Balcony standing (3/43 Ethel Street)

**No. 2/43 Ethel Street, Seaforth**

Apartment 2 is located on the first storey of **the** adjoining residential flat building to the north of the subject site. The proposed dual occupancy will impact existing harbour views from the living room and balcony. The areas are high use areas and such highly valued. The harbour and headland views from these areas will be impacted to a severe extent as a result of the proposed works. While there may be loss of harbour views as a result of the first floor of the dual occupancy, some additional water views will be reclaimed as a result of the removal of existing vegetation that currently occupies the site in the north-east corner of the site.

Qualitatively and in consideration of the existing views available from Unit 2/43 Ethel Street the extent of view loss is moderate. The view impact is not considered overall "severe" given the vegetation removal will open up additional views and harbour views to the south-east and city views south-west will be retained.



Photo 5 - Balcony standing (2/43 Ethel Street)



Photo 6 - Balcony standing (2/43 Ethel Street)

**No. 1/43 Ethel Street, Seaforth**

Apartment 1 is located on the ground floor of the adjoining residential flat building to the north of the subject site. The proposed development will impact existing skyline views from the rear yard of the apartment. The skyline views from the rear yard will be impacted to a minor extent. It is noted that views of the skyline are not highly valued under this planning principle.



Photo 7 - Rear yard standing (1/43 Ethel Street)

**No. 3/41 Ethel Street, Seaforth**

Apartment 3/41 Ethel Street is located on the second storey (top storey) of the adjoining residential flat building to the north-east of the subject site. The proposed development will impact harbour views from the living room and balcony to the south-east. The proposed development will be impacted to a minor extent. Views to the east will be retained in full. The proposal which will be a storey higher than the existing building will have a minor impact upon the total view from this apartment noting the total existing panoramic view from this property.



Photo 8 - Balcony standing (3/41 Ethel Street)





**Photo 9 - Living room standing (3/41 Ethel Street)**



**Photo 10 - Balcony standing (2/41 Ethel Street)**

**No. 1/41 Ethel Street, Seaforth**

Apartment 1/41 Ethel Street is located at ground floor level of the adjoining residential flat building to the north-east of the subject site. The view of the harbour and the city will be impacted to a severe extent, however the view is over a side boundary.



Photo 11 - Living room standing (1/41 Ethel Street)



Photo 12 - Rear yard room standing (1/41 Ethel Street)

**No. 2/45 Ethel Street, Seaforth**

Apartment 2/45 Ethel Street is located at ground floor level of the adjoining residential flat building to the north-west of the subject site. The proposed development will impact existing skyline views from the rear yard of the apartment. The skyline views from the rear yard will be impacted to a minor extent. It is noted that views of the skyline are not highly valued under this planning principle.



Photo 13 - Living room standing (2/45 Ethel Street)



Photo 14 - Rear yard standing (2/45 Ethel Street)

#### **4. Reasonableness of the proposal that is causing the impact**

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

#### **Comment to Principle 4:**

In considering the totality of impact it is noted that the dual occupancy is compliant with both



Clause 4.3 - Height of buildings and Clause 4.4 - Floor Space Ratio development standards under MLEP 2013. However, the proposed development does not comply with the side setbacks control with a minor variation to the rear of the building as the land slopes away. While it acknowledged that aspects of water views from each property will be impacted, it considered that the neighboring properties considered above are all highly vulnerable to any redevelopment of the subject site. The proposal, as amended, responds appropriately to the available views through the provision of appropriate view corridors, setbacks and building articulation to ensure highly valued views are retained and the impact on properties in terms of view loss is at worst minor. The total severity of impacts upon harbour views is not considered to be unreasonable. A more skillful design is not likely to be able to achieve the same development potential and amenity while reducing view impacts to neighbouring properties.

Further as noted previously, the application proposes to remove two trees to the north-eastern portion of the subject site. The trees proposed to be removed, currently restrict views to the eastern side off the existing dwelling house, as can be seen in the images above. The removal of the listed trees will open up a greater view corridor for properties north of the subject site, and will help offset the loss of water views that will be lost as a result of the proposed dual occupancy.

The proposal is acceptable and view sharing is achieved.

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

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include any unreasonable bulk which could result in unreasonable future view loss.

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

#### **4.1.1.1 Residential Density and Dwelling Size**

Description of non-compliance

Clause 4.1.1.1 of the MDCP 2013 requires 500sqm of site area per dwelling. The proposed development results in 2 units on a 972sqm site (Excluding access handle), which exceeds the density requirement.

Merit consideration

With regard to the consideration of the variation the development is considered under the objectives of the control below

- *Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

The proposed development for additional housing stock within a low density environment. The material impacts of the proposal would be comparable to a single dwelling house, given the dual occupancy complies with the MLEP 2013 Height and FSR standards and deemed to be consistent with the objectives of the MDCP 2013 setback, open space and landscaping provisions.

- *Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

Comment:

The proposed development has been assessed by Councils Landscape Officer and has been found to have an acceptable impact upon the natural environment, with the proposed tree removal being off-set by conditions requiring tree re-planting. As specified in Council's landscape referral, the proposed prescribed (non exempt) trees to be removed is located in buildable area of the site and is considered restrictive and limiting for any substantial development changes from the current condition. The dual occupancy follows the slope of the land and the proposal does not require excessive excavation or land alteration. The development does not immediately adjoin a waterways or riparian land.

- *Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The proposal adds to the housing diversity of the locality. The proposed units will achieve a high level of internal amenity including access to light and natural ventilation. The nature of the development is consistent with nearby dual occupancies within the Seaforth locality.

- *Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The proposal will be consistent with the desired character of the streetscape, given the development complies with the height, FSR and front setback requirements of the site. Whilst the proposal exceeds the housing density requirement, the overall building mass is consistent with the scale of a single dwelling that would be permitted on the site through Council's current planning controls and the streetscape and amenity impacts are not exacerbated through the provision of a 2 unit structure in this instance.

- *Objective 5) To maximise the use of existing infrastructure.*

Comment:

The proposal will maximise the use of the existing infrastructure within the locality.

Having regard to the above assessment, it is concluded that the objectives of the control have been

achieved. Therefore, the application is supported on merit in this particular circumstance.

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

##### Description of non-compliance

##### **Wall Height**

The maximum wall height of the proposed development is as follows:

South-eastern elevation: 13.2 metres - does not comply with numeric requirement of 7.4 metres.

North-western elevation: 13.2 metres - does not comply with numeric requirement of 7.4 metres.

##### **Number of storeys**

Clause 4.1.2.2 Number of Storeys states that buildings must not exceed two (2) storeys. The proposed development incorporates 3 storeys to the rear of the development for both proposed dwellings.

##### Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is 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 third storey is deemed to be reasonable given the significant fall of the land from the rear to the front of the property. The development is wholly within the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwelling on the southern side of the ROW along Ethel Street. The proposed development has generous side setbacks to reduce apparent building mass. The development responds appropriately to the constraints of the site.

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

##### Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance. The predominant compliance achieved by the building demonstrating a considered built form that is compatible with any future development on surroundings lands.

*(c) to minimise disruption to the following—*

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

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

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

##### Comment:

The proposed development will not give rise to any unreasonable view impacts (See view loss assessment under Part 3.4.3 of the MDCP 2013 of this report).

*(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 solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

*(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:

Not applicable.

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

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

Description of non-compliance

Clause 4.1.4.1 of the MDCP requires development be setback at least 6m from the front property boundary if there is no prevailing building line. The proposed garages are setback 0m from the front boundary.

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes multiple variations to the numeric requirement at first floor along both the eastern and western elevations. The clause requires the first floor eastern and western wall be setback 2.7m at the highest point. The application proposes a setback of 1.51m - 2m, non-compliant with the numeric control. This represents a variation up to 18.7%.

Clause 4.1.4.2 of the MDCP requires windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries. The proposed windows along the eastern and western elevation are setback 2m from the side property boundary, non-compliant with the numeric control.

Merit consideration:

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

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

Comment:

The proposal has maintained the existing streetscape by the amended design, including the desired spatial residential proportions of the street, including the street edge and the landscape character of the street for Ethel Street. The non-compliance to front setbacks for the position of the hard stand tandem spaces being a variation to the 6.0m setback control.

*Objective 2) To ensure and enhance local amenity by:*

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

Comment:

As discussed earlier within this report, the proposed development does not result in unreasonable amenity impacts to neighbouring properties or the public domain, specifically with regard to view sharing, privacy, solar access and visual amenity.

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

Comment:

Flexibility is afforded in this circumstance as the technical side setback non-compliance does not prompt any unreasonable streetscape or amenity impacts.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

Adequate side setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting to the front and rear setbacks. The proposed setbacks allow for compliance with the Building Code of Australia for maintenance, access, drainage work and emergency requirements (fire safety). The nature of development does not unduly detract from the context of the site, street character and particularly in relation to street frontages and front and side setbacks,

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

Comment:

The development would allow for suitable access to and from the subject site during a bushfire emergency.

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

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

##### Description of non-compliance

Under Clause 4.1.6.1 of Manly Development Control Plan 2013, the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

##### Merit consideration:

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

*Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

##### Comment:

The proposed development will allow for two (2) spaces for the dual occupancy, consistent with the numeric control.

*Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

##### Comment:

Adequate on-site parking is provided, consistent with the numeric control

*Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

##### Comment:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is consistent with this control.

*Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

##### Comment:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is

consistent with this control.

*Objective 5) To ensure the width and number of footpath crossings is minimised.*

Comment:

The property will use a single driveway and cross over to reduce the disruption to the existing footpaths.

*Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:

The driveway is limited to single width to allow for minimum parking requirements.

*Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

The subject site is not located within a established town centre noted within the Manly DCP.

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

#### **4.1.8 Development on Sloping Sites**

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The development responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the development. The recommendations included as part of this report have been included as part of the final conditions of consent.

#### **4.4.5 Earthworks (Excavation and Filling)**

Description of non-compliance

The maximum depth of excavation on the site is estimated at 3.1m, which exceeds the 1m control specified in Part 4.4.5 of MDCP 2013.

Merit consideration

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

*Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:*

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The excavation works are not considered to be excessive and are reasonable within the R2 Low Density Residential zone. The excavation works do not significantly alter the site topography or compromise the ability to establish the proposed landscape treatment within the front yard. The application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated 12 January 2024) which states that the proposal will achieve an acceptable level of risk, subject to adherence to the recommendations stipulated within the report. A condition has been included with this consent to ensure compliance with the recommendations within the Geotechnical Report.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

**THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

**CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

**POLICY CONTROLS**

**Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$20,606 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,060,555.

**CONCLUSION**

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

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



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

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

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

### **Conclusion**

This development application seeks consent for demolition works and construction of a attached dual occupancy.

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to receipt of more than 10 submissions.

The concerns raised in the objections have been addressed and resolved by additional information, amended plans, and explanation throughout this report.

The critical assessment issues included building height, stormwater management, amenity impacts and built form non-compliance.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies 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 grant Development Consent to DA2023/0281 for Demolition works and construction of an attached dual occupancy on land at Lot 19 DP 7532, 3 / 43 A Ethel Street, SEAFORTH, subject to the conditions printed below:

## Terms and Reasons for Conditions

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

### GENERAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA100	D	Site and roof plan proposed	Your Beautiful Home	12 October 2023
DA120	D	Lower ground floor plan proposed	Your Beautiful Home	12 October 2023
DA130	D	Ground floor plan proposed	Your Beautiful Home	12 October 2023
DA140	D	First floor plan proposed	Your Beautiful Home	12 October 2023
DA150	D	Driveway proposed	Your Beautiful Home	12 October 2023
DA200	D	Elevation north garage proposed	Your Beautiful Home	12 October 2023
DA210	D	Elevation north courtyard proposed	Your Beautiful Home	12 October 2023
DA220	D	Elevation south proposed	Your Beautiful Home	12 October 2023
DA230	D	Elevation east proposed	Your Beautiful Home	12 October 2023
DA240	D	Elevation west proposed	Your Beautiful Home	12 October 2023
DA300	D	Section AA proposed	Your Beautiful Home	12 October 2023
DA310	D	Section BB proposed	Your Beautiful Home	12 October

				2023
DA400	D	Materials proposed	Your Beautiful Home	12 October 2023
DA700	D	Demolition plan	Your Beautiful Home	12 October 2023
DA710	D	Excavation plan	Your Beautiful Home	12 October 2023
DA720	D	Sediment control and waste management plan	Your Beautiful Home	12 October 2023
DA800	D	Landscape plan proposed	Your Beautiful Home	12 October 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 1367730M	-	Concept Designs Australia	14 March 2023
Geotechnical Report	-	White Geotechnical group	12 January 2024
Arboricultural Impact Assessment	2	Hugh the Arborist	21 January 2023
Bushfire Assessment Report	B	Bushfire Consultancy Australia	14 Decmeber 2022
Waste Management Plan	-	-	-

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

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of dwellings as detailed on the approved plans for any land use of the site beyond the definition of a dual occupancy (attached), in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

***dual occupancy (attached)*** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

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

Reason: Legislative requirement.

**5. No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

**6. 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 an 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 following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (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

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$20,605.55 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,060,555.26.

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

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

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

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

**8. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

**9. Construction, Excavation and Associated Works Security Bond(s)**

The applicant is to lodge a bond with Council for the following:

**Drainage Works**

As security against any damage to Council's stormwater drainage infrastructure as part of this consent a bond of \$5,000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**10. Amended Landscape Plan**

An Amended Landscape Plan, prepared by a suitably qualified professional such as a Landscape Architect or Landscape Designer, shall be issued to the Certifier prior to the issue of



a Construction Certificate to include the following details:

- a) proposed surface treatments and materials, including but not limited to structures, features, walling, fences, pavements, gardens, lawns, ground stabilisation, drainage, etc.,
- b) existing trees and other vegetation to be retained or removed, and all trees are to be located, identified and numbered, and shall coincide with the arborists report,
- c) proposed planting scheme including species selection, location, quantities, mature heights and pot sizes,
- d) at least four replacement trees within the property, of which two shall be *Glochidion ferdinandi* (Cheese Tree), selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, or Council's Tree Guide,
- e) all tree planting shall be a minimum pre-ordered planting size of 75 litres; to achieve at least 6.0 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- f) screen boundary planting is to comprise of species capable of attaining a height of 3.0 metres at maturity, installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- g) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

#### 11. Tree Protection Plan

- a) A Tree Protection Plan, prepared by a AQF level 5 Arborist, shall be submitted to the Principal Certifier for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures in accordance with AS4970-2009 Protection of Trees on Development Sites, to protect the following trees:
  - i) tree 10 - Cheese Tree within the road reserve of Magarra Place, including the extent of tree protection fencing for the tree protection zone as determined.
  - ii) trees 11, 12 and 13 - Cheese Trees, as determined.
- b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:
  - i) location of all trees identified for retention, including extent of canopy,
  - ii) access routes throughout the site for construction activity,
  - iii) location of tree protection fencing / barriers,
  - iv) root protection in the form of mulching or boards proposed within the tree protection zone,
  - v) trunk and branch protection within the tree protection zone,
  - vi) location of stockpile areas and materials storage,
  - vii) other general tree protection measures.

Reason: Tree protection.

**12. On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm-1A, dated August 2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. Details of the connection into Council's stormwater pit.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**14. Vehicular Swept Paths**

Vehicular manoeuvring swept path plots should be provided for review by Council's traffic engineer. The plots to be prepared using traffic engineering software such as Autotrack/Autoturn, for a B85 car entering and egressing the garages with the adjacent parking space occupied. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Principal Certifier prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

**15. 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 a TfNSW 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. All Staff and Contractors are to use the basement parking once available
- 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 safety
- 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
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent

- 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.

**16. Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

- Dimensioned plans to be submitted for the garage/parking area including the double garages doorway, apron width and internal width and lengths to confirm that parking bays are appropriately sized.
- a secure on-site storage area capable of accommodating at least two adult-sized bicycles should be provided and shown on the Architectural Plans.

Plans prepared by a suitably qualified Engineer shall be submitted to the Principal Certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

**17. Amendments to the approved plans**

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

- Windows W1.06 and W2.06 are to have a sill height of at least 1.6m above finished floor level, or be fixed and frosted below 1.6m.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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

20. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the stormwater connection from the site into Council's stormwater pit in Maggera Place which is to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au) > Council Forms > Stormwater Drainage Application Form.s

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

21. **Compliance with Standards**

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

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

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

22. **Privacy Screen**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire

length of the outermost northern edge of the deck located off the kitchen at first floor level for both dwellings as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining properties.

23. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

24. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

25. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- i) tree numbers 1, 2, 4 and 5
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

26. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

27. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to ##### School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

28. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:

2/43A Ethel Street, Seaforth  
4/43A Ethel Street, Seaforth  
43 Ethel Street, Seaforth

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

## DURING BUILDING WORK

29. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected in accordance with the Tree Protection Plan and Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.



All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

30. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
  - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
  - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
  - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

**31. Wildlife Protection**

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

Reason: To protect native wildlife.

**32. Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

**33. Road Reserve**

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

Reason: Public safety.

**34. Implementation of Demolition Traffic Management Plan**

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

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

**35. 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 TfNSW 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.

36. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

37. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 2 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Demolition Works - Asbestos**

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

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

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

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

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

39. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved

levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

#### BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

**40. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Amended Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- c) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

**41. Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 qualifications in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

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

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

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

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

43. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

44. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

45. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

46. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

47. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

48. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

- After council review the following amendments have been made to the design:
  - upper section of roof reduced to the same max RL as the existing house
  - upper section of roof cut back to exclude powder room and therefore reduce length of roof
  - storey windows to powder rooms removed and replaced with skylights
  - dwellings lowered 350mm (garage levels remain unchanged)
  - all floor, ceiling and roof levels amended
  - north facing decks reduced in width to increase side setback to 2m
  - privacy screen on north facing decks increased in length by 2500mm



DA100

SCALE  
1:200



SCALE  
1:100

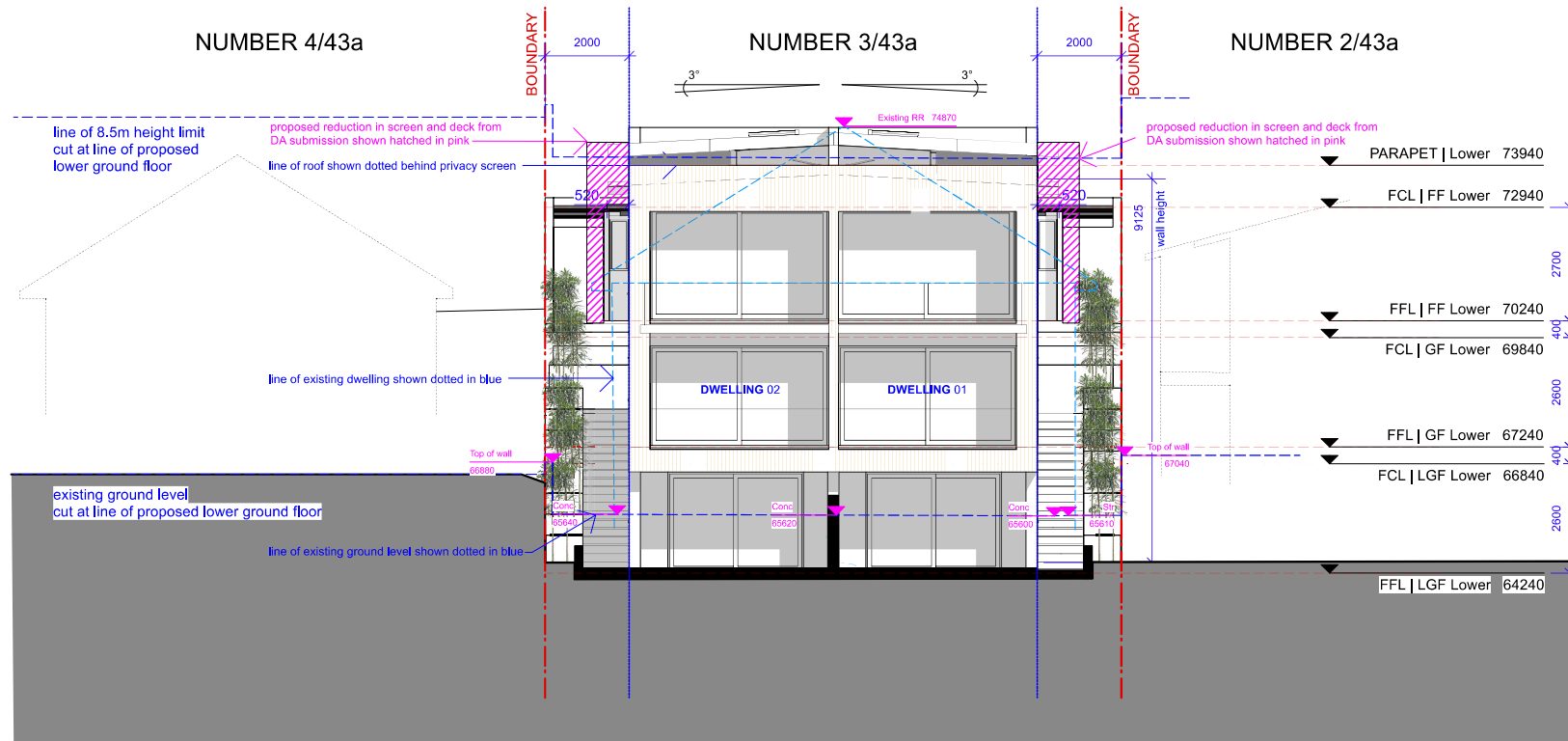
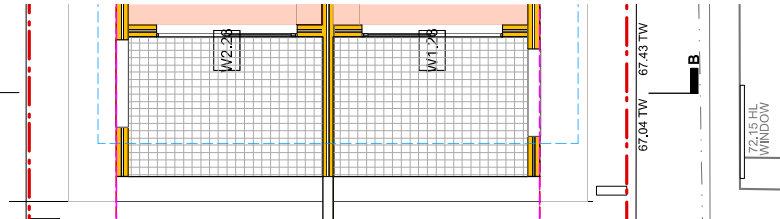


DA210

SCALE  
1:100

NOTE:

- After council review the following amendments have been made to the design:
- upper section of roof reduced to the same max RL as the existing house
- upper section of roof cut back to exclude powder room and therefore reduce length of roof
- clerestory windows to powder rooms removed and replaced with skylights
- dwellings lowered 350mm (garage levels remain unchanged)
- all floor, ceiling and roof levels amended
- north facing decks reduced in width to increase side setback to 2m
- privacy screen on north facing decks increased in length by 2500mm



PROJECT ADDRESS  
3/43a Ethel Street  
Seaforth NSW 2093  
Lot 19 DP7532 1004,9sqm

DATE  
November 2022

CLIENT/S  
Annie + James Gibbins

STATUS  
Development Application

REVISION  
B 13/3/23  
C 15/8/23  
D 12/10/23

for Development Application Approval  
for approval following Council Review  
updated for approval following council review

ELEVATION SOUTH  
PROPOSED

NOT FOR CONSTRUCTION

DA220

SCALE  
1:100

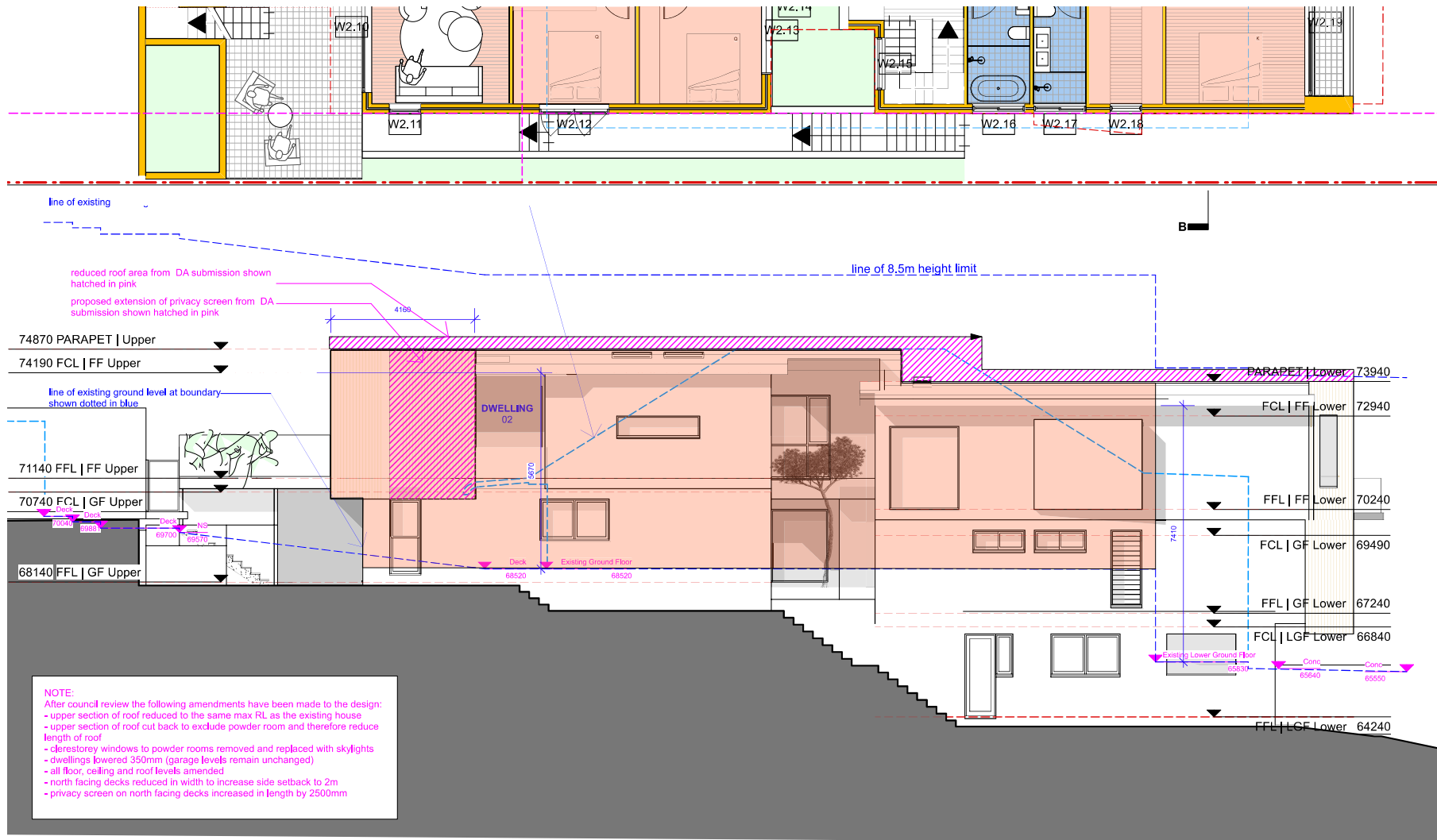
DA230

SCALE  
1:100

NOTE:

After council review the following amendments have been made to the design:

- upper section of roof reduced to the same max RL as the existing house
- upper section of roof cut back to exclude powder room and therefore reduce length of roof
- clerestory windows to powder rooms removed and replaced with skylights
- dwellings lowered 350mm (garage levels remain unchanged)
- all floor, ceiling and roof levels amended
- north facing decks reduced in width to increase side setback to 2m
- privacy screen on north facing decks increased in length by 2500mm



YOUR  
BEAUTIFUL  
HOME

PROJECT ADDRESS  
3/43a Ethel Street  
Seaforth NSW 2093  
Lot 19 DP7532 1004.9sqm

DATE  
November 2022

CLIENT/S  
Annie + James Gibbins

STATUS  
Development Application

REVISION  
B 13/3/23  
C 15/8/23  
D 12/10/23

for Development Application Approval  
for approval following Council Review  
updated for approval following council review

ELEVATION WEST  
PROPOSED

NOT FOR CONSTRUCTION

DA240

SCALE  
1:100

ITEM 4.3	DA2023/0275 - 4 / 43 A ETHEL STREET, SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF AN ATTACHED DUAL OCCUPANCY
AUTHORISING MANAGER	Daniel Milliken
TRIM FILE REF	2024/023488
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan & Elevations

## 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.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0275 for Demolition works and construction of an attached dual occupancy on land at Lot 18 DP 7532, 4 / 43 A Ethel Street, SEAFORTH, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0275
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 18 DP 7532, 4 / 43 A Ethel Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Demolition works and construction of an attached dual occupancy
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Robert Paul Barton
<b>Applicant:</b>	Robert Paul Barton

<b>Application Lodged:</b>	21/03/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	30/11/2023 to 14/12/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	19
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 2,904,000.00
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition and construction of an attached dual occupancy development at 4/43A Ethel Street, Seaforth.

The application is referred to the Northern Beaches Local Planning Panel (**NBLPP**) due to the development application receiving more than 10 submissions, with a total of 19 unique submissions received.

Concerns raised in the objections predominantly relate to view loss, privacy, traffic and construction impacts (use of the Right Of Way).

The proposal maintains an appropriate visual relationship with surrounding development and will not result in unreasonable amenity impacts to surrounding properties, notwithstanding the proposed Manly Development Control Plan (**MDCP**) 2013 built form non-compliances.

The proposal does not seek any variations to the development standards under the Manly Local Environmental Plan (**MLEP**) 2013.

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

### **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for demolition works and construction of a **dual occupancy (attached)** development.

Specifically, the works incorporate the following:

- Demolition of the existing dwelling house and associated structures
- Construction of a three storey attached dual occupancy, which each dwelling including:
  - 3 bedrooms;
  - Private open space;
  - Balcony;
  - Ground floor courtyard;
  - Enclosed double garage;
  - Lower ground floor with games room and wet bar.
- Associated landscaping; and

### **AMENDED PLANS**

Following a preliminary assessment of the application, Council wrote to the applicant on 10 July 2023 outlining concerns that would not allow Council to support the application in its current form.

The issues raised included:

- Building and wall height non-compliance
- View Sharing
- Owners consent

The applicant lodged amended plans and additional information to address concerns raised on 23 November 2023. The proposed amendments can be summarised as follows:

- First floor eastern and western wall alterations.
- Internal alterations.
- Window alterations.
- Privacy screening
- External materials alteration.
- Stair access

The proposed amended package was re-notified to the neighbouring properties from 30 November 2023 - 14 December 2023.

### Owners Consent

The subject site is currently accessed from a shared driveway from Ethel Street, with the subject site benefiting from a Right of Way (ROW) over the adjoining properties at Nos. 41 and 43 Ethel Street, Seaforth. Owner's consent from the owner of a ROW is not required for a proposed development that relies on the use of a ROW, where the proposal does not require physical works on the ROW. Given no works are proposed in the ROW, owners consent is not required in this circumstance.

### 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 - 6.1 Acid sulfate soils  
 Manly Local Environmental Plan 2013 - 6.2 Earthworks  
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.12 Essential services  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size  
 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)  
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

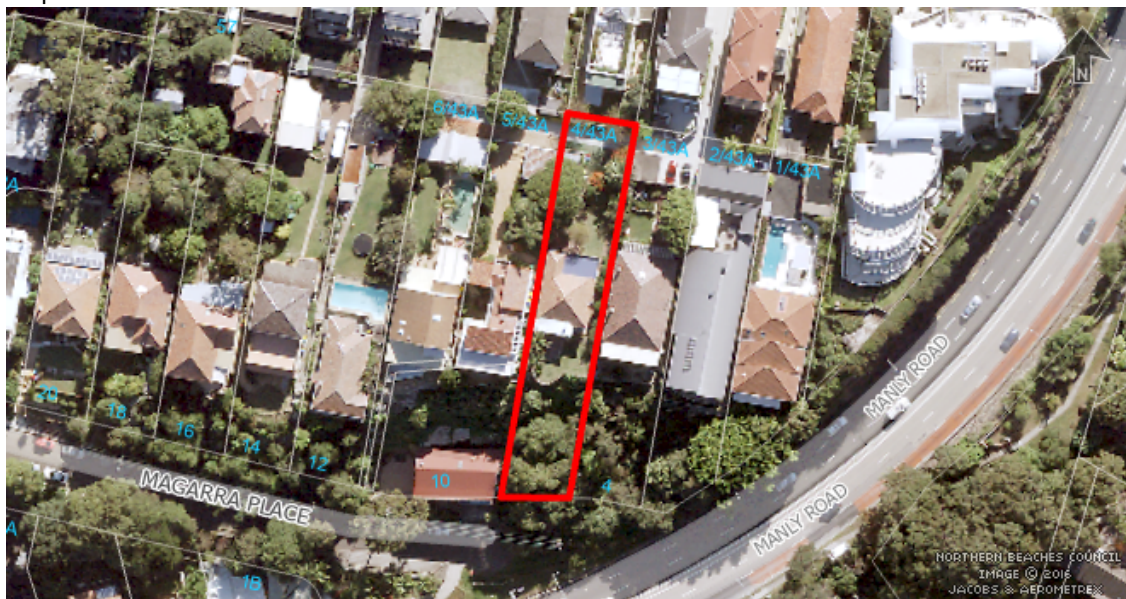
### SITE DESCRIPTION

<b>Property Description:</b>	Lot 18 DP 7532 , 4 / 43 A Ethel Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment with dual access from Ethel Street via a Right of Way and Magarra Place.



	<p>The site is irregular in shape with a frontage of 13.895m to Magarra Place (Unmade road) and 13.71m to the ROW to the North and an average depth of 74.8m. The site has a surveyed area of 1026m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes down approximately 18m from the northern boundary to the south.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development.</p>
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Map:



## SITE HISTORY

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

**PLM2022/0168** - Demolition works and construction of two (2) semi-detached dwellings including Torrens title subdivision of one (1) lot into two (2) lots.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to built form and stormwater management.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic</p>

Section 4.15 Matters for Consideration	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/11/2023 to 14/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 19 submission/s from:

Name:	Address:
Mr Franco Anthony Totino	303 Mona Vale Road TERREY HILLS NSW 2084
Sylvia Westerhof	1 / 43 Ethel Street SEAFORTH NSW 2092
Ms Susan Schwandl	5 Magarra Place SEAFORTH NSW 2092
Mrs Catherine Ann Murphy	3 Ponsonby Parade SEAFORTH NSW 2092
Mrs Beverley Ronda Hamann	1 / 43 A Ethel Street SEAFORTH NSW 2092
Gail Bower	13 / 33 - 37 Ethel Street SEAFORTH NSW 2092
Mr Philip James Twibell	2 / 43 Ethel Street SEAFORTH NSW 2092
Mr Ciro Romano Mrs Mary Louise Romano	1 / 41 Ethel Street SEAFORTH NSW 2092
Mrs Carmela Lina Mastroianni	5 / 43 A Ethel Street SEAFORTH NSW 2092
Ivor Dacic	8 Old Sydney Road SEAFORTH NSW 2092
Mrs Zoe Economides	3 / 41 Ethel Street SEAFORTH NSW 2092
Mrs Elizabeth Josephine Molinia	2 / 43 A Ethel Street SEAFORTH NSW 2092
Peek A Boo Cottage	1 B Magarra Place SEAFORTH NSW 2092

Name:	Address:
Mr Stephen Dale Parry Ms Marie Armande Kanyaro	2 / 45 Ethel Street SEAFORTH NSW 2092
Ethos Urban	173 Sussex Street SYDNEY NSW 2000
Mr Michael Ioannou	C/- Smyth Estate Agents PO Box 612 FRESHWATER NSW 2096
Pamella Ann Macleod	2 / 43 Ethel Street SEAFORTH NSW 2092
Ms Faye Genevieve Stirling	3 / 43 Ethel Street SEAFORTH NSW 2092
Mr Murray Charles Bailes	11 / 52 Fairlight Street FAIRLIGHT NSW 2094

The following issues were raised in the submissions and each have been addressed below:

- **Building Height;**
- **Bulk and Scale;**
- **Solar Access;**
- **View Loss;**
- **Privacy (visual and acoustic);**
- **Built form non-compliance;**
- **Excavation;**
- **Drainage and landslide;**
- **Construction impacts on adjoining properties (Impact on ROW);**
- **Assessment of 3 application concurrently;**
- **Height Pole Accuracy**

The matters raised within the submissions are addressed as follows:

- **Building Height**  
Comment:  
A number of submissions raised concerns with the height of the proposed development. The amended proposal is compliant with the Height of Buildings development standard (8.5m) under clause 4.3 of the MLEP 2013.
- **Bulk and Scale**  
Comment:  
Concern is raised in regards to the overall bulk of the dual occupancy. The bulk and scale of the proposed development is satisfactory given the compliance with the development standards, constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are considered to be appropriate in this residential context and satisfies the requirements and objectives of the MDCP 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dual occupancy deemed satisfactory.
- **Solar Access**  
Comment:  
Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposed development is multi storey, will be excavated into the natural

landform and the site has a north-south orientation. The proposal complies with the requisite provisions of clause 3.4.1 of the Manly DCP.

- **View Loss**

Comment:

Concern was raised in regards to loss of water views from private open space from the adjoining northern properties. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *'Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140'* in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the amended proposal does not cause unreasonable view loss to and from public and private open spaces.

- **Privacy (visual and acoustic)**

Comment:

Concern was raised about privacy impacts (acoustic and visual) from the proposed dwelling particularly the ground floor courtyard to the north of the buildings. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP, subject to conditions.

- **Built form non-compliance**

Comment:

Concern is raised in regards to the extent of built form (wall height, setbacks, number of storeys) non-compliance proposed under this application. This matter is addressed in detail elsewhere within this report (refer 4.1 of Manly DCP 2013 section of this report). Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Excavation and Geotechnical report.**

Comment:

Concern was raised in regards to potential impacts from excavation works including vibration, soil stability and waste disposal. These matters have been considered under Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Further, the recommendations proposed under the Geotechnical report (prepared by eiaustralia dated 19 December 2022) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction.

- **Stormwater management**

Comment:

The application was referred to Council's Development Engineers for comment in regards to stormwater management. Suitable conditions have been imposed as part of this recommendation to ensure adequate stormwater management for the proposed dwellings and adjoining properties.

- **Construction impacts on adjoining properties (Impact on ROW)**

Comment:

Submissions have been received raising concern with regard to potential impacts to adjacent buildings and ROW during construction. Submissions were raising concern with regard to potential impacts on adjoining properties as result of the build as well as access issues within the right of way. Conditions of consent are recommended to require the preparation of pre and post construction dilapidation reports for all adjoining buildings and assets. Further conditions are also recommended to require further geotechnical assessment and the preparation of a detailed construction management plan, inclusive of vibration minimisation measures, prior to the issuance of any construction certificate. Council's traffic engineer has reviewed the proposal with particular attention drawn to the existing ROW and access to and from the site during construction and for the life of the development. Suitable access will be retained, subject to relevant traffic conditions.

- **Assessment of 3 applications concurrently**

Comment:

Submissions have been received requesting that the current Development lodged at 3/43A and 4/43A and 6/43A be assessed cumulatively/together. The subject development application and development application at 3/43A Ethel Street, Seaforth (DA2023/0281) are being considered on their merits by the same Council officers and will be reported to the same NBLPP meeting. Given the different scope of application and time of lodgement, the current application at 6/43A Ethel Street can be considered independently.

- **Height Pole Accuracy**

Comment:

Concern is raised with regard to the accuracy of the height poles erected on site. Survey confirmation of the location and height has been provided which confirms the location and heights are consistent with the envelope of the original development.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported, with conditions</b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p><b>Supported, with conditions</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings</li> </ul>

Internal Referral Body	Comments
	<p>The Arboricultural Impact Assessment (AIA) identified five trees, of which only tree 1 is a prescribed tree. The plans indicate that tree 1 will be retained which is supported by the AIA. The garages will be suspended above the existing ground level which will reduce the potential impact to tree 1, and as recommended in the AIA a Project Arborist shall be engaged to supervise all work in the tree protection zone of tree 1. Furthermore, the Arborist has requested changes to the stormwater layout, which shall be further developed to mitigate any arboricultural concerns.</p> <p>The landscape proposal is generally supported; however, all <i>Rhaphiolepis</i> species shall be substituted with a suitable alternative as Council deems this species an environmental threat. All on slab landscaping shall meet Council's minimum soil depth requirements.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported, with conditions</b></p> <p>The proposal has been assessed for potential impacts to native flora and fauna along the southern boundary and wildlife corridor. The development is unlikely to impact the corridor and no significant impacts would take place. The proposed development would take place in previously disturbed areas of the site.</p>
NECC (Development Engineering)	<p><b>Supported, with conditions</b></p> <p>The submitted stormwater design including OSD is acceptable. The proposed levels for the garages and driveway grades are also acceptable. The existing right of way will permit vehicles to enter and exit in a forward direction. As one side of the garage is open, the garage width of 5 metres is acceptable. A review of the Geotechnical report indicates that the stormwater plan was not reviewed and the date of the Architectural plans is inconsistent with the submitted plans. It is considered that the Geotechnical Engineer provide an addendum to cover these issues to ensure the report is still valid with no additional recommendations.</p> <p>Provided the Geotechnical report is amended to suit the above comments, Development Engineering support the proposal, subject to conditions as recommended.</p>
Traffic Engineer	<p><b>Supported, with conditions</b></p> <p>Proposal description: Demolition works and construction of two (2) semi-detached dwellings including Strata subdivision subdivision.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>Plans (Master Set), Revision B – designed by platform Architects, dated 15/12/2022, and</li> <li>The <i>Statement of Environment Effects</i> prepared by BBF Town Planners dated March 2023.</li> </ul>

Internal Referral Body	Comments
	<p><b><u>Access, Parking requirement and design:</u></b></p> <ul style="list-style-type: none"> <li>• The Manly DCP applies to the subject site. Under the DCP, two (2) parking spaces per dwelling are required for a semi-detached dwelling. As four (4) parking spaces (in the form of double garages) have been provided, the proposal comprising two residential dwellings provides adequately for the parking needs generated by the development.</li> <li>• The double garages' layout appears to be compliant with Australian Standards AS2890.1:2004 Off-Street Parking requirements. The proposed 5.0m x 7m dimensions of the garages are acceptable noting that one side of each garage is open which will allow greater room for door opening. The plans should be clearly dimensioned to confirm garage doorway widths and internal area dimensions. This will be conditioned.</li> <li>• It is noted that the driveway of 6.295m in width is present which can provide vehicle access to each dwelling.</li> <li>• No plots for access to and from garages have been provided. Swept path plots will be conditioned to demonstrate that access to garages is possible as required by AS2890.1.</li> <li>• Under the DCP, a secure storage area capable of accommodating at least two adult-sized bicycles are required for each dwelling house. Bicycle parking spaces are not presented in the architectural plans. This will be conditioned.</li> <li>• It is noted that the primary point of access to the site is via a shared driveway from Ethel Street, with the site benefitting from a right of carriageway over adjoining properties. The northernmost part of the site is burdened by a right of carriageway benefitting other properties that also rely upon the shared access arrangement. The development continues to rely on this existing access arrangement, and the application does not propose any works to the shared driveway beyond the confines of the subject site.</li> </ul> <p><b><u>Traffic Impact</u></b></p> <ul style="list-style-type: none"> <li>• The proposal will generate minimal vehicular traffic during the peak, and it will not have any unacceptable implications in terms of road network capacity performance.</li> </ul> <p><b><u>Conclusion</u></b></p> <p>Subject to conditions, the application can be supported from a traffic perspective.</p>



Internal Referral Body	Comments

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

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 136745M dated 1 March 2023).

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

Commitment	Required Target	Proposed
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	50

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

#### SEPP (Transport and Infrastructure) 2021

##### Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

**SEPP (Biodiversity and Conservation) 2021**

**Chapter 6 – Water catchments**

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

**Part 6.2 Development in regulated catchments - Division 2 Controls on development generally**

**6.6 Water quality and quantity**

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

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

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

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

Comment:

The proposal has been reviewed by Council and no objection are raised regarding the works and their impacts to the surrounding natural environment.

## **6.8 Flooding**

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

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

*(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*

*(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

### Comment:

The site is not located within a flood prone area.

## **6.9 Recreation and public access**

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

*(a) the likely impact of the development on recreational land uses in the regulated catchment, and*

*(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

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

*(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*

*(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*

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

### Comment:

The proposed development will not have any impact upon public access along the foreshore. The proposed works are located entirely within the subject site.

## **6.10 Total catchment management**

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

### Comment:

The proposal has been reviewed by the Bushland & Biodiversity Officer who have raised no objection

to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

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

## Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.45m	Yes
Floor Space Ratio	FSR:0.45:1 (452.2sqm)	FSR: 0.449:1 (451.9sqm)	Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### 6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur. The proposed development does not excavate not below 5 metres Australian Height Datum

## 6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

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

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

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

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

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

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

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **6.4 Stormwater management**

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

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

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, 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.

#### **6.9 Foreshore scenic protection area**

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

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
- (b) measures to protect and improve scenic qualities of the coastline,
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposed development is designed and sited such that it does not result in detriment to the visual amenity of the harbour or foreshore. The subject site is not within the immediate vicinity of the foreshore, and is not visible from the foreshore, so does not impact upon the foreshore.

## 6.12 Essential services

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

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

Comment:

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

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 1026qm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: D5 500sqm per dwelling (2)	2 dwellings per 984.4sqm not including access handle (492.2qm per dwelling)	1.56%	No
	Dwelling Size: 90sqm	225sqm per dwelling	-	Yes
4.1.2.1 Wall Height	East: 7.3m	6.3m -8m	8.75%	No
	West: 6.9m	6.1m - 7.1m	2.89	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1m	-	Yes

	Pitch: maximum 35 degrees	3 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.1m - 2.66m (based eastern wall height)	Dwelling: 1m - 2.3m	up to 53%	No
	2.03m - 2.36m (based western wall height)	Dwelling: 0.98m - 2.29m	up to 53%	No
	Windows: 3m	0.98m - 2.49m	67.3%	No
4.1.4.4 Rear Setbacks	8m	21.2m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (564.3sqm) of site area	51.1% (525.2sqm)	7.1%	No
	Open space above ground 25% (131sqm) of total open space	7.6% (40sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (181.82sqm) of open space	80% (420sqm)	-	Yes
	3 native trees	7 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Whole frontage	100%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	Dwelling 1 - 2 Dwelling 2 - 2	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### **3.4.2 Privacy and Security**

#### Description of non-compliance

Council has received a number of submissions which raise privacy issues in objection to the proposed development, with particular concern raised with regard to the north facing courtyard at ground floor level.

#### **3.4.2.1 Window Design and Orientation**

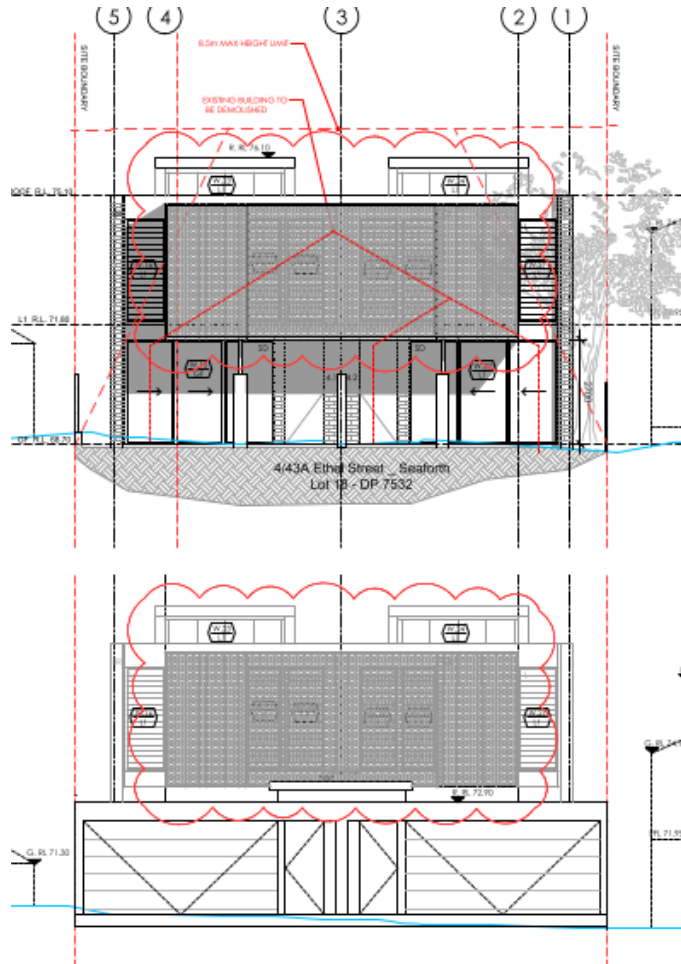
This control requires the use of narrow, translucent or obscured glass windows to maximise privacy, where necessary and that when building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

The proposed ground floor and first floor windows are appropriately designed and located for privacy..

#### **3.4.2.2 Balconies and Terraces**

This control stipulates that architectural or landscape screens must be provided to balconies and terraces to limit overlooking of nearby properties. If an architectural screen is proposed, these must be fixed in position and suitably angled to protect visual privacy. Further, a recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

The proposed courtyard to the north of both dwellings at ground floor level will be screened by the proposed garages to the northern edge of the subject site. The proposed use of the courtyards is secondary to the primary outdoor living area of the proposed development being the ground floor south facing balconies off the living room. The proposed courtyard are not likely to result in any unreasonable visual or acoustic impacts to neighbouring properties. No further privacy mitigation is required.



**Figure 1** - Northern elevation illustrating position of the courtyards and proposed garages.

Merit consideration:

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

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

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

Comment:

For the reasons as detailed above, the proposed development results in a reasonable level of privacy between the subject site and adjoining properties.

*Objective 2) To increase privacy without compromising access to light and air. To balance outlook and*

views from habitable rooms and private open space.

Comment:

As detailed above, the proposal includes a privacy screen affixed to the balconies to the south of the site to increase privacy between properties to the east and west. This privacy mitigation does not adversely or unreasonably compromise access to light and air.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

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

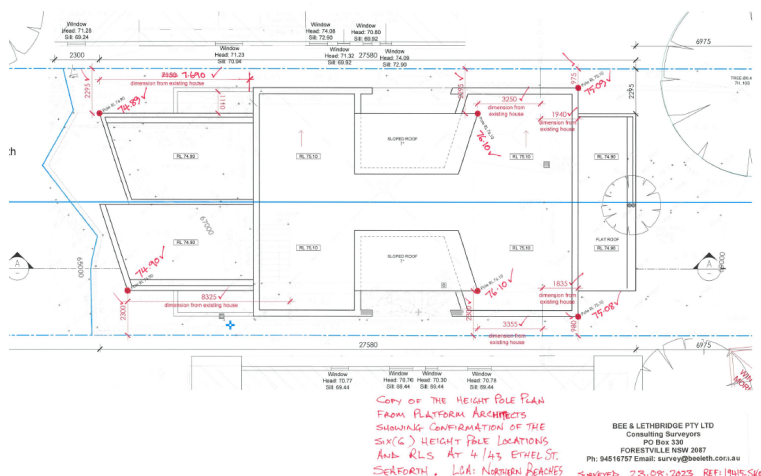
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal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

### 3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received a number of submissions raising view loss as a concern.

To assist Council in its assessment of the application, on 10 July 2023 a request was made for the Applicant to erect height poles to reflect the envelope of the original proposal. The Applicant subsequently erected height poles with certification of the height and location of the poles provided by a Registered Surveyor (Refer to plan prepared by Bee and Lethbridge dated 23 August 2023). The poles have not been relocated to reflect the amended proposal.

The location of the height poles is shown below:



***Image 1- Survey confirmation of height poles (dated 23 August 2023)***

Note: For ease of reference the photos contained below include the height poles indicating the height of the proposal.

Merit consideration:

The development is considered against the Objectives of the Control:

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

Comment:

The proposed development will not result in a unreasonable loss of views from neighbouring properties. The proposal maintain adequate view sharing between properties.

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

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

**1. Nature of the views affected**

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

Comment to Principle 1:

**No. 3/43 Ethel Street, Seaforth**

The nature of the views affected from this apartment are Middle Harbour, Middle Harbour, City, Spit Bridge and the land-water interface to the south as pictured below.

**No. 2/43 Ethel Street, Seaforth**

Views affected from this property are Middle Harbour, Middle Harbour and the land-water interface to the south as pictured below.

**No. 1/43 Ethel Street, Seaforth**

Views affected from this property are skyline views as pictured below.

**No. 3/41 Ethel Street, Seaforth**

Views affected from this apartment are Middle Harbour, Middle Harbour, City Spit Bridge and the land-water interface to the south and south-west as pictured below.

**No. 1/41 Ethel Street, Seaforth**

Views affected from this apartment are Middle Harbour and the city to the south-west as pictured below.

**No. 2/45 Ethel Street, Seaforth**

Views affected from this property are skyline views as pictured below.

**2. What part of the affected property are the views obtained**

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

Comment to Principle 2:

**No. 43 Ethel Street, Seaforth (all apartments)**

Existing views are obtained over the rear boundaries of each apartment, from living rooms and balconies off living rooms from a standing and sitting position. The views are filtered through existing development and vegetation over the top and to the side of the existing dwelling house.

**No. 1/41 Ethel Street, Seaforth**

The views from this apartment are obtained over the western side boundary from the living room and rear yard. The views are filtered through existing development and vegetation.

**No. 3/41 Ethel Street, Seaforth**

The views from this apartment are obtained over the rear boundary from the living room and living room balconies from a standing and sitting position.

**No. 2/45 Ethel Street, Seaforth**

Views affected from this apartment are taken from living room and rear yard from a standing and sitting position over the southern rear boundary. The views are filtered through existing development and vegetation.

**3. Extent of impact**

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

Comment to Principle 3:

**No. 3/43 Ethel Street, Seaforth**

As viewed from No. 3/43 Ethel, the proposed development would result in a partial loss of harbour views and views of The Spit from the living room and balcony off the living as pictured below. Views of the Middle Head and the city are expected to be retained over the proposed dual occupancy from these rooms. In consideration of the proportion of view lost in comparison to views retained the extent of the impact is considered to be minor.



Photo 1 - Living room standing (3/43 Ethel Street)



Photo 2 - Balcony standing (3/43 Ethel Street)



Photo 3 - Balcony standing (3/43 Ethel Street)



Photo 4 - Balcony standing (3/43 Ethel Street)

**No. 2/43 Ethel Street, Seaforth**

As viewed from No.2/43 Ethel Street, the proposed development would result in a negligible in any loss of harbour views. As can be seen in the photos below (Photos 5 and 6), existing vegetation largely blocks views over the top and to the sides of the existing dwelling house at 4/43A Ethel Street.





Photo 5 - Balcony standing (2/43 Ethel Street)



Photo 6 - Balcony standing (2/43 Ethel Street)

**No. 1/43 Ethel Street, Seaforth**

Apartment 1 is located on the ground floor of the adjoining residential flat building to the north of the subject site. The proposed development will impact existing skyline views from the rear yard of the apartment. The skyline views from the rear yard will be impacted to a minor extent. It is noted that views of the skyline are not highly valued under this planning principle.





Photo 7 - Rear yard standing (1/43 Ethel Street)

**No. 3/41 Ethel Street, Seaforth**

Apartment 3/41 Ethel Street is located on the second storey (top storey) of the adjoining residential flat building to the north-east of the subject site. The proposed development will result in a partial loss of harbour views from the living room and balcony as a result of the additional level proposed under the proposed development. The proposed development will be impacted to a minor extent. Expansive views to the directly to the east will be retained in full. The proposed which will be a storey higher than the existing building will have a minor impact upon the total view from this apartment noting the total existing panoramic view from this property.



Photo 8 - Balcony standing (3/41 Ethel Street)



**Photo 9 - Living room standing (3/41 Ethel Street)**



**Photo 10 - Balcony standing (2/41 Ethel Street)**

**No. 1/41 Ethel Street, Seaforth**

Apartment 1/41 Ethel Street is located at ground floor level of the adjoining residential flat building to the north-east of the subject site. The view of the harbour and the city will be impacted to a severe extent, however the view is over a side boundary.



Photo 11 - Living room standing (1/41 Ethel Street)



Photo 12 - Rear yard room standing (1/41 Ethel Street)

**No. 2/45 Ethel Street, Seaforth**

Apartment 2/45 Ethel Street is located at ground floor level of the adjoining residential flat building to the north-west of the subject site. The proposed development will impact existing skyline views from the rear yard of the apartment. The skyline views from the rear yard will be impacted to a minor extent. It is noted that views of the skyline are not highly valued under this planning principle.



Photo 13 - Living room standing (2/45 Ethel Street)



Photo 14 - Rear yard standing (2/45 Ethel Street)

#### **4. Reasonableness of the proposal that is causing the impact**

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

#### **Comment to Principle 4:**

The dual occupancy is compliant with both Clause 4.3 - Height of buildings and Clause 4.4 -



Floor Space Ratio development standards under MLEP 2013 to enable the retention of views corridors. The proposed development (as amended) is appropriately modulated with varied setbacks and breaks in built form. As a result, the design has largely retained from the neighbouring houses that obtain views over the subject site. Of relevance to view sharing, the development has been found to exhibit non-compliance with the wall height and side setbacks built form control. However, the non-compliance with the wall height and side setback would have negligible view impacts to the northern neighbouring properties.

The proposal is acceptable and view sharing is achieved.

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

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include any unreasonable bulk which could result in unreasonable future view loss.

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

#### **4.1.1.1 Residential Density and Dwelling Size**

Description of non-compliance

Clause 4.1.1.1 of the MDCP 2013 requires 500sqm of site area per dwelling. The proposed development results in 2 units on a 984.6sqm site (Excluding access handle), which exceeds the density requirement. It is important to note that the FSR for the site is compliant. The FSR standard is the primary statutory control that governs building density.

Merit consideration

With regard to the consideration of the variation the development is considered under the objectives of the control below

- *Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

Elements of the overall proposal in terms of building bulk, scale, setbacks, parking and landscaping will be provided to complement the redevelopment work and maintain long term changes to the urban zone. The non-compliance to dwelling density does not create any unreasonable impacts of overshadowing, privacy, views and general amenity.

- *Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

Comment:

Appropriate areas of deep soil soft landscaped areas and open space at ground level is provided and the use of the site for dual occupancy will not create any unreasonable impact on existing vegetation, waterways, riparian land and the topography of the land. The proposal has included a wide setback and stepped in side walls for the side walls to break up building bulk.

- *Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The use of the dual-occupancy is consistent with other similar sites in the surrounding area. The design promotes housing diversity and adds to the variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings for a 1-2 child family or couple. The nature of the development is consistent with nearby dual occupancies within the Seaforth locality.

- *Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The proposal will be consistent with the desired character of the streetscape, given the development complies with the height, FSR and front setback requirements of the site. Whilst the proposal exceeds the housing density requirement, the overall building mass is consistent with the scale of a single dwelling that would be permitted on the site through Council's current planning controls and the streetscape and amenity impacts are not exacerbated through the provision of a 2 unit structure in this instance.

- *Objective 5) To maximise the use of existing infrastructure.*

Comment:

The redevelopment for dual occupancy will promote the use of existing infrastructure for the local area which is consistent with this objective.

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

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

Description of non-compliance

Clause 4.1.4.1 of the MDCP requires development be setback 6m from the front property boundary. The proposed garage has a nil setback to the access handle, non-compliant with the numeric control.

Clause 4.1.4.2 of the MDCP requires development to be setback at least 1/3 of the adjacent maximum

wall height from side boundaries. The maximum wall height on the western elevation is 7.1m and as such, the numeric side setback requirement is 2.36m at first floor level. The eastern elevation of the dwelling involves a varied eastern side setback between 1m -2.3m, which represents a variation up to 53% for the non-compliant elements of the wall. The maximum wall height on the eastern elevation is 8m, which requires a 2.66m setback at first floor level, representing a 53% variation to the numeric control.

It is further noted that windows are also required to be setback 3m from side boundaries. Window are setback 0.98m - 2.45m non-compliant with the numeric control.

Merit consideration:

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

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

Comment:

The impact of the proposed new dwelling on the streetscape is negligible noting that the subject dwelling is in a battle-axe lot and not readily visible from Ethel Street. The proposed side setbacks are consistent with the existing development within the immediate vicinity, and introduces an improved landscape treatment to the front and rear setback area. As such, the proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side and front setbacks.

*Objective 2) To ensure and enhance local amenity by:*

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

Comment:

The side boundary non-compliance does not directly attribute to unreasonable privacy or solar impacts. A detailed assessment of view loss is provided in this report which concludes a equitable level of sunlight is achieved as required by the DCP. The proposal maintains appropriate building separation that is consistent with the street and envisaged by the DCP.

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

Comment:

The proposal maintains access down each side of the building for maintenance. The proposed setbacks allow a reasonable building footprint, compliant with the floor space ratio to provide functional dwellings for the site.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

Suitable levels of landscaping is provided across the site.

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

Comment:

The site is not bushfire prone.

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

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

Clause 4.1.5.1 of the MDCP requires at 55% (564.3sqm) of the site being total open space. The application proposes 51.5% (525.2sqm) of the site as total open space, non-compliant with the numeric control. This represents a 7.1% variation to the numeric control.

Merit consideration:

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

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

Comment:

The proposal does not result in the removal of significant landscape or topographic features

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

Comment:

The proposed development includes deep soil landscaped areas within the front and rear yards to



ensure an appropriate landscaping outcome. No significant vegetation is proposed for removal.

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

Comment:

The proposed development does not result in unacceptable amenity impacts, specifically with regard to view sharing, solar access, privacy and visual bulk.

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

Comment:

The site contains sufficient pervious areas to assist in water infiltration, in turn minimising stormwater runoff. Furthermore, suitable conditions have been included with this consent to ensure that stormwater is managed and disposed of in an acceptable manner.

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

Comment:

The proposal is not likely to lead to a significant spread of weeds

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

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

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

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

Description of non-compliance

Under Clause 4.1.6.1 of Manly Development Control Plan 2013, the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

Merit consideration:

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

*Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

Comment:

The proposed development will allow for two (2) spaces for each dwelling, consistent with the numeric control.

*Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

Comment:

Adequate on-site parking is provided, consistent with the numeric control

*Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

Comment:

Subject to conditions of consent, imposed by Council's Development and Traffic Engineers, the proposal is consistent with this control.

*Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

Comment:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is consistent with this control.

*Objective 5) To ensure the width and number of footpath crossings is minimised.*

Comment:

The property will use a single driveway and cross over to reduce the disruption to the existing footpaths.

*Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:

The proposed garages are proposed in a battle-axe lot and will not be readily visible from the street.

*Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

The subject site is not located within an established town centre noted within the Manly DCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.4.5 Earthworks (Excavation and Filling)**

##### Description of non-compliance

The proposal development will includes excavation to depths of approximately 2m.

Under Clause 4.4.5.2 Excavation of Manly Development Control Plan 2013, the following applies:  
*a) Excavation is generally limited to 1m below natural ground level with the exception of basement parking areas (which will be contained within the footprint of the building) and swimming pools;*

Therefore, the proposal has been assessed against the objectives of the control and is considered supportable in this instance.

##### Merit consideration

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

**Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:**

- ***Limiting excavation, “cut and fill” and other earthworks;***
- ***Discouraging the alteration of the natural flow of ground and surface water;***
- ***Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and***
- ***Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.***

##### Comment

The proposed excavation is considered to be acceptable, and will not result in any adverse impacts to the natural flow of ground and surface water. Therefore, it is considered that the proposal will largely retain the existing landscape character, and will not result in any significant impacts to the site topography.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

**Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$29,040 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,904,000.

## **CONCLUSION**

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

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

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

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

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

## **Conclusion**

This development application seeks consent for demolition works and construction of an attached dual occupancy at 4/43A Ethel Street, Seaforth/

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to receipt of more than 10 submissions (19 total).

The concerns raised in the objections have been addressed and resolved by additional information, amended plans, and explanation throughout this report.

The critical assessment issues included built form, amenity impacts and traffic.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies 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 grant Development Consent to DA2023/0275 for Demolition works and construction of an attached dual occupancy on land at Lot 18 DP 7532, 4 / 43 A Ethel Street, SEAFORTH, subject to the conditions printed below:

**Terms and Reasons for Conditions**

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

**GENERAL CONDITIONS****1. Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
DA010	C	Site Analysis + Roof Plan	Platform Architects	27 October 2023
DA100	C	Lower ground	Platform Architects	27 October 2023
DA101	C	Ground floor plan	Platform Architects	27 October 2023
DA102	C	First floor plan	Platform Architects	27 October 2023
DA103	C	Ground Floor Garage	Platform Architects	27 October 2023
DA200	C	North Elevation	Platform Architects	27 October 2023
DA201	C	West Elevation	Platform Architects	27 October 2023
DA202	C	East Elevation	Platform Architects	27 October 2023
DA203	C	South Elevation	Platform Architects	27 October 2023
DA204	C	Window Schedule	Platform Architects	27 October 2023
DA300	C	Section AA	Platform Architects	27 October 2023
DA301	C	Section AA Part 2	Platform Architects	27 October

DA400	C	Materials proposed	Platform Architects	20 November 2023
1 of 4	B	Landscape Site Plan	Paul Scrivener	16 January 2023
2 of 4	B	Detail Plan A and Planting Plan	Paul Scrivener	16 January 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 1367645M	-	Eco Certificates Pty Ltd	1 March 2023
Preliminary Geotechnical Report	-	eiaustralia	19 December 2022
Arboricultural Impact Assessment Report	1	Blues Bros	7 March 2023
Waste Management Plan	-	-	-

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

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of dwellings as detailed on the approved plans for any land use of the site beyond the definition of a dual occupancy (attached), in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

***dual occupancy (attached)*** means 2 dwellings on one lot of land that are attached to each

*other, but does not include a secondary dwelling.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

**4. Prescribed Conditions**

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.



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

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

Reason: Legislative requirement.

**5. No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dual occupancy for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

**6. 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 an 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 following is required:

- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (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

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$29,040.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,904,000.00.

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

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

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

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

**8. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**9. Footing Design Near Trees to be Retained**

- a) Footing structural layout plans for the works including the proposed garages shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root mapping investigation near existing tree, tree 1, to locate critical tree roots and recommend footing design and locations for the construction works.
- b) The Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.
- c) The Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.
- d) The agreed footing structural layout plans shall be submitted to the Principal Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

**10. On Slab Landscape Works**

Details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping:

- i) 300mm for groundcovers, perennials, and grasses,
- ii) 600mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

11. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

12. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Delete *Raphiolepis indica* from the landscape plan as it is identified as a Local Priority Weed on the Northern Beaches Local Priority Weed management plan.

The Landscape Plan is to be amended by a qualified landscape architect and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

13. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by IStruct Consulting Engineers, drawing number 221107 D01, & D02 Revision 1, dated 28/02/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The orifice plates in the two detention tanks are to be increased to 45mm to reduce the risk of blockage.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**15. Vehicular Swept Paths**

Vehicular manoeuvring swept path plots should be provided for review by Council's traffic engineer. The plots to be prepared using traffic engineering software such as Autotrack/Autoturn, for a B85 car entering and egressing the garages with the adjacent parking space occupied. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Principal Certifier prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

**16. 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 a TfNSW 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 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. All Staff and Contractors are to use the basement parking once available

- 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 safety
- 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
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- 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.

**17. Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

- Dimensioned plans to be submitted for the garage/parking area including the double garages doorway, apron width and internal width and lengths to confirm that parking bays are appropriately sized.

- a secure on-site storage area capable of accommodating at least two adult-sized bicycles should be provided and shown on the Architectural Plans.

Plans prepared by a suitably qualified Engineer shall be submitted to the Principal Certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

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

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

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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

20. **Compliance with Standards**

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

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

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



21. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

22. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

23. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) work in the tree protection zone of tree 1,
- b) stormwater installation.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained

shall be recorded, including at commencement, during the works and at completion.

Note: Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

**24. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

**25. Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to ##### School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.

- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

**26. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:

2/43A Ethel Street, Seaforth  
4/43A Ethel Street, Seaforth  
43 Ethel Street, Seaforth

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

## DURING BUILDING WORK

### 27. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

### 28. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
  - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
  - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

## 29. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

## 30. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a

native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

31. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

32. **Road Reserve**

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

Reason: Public safety.

33. **Implementation of Demolition Traffic Management Plan**

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

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

34. **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 TfNSW 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.

35. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

36. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**37. Demolition Works - Asbestos**

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

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

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

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

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

**38. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**39. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing 2 of 4, and 3 of 4 by Paul Scrivener dated 16/01/23), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all native tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying

Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- d) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) substitute all *Rhaphiolepis* species with a suitable alternative (although a cultivar is proposed, Council deems this species an environmental threat).

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

40. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 qualifications in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

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

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

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

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

42. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:



- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

**43. Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**44. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

**45. Landscape Maintenance**

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

are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To maintain local environmental amenity.

46. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

47. **Geotechnical Recommendations**

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

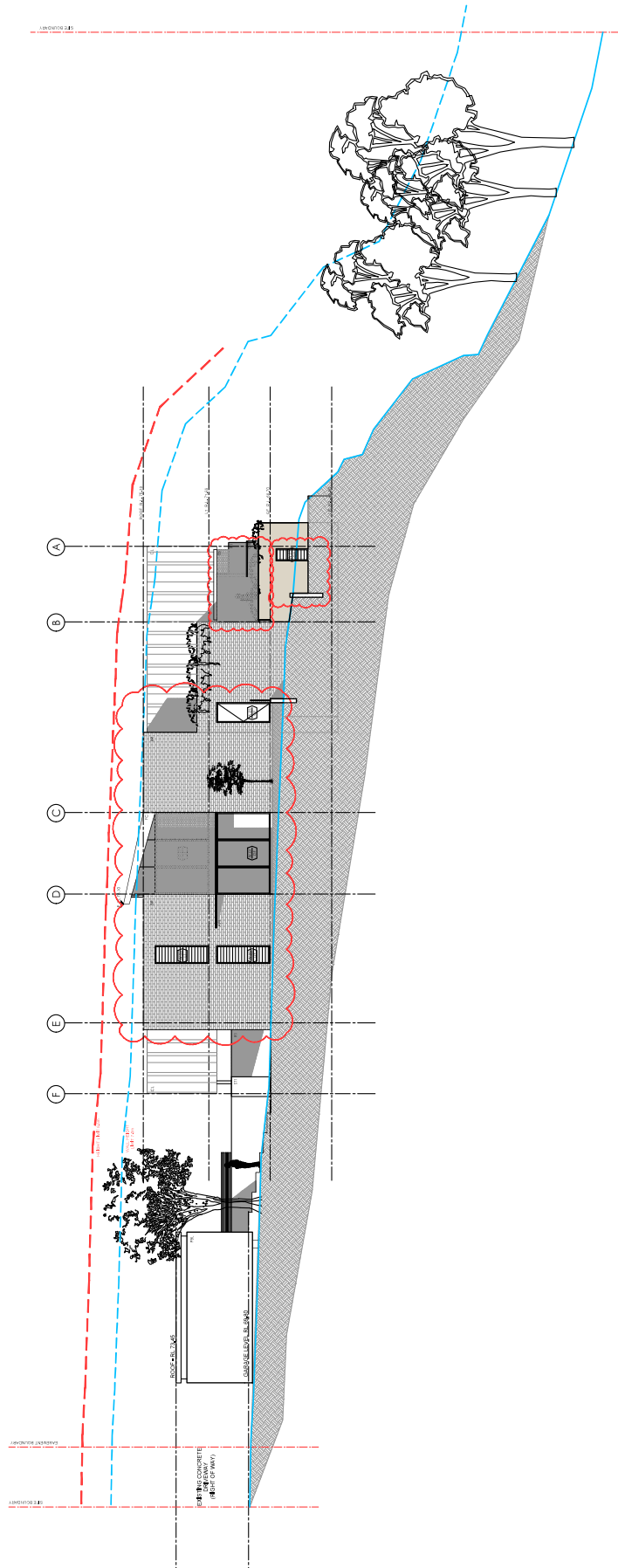
Reason: To ensure geotechnical risk is mitigated appropriately.





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| EAST AND WEST BRICK WALLS ANGLED TO PROVIDE GREATER ARTICULATION AND BUILDING SEPARATION.                          |         |
| GENERAL INTERNAL FLOOR PLAN CHANGES AS A RESULT OF ANGLED WALLS INCLUDING  |         |
| STAIR RECONFIGURATION  | ~ ~ ~ ~ |
| WET AREAS REVISED  | ~ ~ ~ ~ |
| LOWER GROUND FLOOR INCREASED IN GFA DUE TO REDUCED GFA AT GROUND AND FIRST FLOORS.                                 |         |
| ADDITIONAL WINDOWS INTRODUCED TO EAST AND WEST FAMILY ROOM AND BED 2   |         |
| ADDITIONAL WINDOW TO WESTERN WALL OF LG GAMES ROOM TO ALLOW CROSS VENTILATION.                                     |         |
| PRIVACY SCREEN INTRODUCED TO EAST AND WEST TERRACES WITH OPERABLE PERGOLA INFILL                                   |         |
| EXTERNAL MATERIALS REVISED   |         |
| STAIR DOWN EASTERN SIDE FOR ACCESS TO GAMES ROOM CLOSETTERY, WINDOWS AND ROOF REDUCED DUE TO INTERNAL PLAN CHANGES |         |
| DRAINAGE VOID SHOWN BEHIND LOWER GROUND TO CONTROL MOISTURE  |         |
| Slim STEEL AWNING INTRODUCED OVER DINING ROOM SLIDING DOORS  |         |

BR: FACE BRICK-LIGHT  
CL: LIGHTWEIGHT CLADDING - MID TONE  
CR: CONCRETE RENDER-OFF WHITE  
MS1: METAL SCREEN - POWDERCOAT  
MS2: METAL SCREEN  
GB: GLASS BALUSTRADE  
MB: METAL BALUSTRADE  
BS: BRICK SCREEN  
FC: FC SHEETING  
PBL: PAINTED BLOCKWORK  
  
SD: SLIDING DOOR  
L: LOUVER  
F: FIXED WINDOW  
AL: ALUMINUM FRAME

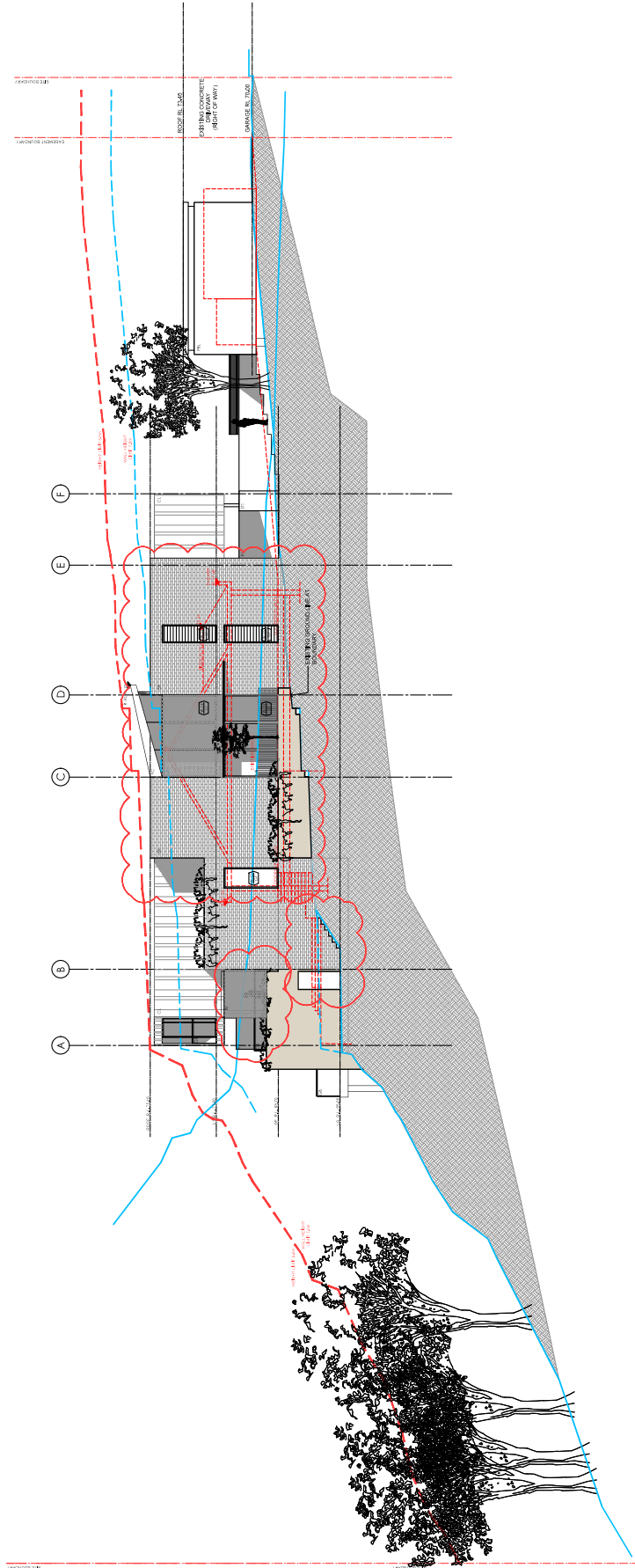
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DRAWING TITLE	STATUS	NUMBER	REVISION
WEST ELEVATION	DA	DA201	C
PROJECT	SCALE		
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- EAST AND WEST BRICK WALLS ANGLED TO PROVIDE GREATER ARTICULATION AND BUILDING SEPARATION.  
GENERAL INTERNAL FLOOR PLAN CHANGES AS A RESULT OF ANGLED WALLS INCLUDING  
STAIR AREAS REVERSED  
LOWER GROUND FLOOR INCREASED IN GFA DUE TO REDUCED GFA AT GROUND AND FIRST FLOORS.  
ADDITIONAL WINDOWS INTRODUCED TO EAST AND WEST FAMILY ROOM AND BED 2  
ADDITIONAL VENTILATION TO WESTERN WALL OF LG GAMES ROOM TO ALLOW CROSS VENTILATION,  
PRIVATE SCREEN INTRODUCED TO EAST AND WEST TERRACES WITH OPERABLE PERGOLA INFILL  
EXTERNAL MATERIALS REVISED  
STAIR DOWN EASTERN SIDE FOR ACCESS TO GAMES ROOM  
CLERESTORY WINDOWS AND ROOF REDUCED DUE TO INTERNAL PLAN CHANGES  
DRAINAGE VOID SHOWN BEHIND LOWER GROUND TO CONTROL MOISTURE  
SLOPE STEEL AWNING INTRODUCED OVER DINING ROOM SLIDING DOORS

BR: FACE BRICK-LIGHT  
CL: LIGHTWEIGHT CLADDING - MID TONE  
CR: CONCRETE RENDER - OFF WHITE  
MS1: METAL SCREEN - POWDERCOAT  
MS2: METAL SCREEN  
GB: GLASS BALUSTRADE  
MB: METAL BALUSTRADE  
BS: BRICK SCREEN  
FC: FC SHEETING  
PBL: PAINTED BLOCKWORK  
SD: SLIDING DOOR  
L: LOUVER  
F: FIXED WINDOW  
AL: ALUMINUM FRAME



REVISION		DATE	DESCRIPTION	DRAWN BY	CHECKED BY
A	11/23/2022	FOR COMMENTS	CO	RG	
B					
C	2/9/2023	FOR REVIEW TO COME	RG	RG	

REVISION NOTES

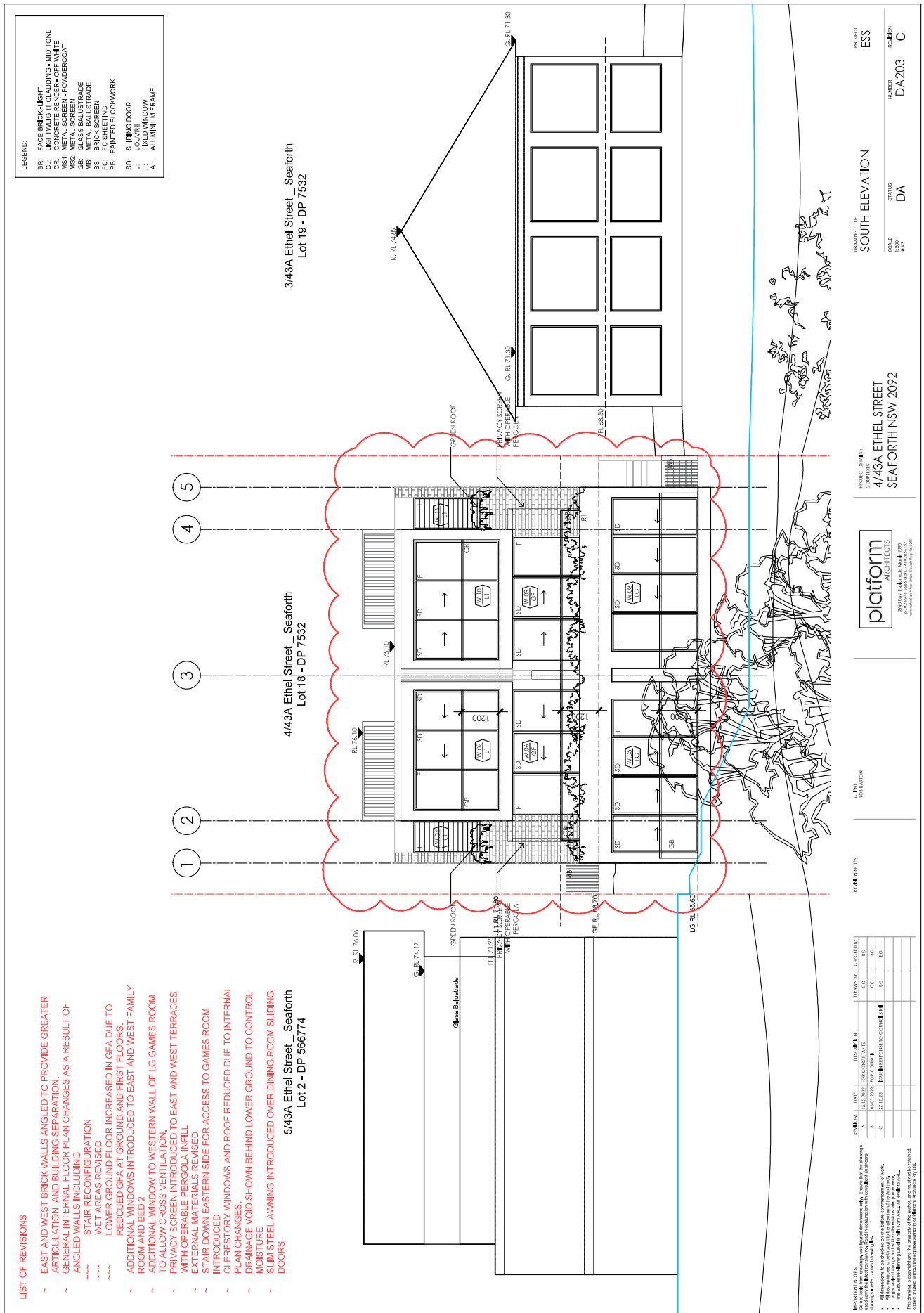
PROJECT DETAILS:  
2,000 DGS  
4/43A ETHEL STREET  
SEAFORTH NSW 2092

platform  
ARCHITECTS

2/41 East Esplanade, North Sydney, NSW

DRAWING TITLE  
EAST ELEVATION

SCALE	STATUS	NUMBER	REVISION
1:200	DA	DA202	C
@A3			



ITEM 4.4	DA2023/1458 - 49 PITTWATER ROAD, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF A STUDIO WITH ASSOCIATED LANDSCAPING
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2024/023501
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan & Elevations

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a development involving the demolition of a heritage item.

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## 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. DA2023/1458 for the Demolition works and construction of a studio with associated landscaping on land at Lot 1 DP 233249, 49 Pittwater Road, MANLY for the reasons for refusal set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1458
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<b>Responsible Officer:</b>	Stephanie Gelder
<b>Land to be developed (Address):</b>	Lot 1 DP 233249, 49 Pittwater Road MANLY NSW 2095
<b>Proposed Development:</b>	Demolition works and construction of a studio with associated landscaping
<b>Zoning:</b>	Manly LEP2013 - Land zoned E1 Local Centre
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jason Gregory Smith Emma Jane Smith
<b>Applicant:</b>	Emma Jane Smith

<b>Application Lodged:</b>	19/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	27/10/2023 to 10/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 82,500.00
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a studio with associated landscaping.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed development involving demolition works associated with a heritage item.

The existing attached dwelling and its improvements on site is a prohibited land use within the E1 Local Centre zone under the provisions of the Manly Local Environmental Plan 2013. The proposed development relies upon existing use rights, which has been adequately demonstrated by the

applicant, satisfying the requirements under *Section 4.65 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*. Subject of the existing use rights provisions of the Act, the proposed development on merit is acceptable. However the development application suffers from a lack of Owners Consent from the adjoining site at No.47 Pittwater Road, as the extent of works includes works to the Party Wall within a Easement, with the extent of works also extending over the boundary and into the adjoining site of No.47 Pittwater Road. The lack of Owners Consent forms the reason for refusal of the development application.

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, with one (1) confidential submission received. Concerns raised in the objection predominantly relate to flooding, the party wall on the common boundary, height of studio, privacy, light, construction of studio, and asbestos.

This report concludes with a recommendation that the NBLPP refuse the development application, due to its incomplete form.

## PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Demolition of redundant outside storage structure (former toilet) at southwest corner of lot;
- Construction of new skillion-roofed studio of 11m<sup>2</sup> floor area at rear of property with pedestrian access from the rear pedestrian lane; and
- Associated landscaping works.

The proposed development include works to the Party Wall Easement as detailed on the extract of the Survey Plan (see Figure 1), and as such Owners Consent was sought from No.47 Pittwater Road (site located to the south).

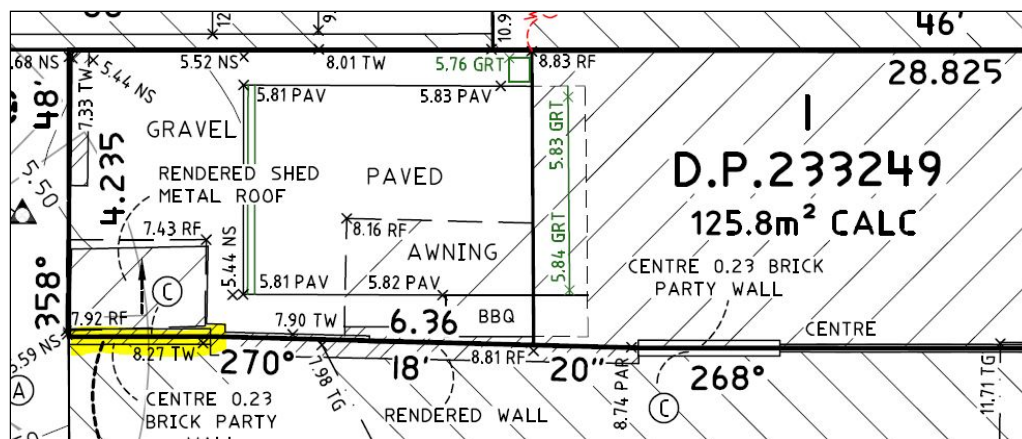
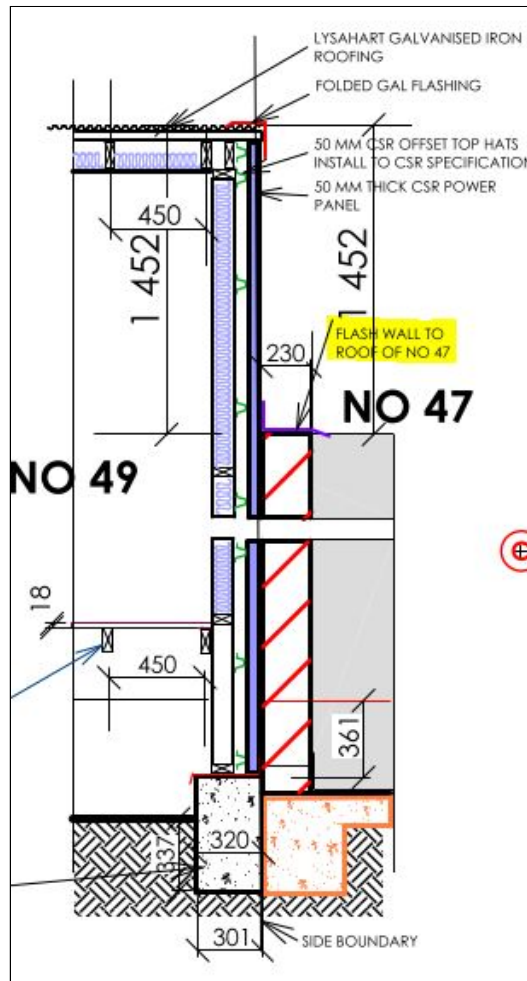


Figure 1. Extract of Survey Plan (yellow highlighting location of proposed works)

Furthermore, the proposed works include works that are located within the site boundaries of No.47 Pittwater Road (see Figure 2).



**Figure 2. Extract of Drawing No.7A prepared by Darryl Lock Studio dated 3 June 2023 (yellow highlighting proposed works)**

The applicant was requested to seek Owners Consent from No.47 Pittwater Road as the proposed works include works within the Party Wall Easement, and works within the site boundaries of No.47 Pittwater Road. The applicant was not able to obtain Owners Consent, and as such the lack of Owners Consent will form the reason for refusal, as the the development application has not contain all the information and documents required by Section 24(1)(b) of the *Environmental Planning and Assessment Regulation 2021*.

## ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

### SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone E1 Local Centre  
 Manly Local Environmental Plan 2013 - 5.21 Flood planning  
 Manly Local Environmental Plan 2013 - 6.11 Active street frontages  
 Manly Local Environmental Plan 2013 - 6.13 Design excellence  
 Manly Development Control Plan - 4.1 Residential Development Controls  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2  
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor  
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access  
 Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 233249 , 49 Pittwater Road MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Pittwater Road.</p> <p>The site is regular in shape with a frontage of 4.45 metres along Pittwater Road and a depth of 28.825 metres. The site has a surveyed area of 125.8m<sup>2</sup>.</p> <p>The site is located within the E1 Local Centre zone from MLEP 2013 and accommodates a two storey semi-attached dwelling, and outbuilding currently on the site.</p> <p>The site is generally flat with no significant changes in levels.</p> <p>The site contains minimal vegetation. There are no details of any threatened species on the subject site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by</p>

	semi-detached dwellings, attached dwellings, residential flat buildings, and commercial premises.
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Map:



## SITE HISTORY

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

### DA487/2005

Development Application for Alterations & Additions to an existing terrace dwelling.  
Approved on 21 February 2006.

## APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information on 13 November 2023 in relation to existing use rights as the development is not permissible in E1 Local Centre Zone of Manly Local Environmental Plan 2013. A detailed existing use rights assessment was requested to demonstrate that the site benefits from existing use rights. Furthermore, as the proposed works are located within the party wall easement and on the adjoining site of No.47 Pittwater Road, Owners Consent was requested.

An existing use rights assessment was subsequently submitted on 4 December 2023.

The applicant requested for additional time to seek Owners Consent, and Council granted an extension until 22 December 2023.

On 3 January 2024, the applicant confirmed via email that they had not obtained Owners Consent from No.47 Pittwater Road.

Furthermore, on 7 January 2023, the applicant confirmed via email that they wish to proceed with the application without the Owners Consent.

The additional documentation did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan

(CPP).

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed by a condition of consent if the development were approved.</p> <p><u>Clause 23</u> of the EP&amp;A Regulation 2021 requires the written consent from the owner of the land to which development is proposed. Works are proposed on No. 47 Pittwater Road and no land owners consent from the owners of that property has been submitted.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an existing use rights assessment, and Owners Consent from No.47 Pittwater Road as the proposed works include works to the party wall easement, and within the site of No.47 Pittwater Road.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being addressed by a condition of consent if the development was recommended for approval.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this</p>

Section 4.15 Matters for Consideration	Comments
	<p>application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed by a condition of consent if the development was recommended for approval.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed by a condition of consent if the development was recommended for approval.</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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

*(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and  
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment:

The Applicant has not provided any evidence in the form of a planning approval to substantiate that the use of the land as a lawful purpose prior to the coming into force of Manly Local Environmental Plan 2013 on 19 April 2013. Notwithstanding, the applicant has provided an Existing Use Rights assessment, and a Heritage Impact Statement (prepared by Betteridge Heritage dated 16 December 2021). The Heritage Impact Statement details historical information surrounding the existing attached dwelling, and surrounding heritage items dating back to the early 1900s. Furthermore, Council a historical subdivision plan from 1967 depicts the existing attached dwelling house, and as such this is further evidence of the existence of the development and use of the site as a residential dwelling.

Whilst the application does not explicitly contain any planning approvals of the subject dwelling, the above-mentioned information confirms the dwelling's prolonged existence on the subject site prior to the coming in force of Manly Local Environmental Plan 2013 on 19 April 2013. Having regard to the prolonged existence of the dwelling, it can be reasonably assumed that a planning approval or some form of planning approval has been granted for the dwelling on the subject site between 1906 and the coming in force of Manly Local Environmental Plan on 19 April 2013. However, Council's records do not contain any historical approvals from the early 20th century for the site.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

As noted above, the dwelling's prolonged existence leads Council to believe that a planning approval had been issued for the existing attached dwelling. However, such approval would pre-date Council's records. As detailed within the Heritage Impact Statement the following is outlined:

*The row of eight fine terraces, including the subject property, on the corner of Pittwater Road and Denison Street (35-49 Pittwater Road), with their late Victorian bullnose verandahs, gave further distinction to this area of Manly, first as Belgravia Terrace and subsequently as Roslyn Villas.*

Furthermore, the State Heritage Inventory Report details the group of group of commercial and residential buildings as follows:

*This item is a group of unusual early Twentieth Century terraced two storey residences with shops at each end. Listed due to its originality and uniqueness of concept, layout and mixture of materials. Significance in contribution to streetscape and in relationship to late 19th century development locally.*

As such, whilst a development consent is not evident, it is considered that due to the longstanding



history of the site, that it can be assumed that the use of the land was lawfully approved by Council prior to coming in force of Manly Local Environmental Plan on 19 April 2013.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Any planning approval issued for the attached dwelling likely pre-dates Council's records. As such, there is insufficient information to determine whether any approved works commenced within one year of the Development Consent.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The principles of *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71 however have been varied by more recent judgements of the Court to the extent described in *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made property Group Pty Ltd v North Sydney Council* [2020] NSWLEC 1332 in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of the Environmental Planning and Assessment Act, 1979.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its*

*existing and likely future context is a matter to be considered in all planning assessments.*

Comment:

The proposal includes demolition works, and construction of a studio at the rear of the existing attached dwelling. The proposed development complies with the height of buildings, and floor space ratio development standards under Manly Local Environmental Plan 2013. The proposal is located at the rear of the site, and as such no changes will be prevalent to the streetscape. The proposed studio will not be visible from Pittwater Road, and as such will not result in any visual dominance.

**2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Comment:

There is no change of use proposed. The proposal includes demolition of the existing rear shed, and construction of a studio. It is considered that the proposed development is of suitable bulk and scale.

**3. What are the impacts on adjoining land?**

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Comment:

The proposed studio will not result in any unacceptable impacts to adjoining land, specifically in regards to privacy and solar access.

**4. What is the internal amenity?**

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Comment:

The proposal presents a suitable level of internal amenity, by providing compliance sunlight access, and private open space. It is considered that the internal amenity of the site is acceptable, and generally consistent with the relevant planning controls for attached dwellings.

**Conclusion**

It is considered the evidence provided in the Heritage Impact Statement, and Existing Use Rights assessment details the prolonged use of the site since the early 20th century. Therefore, it is considered that existing use rights are applicable, and it is assumed that the use of the attached dwelling was approved under a previous environmental planning instrument. As such, the use should be retained under the Manly Local Environmental Plan 2013.

**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 27/10/2023 to 10/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Withheld	MANLY NSW 2095

The following issues were raised in the submissions:

- **Flooding;**
- **Party Wall;**
- **Site Boundaries;**
- **Height, Privacy and Light;**
- **Ventilation;**
- **Quality of Builder;**
- **Storing of Bikes;**
- **Drinking Water;**
- **Noise and Dust;**
- **Cracks or Issues to Party Wall;**
- **Damage from Building Materials; and**
- **Asbestos.**

The above issues are addressed as follows:

- **Flooding**

The submission raised concerns that the proposed development is located in a flood area, and if the site floods it may impact adjoining sites.

Comment:

Council's Flood Engineer has reviewed the proposed development and provided comments under the Internal Referrals section contained within this report. In summary, the proposed development has been designed in accordance with the required Flood Planning Levels, and is therefore supportable if the application were to be approved.

- **Party Wall**

The submission raised concerns surrounding the party wall, and how the party wall will be protected.

Comment:

The Party Wall Easement is located on the subject site, and adjoining site at No.47 Pittwater

Road. As there are works proposed within the Party Wall Easement, Owners Consent is required from No.47 Pittwater Road. As Owners Consent has not been obtained from No.47 Pittwater Road, the application has been recommended for refusal.

- **Site Boundaries**

The submission raised concerns that the proposal may impede on surrounding site boundaries.

Comment:

The proposal includes works to the adjoining site at No.47 Pittwater Road as a result of the roof flashing works. As Owners Consent has not been obtained, the application has been recommended for refusal.

- **Height, Privacy and Light**

The submission raised concerns that the height of the studio will impact upon privacy and light to adjoining sites.

Comment:

The proposed height of the studio is compliant with Clause 4.3 Height of buildings of Manly Local Environmental Plan 2013. Furthermore, the proposal is compliant with Clause 3.4.1.1 Overshadowing Adjoining Open Space of Manly Development Control Plan 2013 (MDCP 2013), Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties of MDCP 2013. The proposed studio does not include any windows along the northern, or southern elevations and as such will not result in any unacceptable privacy impacts to adjoining sites.

- **Ventilation**

The submission raised concerns that the proposed bathroom in the studio does not include ventilation.

Comment:

The proposed bathroom includes a small window (W2) along the eastern elevation that may assist with ventilation.

- **Quality of Builder**

The submission raised concerns to ensure the builder is sound, and has fundamental building skills, with proper building insurances

Comment:

If the application were to be approved, the Certifier would be responsible to ensure the appointed builder appropriately qualified in accordance with the *Home Building Act 1989*.

- **Storing of Bikes**

The submission raised concerns if the storage of bikes will impede on the alleyway and water

holes for each house.

Comment:

The proposed storage of bikes is located within the studio. If the application were to be approved, the storage of the bikes is permitted on the subject site. The plans do not include any works to the existing alleyway.

- **Drinking Water**

The submission raised concerns to ensure protection of drinking water during the demolition, and building as the water pipes are located outside each house in the alleyway.

Comment:

If the application were to be approved, a condition would be recommended for Sydney Water "Tap In" that requires the approved plans to be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements.

- **Noise and Dust**

The submissions raised concerns that the construction will result in dust to neighbours, and what compensation is provided. Further concern is raised in relation to noise and how will noise be minimised during working business hours.

Comment:

If the application were to be approved, it is considered that the proposed development would not result in any unacceptable level of dust. Furthermore, if the application were to be approved, the general building construction and delivery of material hours would apply.

- **Cracks or Issues to Party Wall**

The submissions raised concerns that the studio development may create cracks or issues with the party wall, and if compensation will be provided to fix any problems.

Comment:

If the application were to be approved, suitable conditions would be recommended for a Pre-Dilapidation Report, and Post-Dilapidation Report to ensure the party wall does not result in any damage from the proposed development.

- **Damage from Building Materials**

The submission raised concerns that damage may occur from bringing materials into the alleyway that may cause damage, cracks, or ground shifting.

Comment:

If the proposed development were to be approved, the applicant would be responsible to ensure no unreasonable damage occurs. In the event that damages occur, this is a civil matter that would required to be resolved with the relevant owners.

• **Asbestos**

The submission raised concern surrounding how asbestos will be addressed during the demolition of the wall and shed.

Comment:

If the application were to be approved, suitable conditions would be recommended to ensure the safe disposal of any asbestos in accordance with the relevant WorkCover Short Guide to Working with Asbestos Cement and, Australian Standard AS 2601 2001 - The Demolition of Structures.

**REFERRALS**

Internal Referral Body	Comments			
Landscape Officer	<p><b>Supported - subject to conditions</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the Manly DCP 2013 controls.</p> <p>The street tree fronting the property shall be protected during works in accordance with the conditions of consent.</p>			
NECC (Flooding)	<p><b>Supported - subject to conditions</b></p> <p>The proposed development is for the construction of a studio at the rear of the property.</p> <p>The property is flood affected with the following flood data:</p> <ul style="list-style-type: none"><li>• 1% AEP flood level: 5.84m AHD</li><li>• Flood Planning Level (FPL): 6.14m AHD</li><li>• Probable Maximum Flood (PMF) level: 6.10m AHD</li><li>• Flood Risk Precinct: Medium</li><li>• Flood Life Hazard Category: H2-H3</li></ul> <p>Subject to conditions, the proposal is generally compliant with Section 5.4.3 of the Manly DCP (2013) and Clause 5.21 of the Manly LEP (2013).</p>			
Strategic and Place Planning (Heritage Officer)	<p><b>Supported - without conditions</b></p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td><p>This application has been referred to Heritage as it is a heritage item and is located in the <b>Pittwater Road Heritage Conservation Area</b>. The building is a part of the heritage item, being <b>Item I199 - Group of Commercial and Residential Building</b> - 35–49</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>This application has been referred to Heritage as it is a heritage item and is located in the <b>Pittwater Road Heritage Conservation Area</b>. The building is a part of the heritage item, being <b>Item I199 - Group of Commercial and Residential Building</b> - 35–49</p>
HERITAGE COMMENTS				
Discussion of reason for referral				
<p>This application has been referred to Heritage as it is a heritage item and is located in the <b>Pittwater Road Heritage Conservation Area</b>. The building is a part of the heritage item, being <b>Item I199 - Group of Commercial and Residential Building</b> - 35–49</p>				

Internal Referral Body	Comments	
	Pittwater Road , as listed in Schedule 5 of Manly LEP 2013.	
	Details of heritage items affected	
	Details of the heritage items as contained within the Manly Heritage inventory, are as follows:	
	<b>I199 - Group of Commercial and Residential Buildings</b>	
	<u>Statement of significance</u>	
	The item is a group of unusual early Twentieth Century terraced two storey residences with shops at each end. Listed due to its originality and uniqueness of concept, layout and mixture of materials. Significance in contribution to streetscape and in relationship to late 19th century development locally.	
	<u>Physical description</u>	
	The subject dwelling is part of the group of 8 terraced buildings comprising 6 terraced two storey houses (originally rendered at ground floor level and timbered at first floor level) with rendered two storey (projecting as one storey shops) buildings at each end. Bullnose verandah roofs to residences have reversed bullnose up to sill level on first floor. Projecting 'gable end' of roof forms pediment over central pair - 41&43 Pittwater Road. Other significant elements include; barge boards to end buildings, rendered pediments over shopfronts, window hoods over first floor windows, Italianate render decoration to ground floor of residences.	
	<b>Pittwater Road Heritage Conservation Area</b>	
	<u>Statement of significance</u>	
The street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.		
<u>Physical description</u>		
The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions. The streetscape provides 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two storey residential cottages, with occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.		
Other relevant heritage listings		
SEPP (Biodiversity and Conservation) 2021	No	

Internal Referral Body	Comments		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent for a detached studio at the rear of heritage listed property, which is the last dwelling of a row of 8 terraces, with a projecting bay of the former shop. The proposal involves the demolition of the redundant outside storage (original toilet) structure at southwest corner of the site and the construction of a new studio at the western boundary.</p> <p>Given the proposed works are mainly confined to the rear and not visible from the street, and the materials and finishes are complimentary to the main building, the impact of the proposal upon the significance of the heritage item and the HCA is considered manageable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions are required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>		

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported - subject to conditions</b></p> <p>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 if the application were to be approved.</p>
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	<p><b>Supported - without conditions</b></p> <p>A referral was sent to Transport for New South Wales (TfNSW). However, the referral was rejected with the following comments: <i>No civil works are proposed on Pittwater Rd. As such, no referral is required to TfNSW under the Roads Act, 1993.</i></p>



External Referral Body	Comments
	Therefore, the proposal is supportable by TfNSW, without conditions.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

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

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

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

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

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No.A507566 dated 07 September 2023).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate if the application were to be approved.

##### **SEPP (Transport and Infrastructure) 2021**

###### Ausgrid

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

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

###### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to recommend conditions if the application were to be approved.

##### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 4 – Remediation of Land**

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

#### **Manly Local Environmental Plan 2013**

Is the development permissible?	No
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:	15.0m	4.3m (Studio)	-	Yes
Floor Space Ratio	FSR: 2:1 (251.6m <sup>2</sup> )	FSR: 0.84:1 (105.4m <sup>2</sup> )	-	Yes

#### **Compliance Assessment**

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.14 Requirement for development control plans	Yes
Schedule 5 Environmental heritage	Yes

#### **Detailed Assessment**

#### **Zone E1 Local Centre**

The existing attached dwelling is not permissible in Zone E1 Local Centre of Manly Local

Environmental Plan 2013. It is important to note, the subject site was previously located in B2 Local Centre Zone of Manly Local Environmental 2013, however this zoning was amended on 26 April 2023.

A detailed existing use rights assessment has been conducted within this report. In summary, the subject site benefits from existing use rights.

### 5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

Council's Flood Engineer has reviewed the proposed development, and is supportable of the proposal subject to recommended conditions. It is considered that the proposal is compatible with the flood function and behaviour of the land. The proposal will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties. The proposal will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood. The proposal incorporates appropriate measures to manage risk to life in the event of a flood. The proposal will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The proposal will not result in any unacceptable impact of the development on projected changes to flood behaviour as a result of climate change. The proposal is considered to be of an acceptable design and scale. The proposal incorporates appropriate measures to minimise risk to life, noting the proposed development is located above the Flood Planning Level. The proposal is considered to be an acceptable location, and will not result in an adverse impact by flooding.

### 6.11 Active street frontages

Under this clause, development consent must not be granted to the erection of a building, or a change

of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

Comment:

The proposed development is related to the rear of the subject site, and as such there are no changes to the street frontage. Therefore, the existing street frontage is to be retained.

### 6.13 Design excellence

Under Clause 6.13 Design excellence, development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and*
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*
- (e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*
- (g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*
- (h) promotes vistas from public places to prominent natural and built landmarks, and*
- (i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*
- (j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*
- (k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

Comment:

The proposed development is located at the rear of the subject site, and as such is not visible from the street frontage. It is considered that the proposed development will not detract from the existing residential development on site, and the proposal will retain the existing design excellence of the subject site.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 125.8m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5m (based on no gradient)	4.3m	-	Yes
	S: 6.5m (based on no gradient)	4.3m	-	Yes
4.1.2.2 Number of Storeys	2	2 (unaltered)	-	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	-	Yes

	Pitch: maximum 35 degrees	7.8 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback (unaltered)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.43m (based on 1/3 wall height)	Nil	100%	<b>No</b>
	S: 1.43m (based on 1/3 wall height)	Nil	100%	<b>No</b>
4.1.4.4 Rear Setbacks	8m	Nil	100%	<b>No</b>
4.1.5.3 Private Open Space	18m <sup>2</sup>	18m <sup>2</sup>	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	0m	-	Yes
Schedule 3 Parking and Access	In Manly Town Centre Business Zone (LEP Zone B2- Local Centre) 0.6 resident parking space for each Studio or one bedroom dwelling, plus 1 resident parking space for each 2 bedroom dwelling, plus 2 resident parking spaces for each 3 or more bedroom dwelling, and plus 0.16 visitor parking space for each dwelling (irrespective of number of bedrooms).	0 spaces	100%	<b>No</b>

\*Note: The application proposes works to an existing attached dwelling within the E1 Local Centre zone. As such, the application has been assessed against the relevant requirements of both Section 4.1 Residential Development Controls and Section 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres) of the Manly Development Control Plan 2013.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3 General Principles of Development	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4 Awnings	No	No
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	No
5 Special Character Areas and Sites	Yes	Yes
5.1 Manly Town Centre Heritage Conservation Area and The Corso	Yes	Yes
5.1.1 General Character	Yes	Yes
5.2 Pittwater Road Conservation Area	Yes	Yes

#### Detailed Assessment

#### **4.1 Residential Development Controls**

Under Clause 4.1 the following is stipulated:

*Where Residential Development Controls apply*

*This section of the plan provides controls for development generally in LEP Zones R1, R2, R3, E3 and E4. These paragraphs may also apply to residential development elsewhere in Manly and are to be read in conjunction with development standards in the LEP.*

#### Comment:

The subject site is located in land identified as E1 Local Centre Zone of Manly Local Environmental Plan 2013. Whilst the subject site is not located in the LEP Zones detailed above, it is considered that the proposal is for residential development elsewhere in Manly, and therefore the relevant controls under Clause 4.1 of Manly Development Control Plan 2013 apply.

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

##### Description of non-compliance

Under Clause 4.1.4.2 of Manly Development Control Plan 2013 (MDCP 2013), the requirements for setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The required southern setback is 1.43 metres based off one third of the adjacent wall height.

Under Clause 4.1.4.4 Rear Setbacks of MDCP 2013, the distance between any part of a building and the rear boundary must not be less than 8 metres.

The proposed studio presents a nil setback to the northern and southern side boundary lines, and a nil setback to rear western boundary line.

Notwithstanding, the proposal has been assessed against the objectives of the control. It is considered that the proposed variations are considered acceptable, and the nil setbacks are supportable in this circumstance.

#### Merit consideration:

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

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

#### Comment:

The proposed studio is located at the rear of the site, and as such will not result in any discernible changes to the existing streetscape.

***Objective 2) To ensure and enhance local amenity by:***

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

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

Comment:

The northern and southern elevations to not include any windows, and as such it is considered that the proposal will not result in any unacceptable privacy impacts. The proposed studio will provide equitable access to light, sunshine, and air movement to the subject site, and adjoining sites. The proposal will not result in any unacceptable view sharing impacts. The proposal is located at the rear of the site, and as such will not alter the character of the streetscape. Lastly, the proposal does not alter any traffic conditions.

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

Comment:

The location of the proposed studio is considered acceptable, given the constraints of the site, and limitation for the proposed studio to be located.

**Objective 4) To enhance and maintain natural features by:**

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

Comment:

The subject site does not contain any significant landscape features and does not adjoin any Open Space Lands, or National Parks.

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

Comment:

The subject site is not located in bush fire prone land and therefore this objective is not relevant.

**4.2.3 Setbacks Controls in LEP Zones B1 and B2**

Under Clause 4.2.3 Setbacks Controls in LEP Zones B1 and B2 the following applies:

*All buildings must be constructed to the public road and side boundaries of the allotment except where:*

*a) an alternative setback is identified on the townscape and opportunities maps or having regard to established building lines and whether they contribute positively to the streetscape; or*

Comment:

A detailed assessment has been conducted under Clause 4.1.4 Setbacks (Front, side and rear) and



building separation. It is considered that the proposed studio that presents nil setbacks to the northern and southern building line is supportable, and is in accordance with the control. It is considered that the proposed studio would not result in any adverse impacts, if the studio were to be built wholly within the subject site.

#### **4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor**

##### Description of non-compliance

Schedule 3 of the Manly Development Control Plan 2013 stipulates that attached dwelling houses within the B2 Local Centre zone are to provide the following parking spaces:

*In Manly Town Centre Business Zone (LEP Zone B2- Local Centre)*

- 0.6 resident parking space for each Studio or one bedroom dwelling, plus
- 1 resident parking space for each 2 bedroom dwelling, plus
- 2 resident parking spaces for each 3 or more bedroom dwelling, and plus
- 0.16 visitor parking space for each dwelling (irrespective of number of bedrooms).

The site does not contain any off-street parking facilities, nor does the application propose any off-street parking. As a consequence, the proposed development fails to comply with the Control.

##### Merit consideration

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

***Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.***

##### Comment:

Whilst no off-street parking is proposed, the subject site is located within the Manly Town Centre and is well service by public transport. Given the adjoining properties are devoid of off-street parking facilities, the non-compliance is considered acceptable in this regard.

***Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within business areas.***

##### Comment:

The proposed development will not generate conflicts between pedestrians and vehicles within the locality.

#### **4.2.5.4 Car Parking and Access**

Under Clause 4.2.5.4 Car Parking and Access the following exceptions can be made:

*Exceptions to parking rates/ requirements in Manly Town Centre*

*a) In exceptional circumstances and having regard to the merits of the application, Council may be prepared to allow a reduction in the any parking rate/ requirements in Manly Town Centre (including residential and commercial) where the applicant has demonstrated that:*

*(i) in the case of all uses other than dwellings, the dimensions or topography of the site would*

*physically prevent the provision of some or all of the required spaces;  
(ii) the required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or  
(iii) the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.*

Comment:

A detailed assessment has been conducted under Clause 4.2.4 of Manly Development Control Plan contained within this report. Notwithstanding, the existing attached dwelling and building footprint does not allow for any opportunities for parking facilities on the subject site. It is considered that any parking facilities would result in unacceptable interference with the frontage of the property, and result in conflicts with pedestrian movements in a largely pedestrianised area.

**4.4.4.1 Awnings in LEP B1 and B2 Business Zones**

Description of non-compliance

The proposed development does not provide an awning over the footpath on Pittwater Road.

Clause 4.4.4.1 Awnings in LEP B1 and B2 Business Zones of Manly Development Control Plan 2013, states continuous footpath awnings must be provided on all street frontages generally consistent with the streetscape.

Merit consideration:

The portion of Pittwater Road which adjoins the heritage listed group of commercial and residential buildings does not contain any street awnings, with the existing development generally set back from the street frontage.

As the proposed development involves alterations and additions to an existing attached dwelling, which benefits from existing use rights, and does not include any commercial use, the inclusion of an awning is not considered to be required in this circumstance.

**THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

**CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

**POLICY CONTROLS**

**Northern Beaches Section 7.12 Contributions Plan 2022**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

- 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 EPs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

## **PLANNING CONCLUSION**

This proposal, for demolition works and construction of a studio with associated landscaping, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed development involving the demolition of a heritage item.

The concerns raised in the objections have been considered and resolved by recommended conditions if the application were to be approved.

The critical assessment issues related to the lack of Owners Consent from the adjoining site at No.47 Pittwater Road, which forms the reasons for refusal of the proposed development.

The proposal has therefore been recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

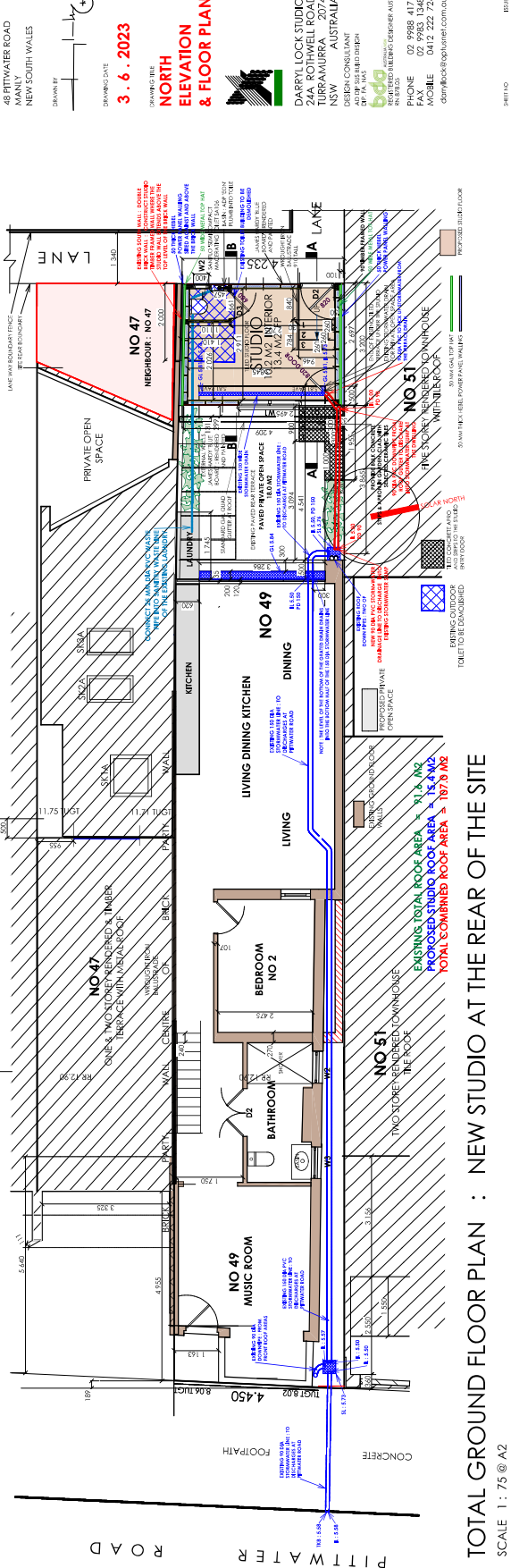
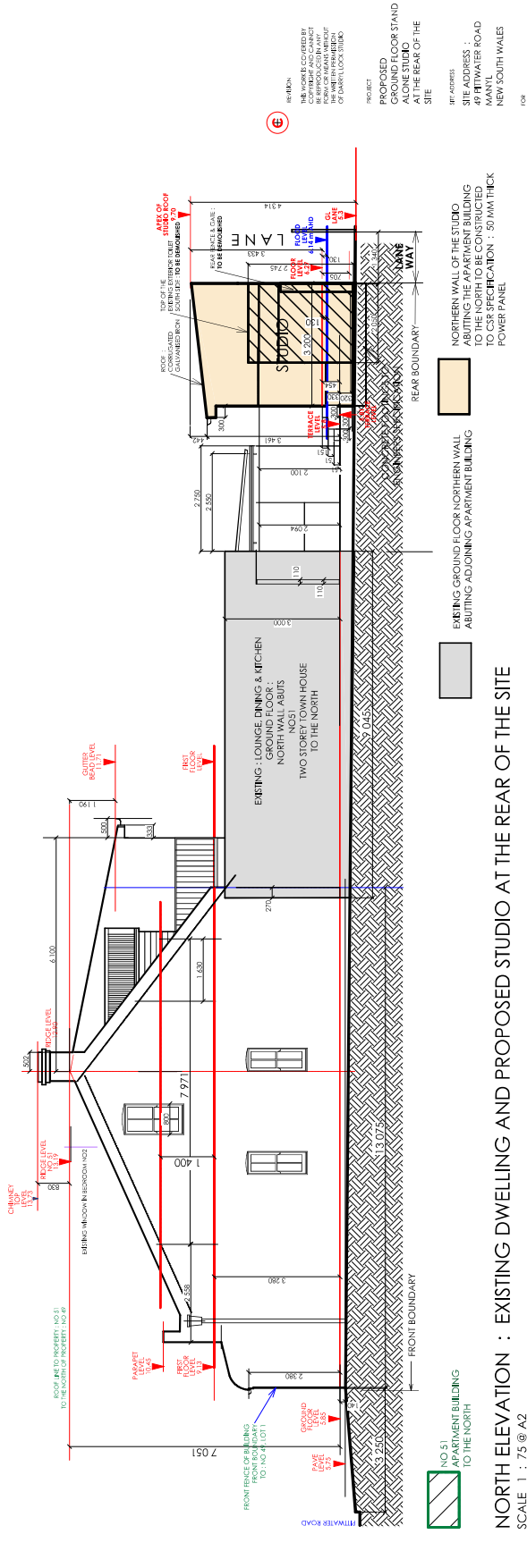
## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/1458 for the Demolition works and construction of a studio with associated landscaping on land at Lot 1 DP 233249,49 Pittwater Road, MANLY, for the reasons outlined as follows:

1. **Pursuant to Section 4.15(1)(a)(iv) of the of the Environmental Planning and Assessment Act 1979, the application has not been accompanied by the required information for a Development Application.**

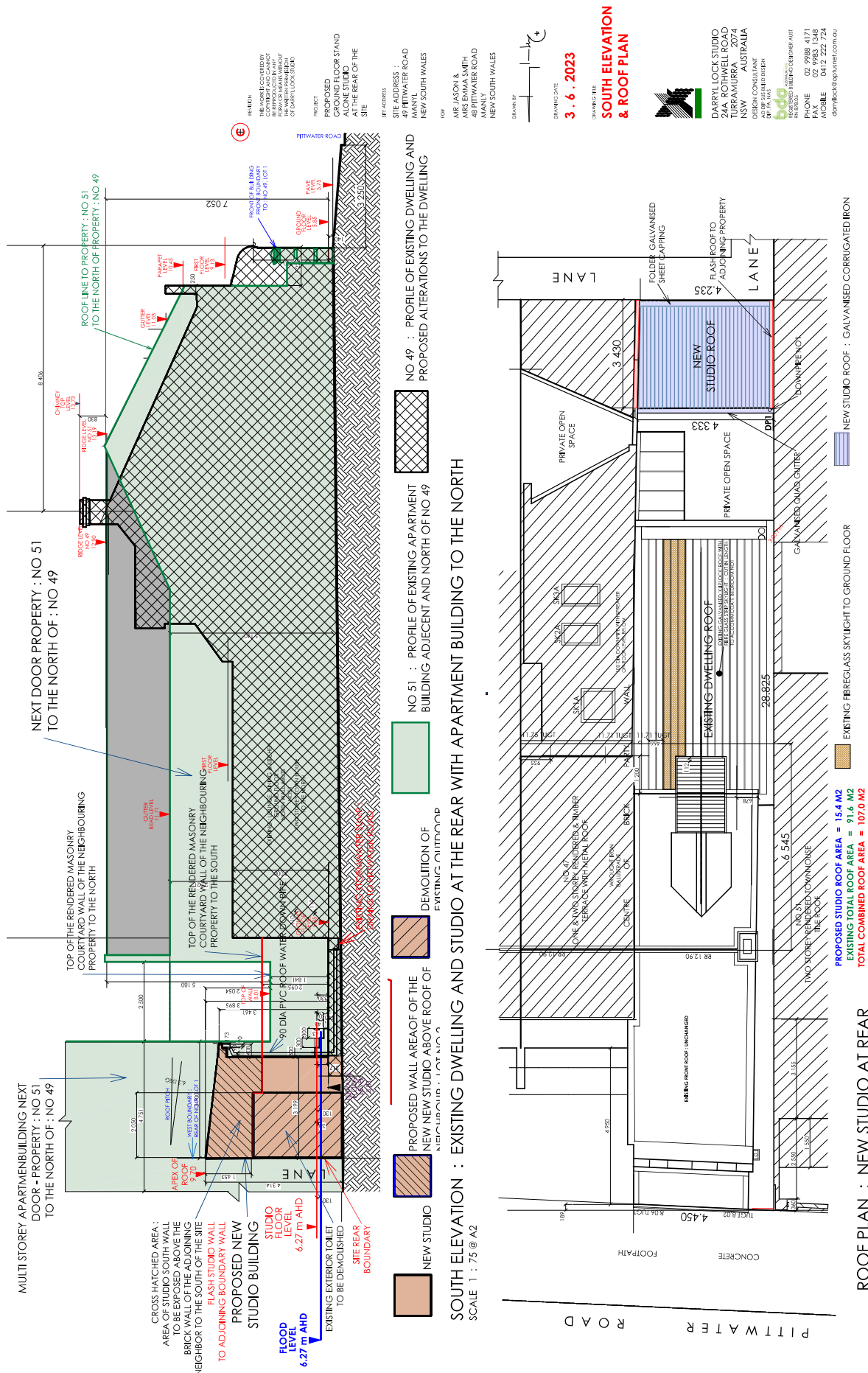
Particulars:

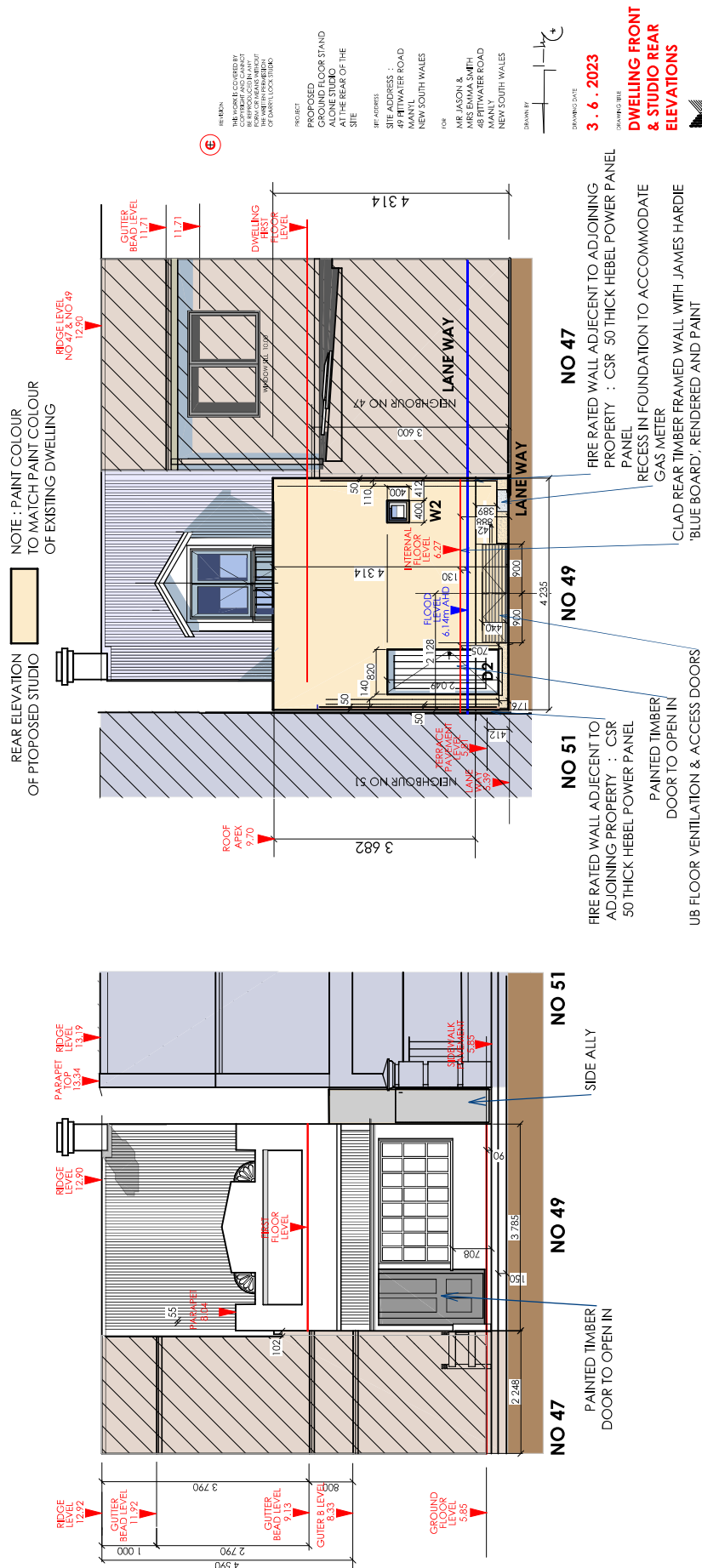
i. The application has not been accompanied by Land Owners Consent from No.47 Pittwater Road. The development application proposes works to the Party Wall Easement which straddles the boundary between No.47 and No.49 Pittwater Road. As such, the development application does not contain all the information and documents required by Section 24(1)(b) of the *Environmental Planning and Assessment Regulation 2021* and the development application has not been made by a person as required by Section 23(1)(b) *Environmental Planning and Assessment Regulation 2021*.



PROPOSED NEW GROUND FLOOR STUDIO AT THE REAR OF THE SITE INCLUDING PLUMBING & STORMWATER

FOR MR JASON SMITH & EMMA SMITH : 49 PITWATER ROAD : MANLY : NEW SOUTH WALES





## STREET ELEVATION

FRONT ELEVATION (STREET) WITH  
NEIGHBOUR NO 51- NORTH  
& NEIGHBOUR NO 47 - SOUTH

SCALE 1 : 50 @ A2

## REAR (LANE WAY) ELEVATION

REAR ELEVATION (LANE WAY) OF STUDIO  
WITH NEIGHBOUR NO 51 - NORTH &  
NEIGHBOUR NO 47 - SOUTH

SCALE 1 : 50 @ A2

STREET : FRONT ELEVATION AND REAR (LANE-WAY) ELEVATION

FOR MR JASON SMITH & EMMA SMITH : 49 PITTWATER ROAD : MANLY : NEW SOUTH WALES

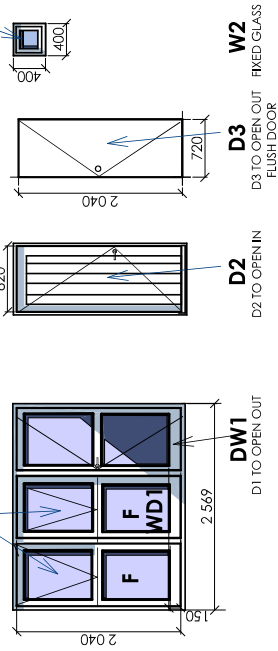
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PROPOSED NEW GROUND FLOOR STUDIO AT THE REAR OF THE SITE : WINDOW & DOOR JOINERY + WEST & EAST ELEVATIONS

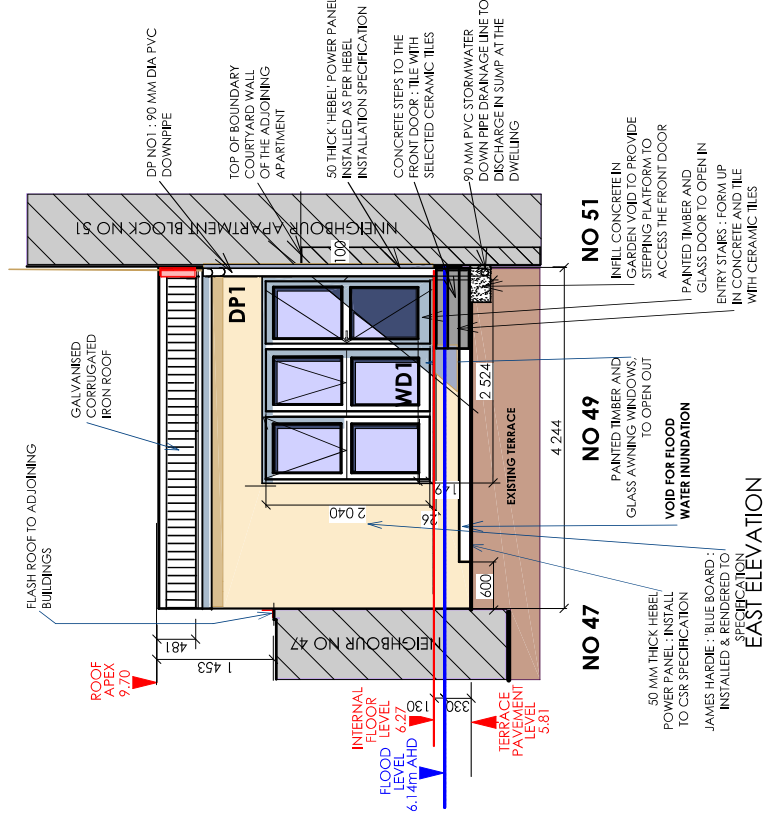
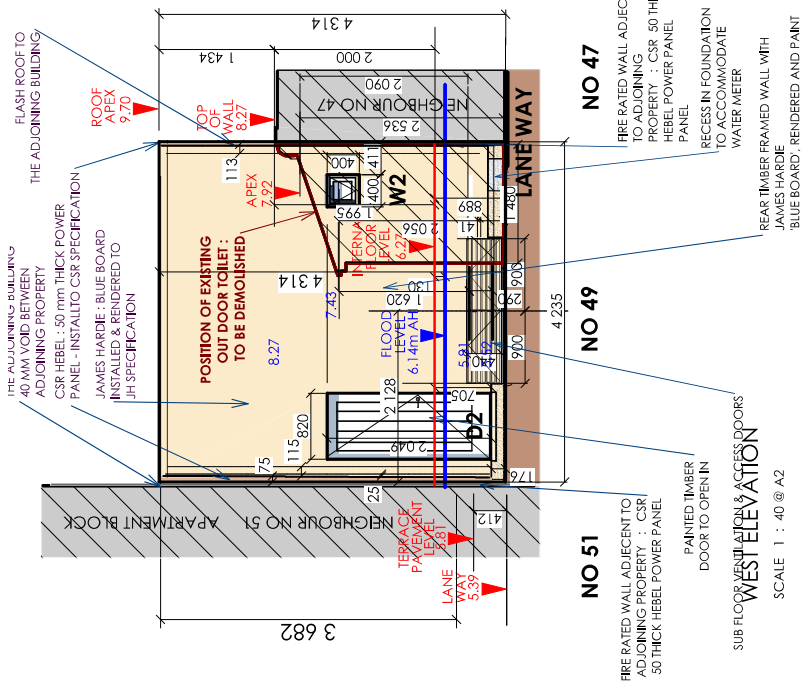
FOR MR JASON SMITH & EMMA SMITH : 49 HITWATER ROAD : MANLY : NEW SOUTH WALES

40 MM GAP BETWEEN  
TOP OF GLASS AN SASH  
FOR VENTILATION

AWNING SASHES TO  
OPEN OUT WITH FRICTION  
STAYS



ELEVATION OF EXTERNAL & INTERNAL DOORS & WINDOWS



REVISION:  
(6) THE WORK COVERED BY THIS DRAWING IS THE PROPERTY OF DARRYL LOCK STUDIO

PROJECT:  
PROPOSED GROUND FLOOR STUDIO AT THE REAR OF THE SITE

SITE ADDRESS:  
49 HITWATER ROAD  
MANLY  
NEW SOUTH WALES

FOR:  
MR JASON &  
MRS EMMA SMITH  
49 HITWATER ROAD  
MANLY  
NEW SOUTH WALES

DRAWN BY:  
DARRYL LOCK

DRAWING DATE:  
3 . 6 . 2023

STUDIO FRONT &  
REAR ELEVATIONS +  
DOORS & WINDOWS

DARRYL LOCK STUDIO  
24A ROTHWELL ROAD  
TURAMURRA 2074  
NSW 1585  
AUSTRALIA  
02 9988 4171  
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**ITEM 4.5****DA2023/1232 - 397 CONDAMINE STREET, ALLAMBIE HEIGHTS - ALTERATIONS AND ADDITIONS TO A CHILDCARE CENTRE****AUTHORISING MANAGER** Maxwell Duncan – Acting DA Manager**TRIM FILE REF** 2024/023511**ATTACHMENTS**  
1 [↓](#) Assessment Report  
2 [↓](#) Site Plan & Elevations  
3 [↓](#) Clause 4.6**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.

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**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. DA2023/1232 for the Alterations and additions to a childcare centre on land at Lot 1 DP 624845,397 Condamine Street, ALLAMBIE HEIGHTS for the reasons for refusal set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1232
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<b>Responsible Officer:</b>	Simon Ferguson Tuor
<b>Land to be developed (Address):</b>	Lot 1 DP 624845, 397 Condamine Street ALLAMBIE HEIGHTS NSW 2100
<b>Proposed Development:</b>	Alterations and additions to a childcare centre
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Double Arts Properties Pty Ltd
<b>Applicant:</b>	Christopher Houghton

<b>Application Lodged:</b>	12/09/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	15/09/2023 to 29/09/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 19%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 160,906.00
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing building that was approved as a childcare centre under DA2022/0492. Specifically, the proposal seeks to erect a façade to the front of the building that includes business identification signage and other minor works.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal contravenes Clause 4.3 Building Height development standard by greater than 10% and it doesn't relate to a Class 1 Building.

The 4.6 request for the non-compliance with height standard arises from the construction of an



external façade attached to the frontage of the existing building. The proposed façade seeks to extend past the height of the existing building to a height of 10.1 metres which creates a 19% variation to the 8.5m development standard. The applicant's written request for variation has not demonstrated sufficient environmental planning grounds to justify a variation to the Height of Buildings development standard. Hence, in this instance, the development standard is upheld and the request refused.

During the notification period, one (1) submission was received which raised concerns that relate to Clause 4.3 Building Height in Warringah Local Environmental Plan 2011 (WLEP), Clause D6 Access to Sunlight in Warringah Development Control Plan 2011 (WDCP) and inconsistencies in the architectural plans.

The assessment of the proposed development has found that the development fails the Objectives of the R2 Low Density Zone, Height of Building and Clause 4.6 Exceptions to development standards of WLEP.

The proposed development has been assessed as being inconsistent with the following provisions of WDCP: Objectives of the DCP, Wall Heights, Side Boundary Setbacks, Front Boundary Setbacks, Access to Sunlight, Building Bulk, Building Colours and Materials and Signs.

The proposal was deemed to be inconsistent with Chapter 3 of the Industry and Employment SEPP and its underlying objectives.

In summary, the proposed façade and signage is considered be inconsistent with the future desired character of the low density residential area and has unacceptable built form impacts upon adjoining properties and public areas.

This report concludes with a recommendation that the NBLPP refuse the development application for the reasons outlined at the end of this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for alterations and additions to the approved childcare facility (DA2022/0492) as follows:

- Alterations to the front façade of the existing building
- Business identification signage
- New metal cladding on the approved ramp to the west of the site

The proposal does not seek to alter the operational details, internal layout or parking arrangement of the approved DA2022/0492.

## **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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential  
Warringah Development Control Plan - A.5 Objectives  
Warringah Development Control Plan - B1 Wall Heights  
Warringah Development Control Plan - B3 Side Boundary Envelope  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D9 Building Bulk  
Warringah Development Control Plan - D10 Building Colours and Materials  
Warringah Development Control Plan - D23 Signs

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 624845 , 397 Condamine Street ALLAMBIE HEIGHTS NSW 2100
<b>Detailed Site Description:</b>	<p>The site has an irregular shape with an 25.6 metre (m) eastern frontage to Condamine Street, a stepped southern boundary of 120.33m in total length, a rear (western) boundary of 26.66m, and a 10m wide frontage for access to James Street. The site has a total area of 4,071 square metres (sqm).</p> <p>The site contains a two storey building of masonry construction with a flat roof at the front and pitched tiled roof to the rear. The building was used as the club house for Warringah Golf Club. Vehicle access is provided via a two-way from James Street and accesses a large at-grade split-level bitumen car park located across a large extent of the site, behind the existing building. Two concrete driveways from Condamine Street also provide vehicle access to the existing building.</p> <p>The site contains a number of trees, palms and shrubs, located within all setback areas and dotted throughout the car parking area.</p>



	<p>Levels vary significantly across the site, rising some 13.6m from the low point at Condamine Street to the high point at the rearmost (western) side of the site. The car parking areas is split into two levels, with the lower (eastern) side being at RL 10.58 (measured centrally) and the upper (western) side being rising from RL 12.89 (eastern side) to RL 16.06 (western side). Sandstone, concrete and masonry retaining walls are located throughout the site and provide terracing for the car park and to site boundaries.</p> <p>No works have commenced on-site as they relate to the approved childcare centre, under DA2022/0492.</p> <p>The surrounding area is generally characterised by one and two storey residential dwelling houses of masonry and render construction, with pitched tiled roofs. Most dwellings include consistent front setbacks that incorporate lawns and soft landscaping, with driveway access to off-street parking. The general scale and typology of built form surrounding the site is typical of its R2 Low Density Residential zoning.</p> <p>Condamine Street adjacent the east of the subject site is a 6 lane road (including 2 bus lanes) and is a classified road (zoned SP2 Infrastructure) under management of Transport for NSW. In this regard the site is separated from the from Warringah Golf Club fairways and golf course buildings located on the eastern side of the road and zoned RE1 Public Recreation.</p> <p>Six residential properties adjoin the site to the south and north with frontages to Condamine Street. Other residential properties adjoin the site along its side and rear boundaries.</p>
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Map:



## SITE HISTORY

### Site History

**Building Application No.1395/78** for Warringah Golf Club car parking area was approved by Council in 1978.

**Development Application No.1995/200** was granted consent No.95/332 at Warringah Golf Club on Lot 1 DP624845 for internal alterations to the building involving the conversion of an existing amenities area into a new poker machine room, on 28.6.1995.

**Development Application No.1998/148** was granted consent No.98/195 for alterations and additions to the existing clubhouse on 24.6.1998

**DA2022/0492** - was resolved at Section 34 Conciliation Conference on 24 August 2022 for '*Alterations and additions to existing two storey building to provide a centre-based child care facility with associated earthworks, landscaping and at-grade parking.*'

### Application History

A request for further information (RFI) was sent out Thursday, October 12, 2023, requesting an amended design with less impacts.

The Applicant requested a meeting to discuss the issues raised in the RFI on October 17. Council asked for preliminary sketches or solutions to be provided prior to any meeting taking place. Options were provided by Applicant, however, it was deemed that they not address the issues raised in the RFI. Thus, further design changes were requested, or the application would progress to a refusal.

The applicant submitted an November 10 - Expert Design Response on November 10, 2023, but they confirmed no further design changes would be provided.

Applicant was informed that the application would be determined by way of refusal.



## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended designs.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may have been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia</p>





Section 4.15 Matters for Consideration	Comments
	(BCA). This matter may have been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 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 requirement(s) of the Warringah LEP 2011 and Warringah DCP 2011, particularly in relation to setbacks, bulk and scale, building envelope, height and amenity impacts. The proposal would 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 application has been publicly exhibited from 15/09/2023 to 29/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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





Name:	Address:
Mr Scott Ronald Turner	395 Condamine Street ALLAMBIE HEIGHTS NSW 2100

The following issues were raised in the submissions:

- Insufficient detail on plans
- Increase in height

The above issues are addressed as follows:

- **Insufficient detail on plans**

The submissions raised concerns that the plans did not contain enough information in order to make a reasoned submission/objection. In particular it was stated that it was unclear what is being proposed on the boundary between 397 and 395 Condamine St.

Comment:

A request for further information (RFI) was sent to the Applicant, requiring amendments to the plans and further detail. However, amended plans were not formally lodged onto the planning portal.

- **Increase in height**

The submissions raised concerns that the height increase was unnecessary and would reduce sunlight to neighbouring property of 395 Condamine Street. It was suggested that there was no need for the proposal to be built higher than the existing building.

Comment:

These concerns were raised within the RFI letter and it was requested that the proposed design be amended so as to reduce the height of the proposal. Amended plans were not formally lodged onto the planning portal and therefore the non-compliance with the height development standard has formed part of the reasons for refusal.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported - subject to conditions</b></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>



Internal Referral Body	Comments
	<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>
<p>Strategic and Place Planning (Urban Design)</p>	<p><b>Not Supported</b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent for alterations and additions to the existing building at 397 Condamine Street, Allambie Heights. The proposed includes text on a new structure that consists of colourful curved shapes on a new steel frame, which sit forward of the existing building façade.</p> <p>Urban Design cannot support the proposal because of the following issues:</p> <ol style="list-style-type: none"> <li>1. The Statement of Environmental Effects (SEE) in section 4.2.4 notes a maximum height that appears incorrect. The applicant's clause 4.6 report states an overall height of 10.4m, but the applicant SEE illustrates a height of 11m (fig 12) to the Southeast corner of the subject site. Please request that the applicant draw the maximum height control on their sections and elevation drawings, and dimension how much the proposal protrudes above the maximum height limit at each point.</li> <li>2. The SEE section 4.2.5 states, '<i>The proposal will comply with the relevant provisions of the Warringah Development Control Plan 2011</i>', but it does not address the controls. This is a new Development Application, and the applicant should address and satisfy all relevant provision of the Warringah DCP 2011. The applicant should address provisions including but not limited to the following: <ul style="list-style-type: none"> <li>o WDCP – B1 Maximum wall height</li> <li>o WDCP – B3 Side Boundary Envelope</li> <li>o WDCP – D1 Landscaped Open Space and Bushland Setting</li> <li>o WDCP – B7 Front setback</li> <li>o WDCP – D9 Building Bulk</li> </ul> </li> </ol>



Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>o WDCP – D10 Building Colours and Materials</li> <li>o WDCP – D23 Signs</li> </ul> <p>The relevant controls should be illustrated on the applicants' drawings and addressed in their SEE. As just two examples, WDCP-D10 requires, <i>'The colours and materials used for alterations and additions to an existing structure shall complement the existing external building façade'</i>, and WDCP-D9 objective is, <i>'To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes'</i> and requires applicants to, <i>'Use colour, materials and surface treatment to reduce building bulk, and 'Articulate walls to reduce building mass'</i>. The applicant has not sufficiently addressed the WDCP controls.</p> <p>3. The SEE states in section 4.2.2.2, <i>'the proposal will have no bearing on the Child Care Planning Guidelines as approved under DA2022/0492'</i>. The proposed new development under this new Development Application should address the relevant sections of the Childcare Planning Guideline and Design Quality Principles, noting the objectives of the guideline are to, <i>'ensure that child care facilities are compatible with the existing streetscape, context and neighbouring land uses'</i>.</p> <p>Urban Design cannot support the design of the development as currently proposed. Further coordination of documentation is required by the applicant, and the applicant needs to address the items noted above. Once the applicant has addressed the issues noted above it may be prudent to meet with the applicant so they can demonstrate how their proposal meets the controls.</p> <hr/> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.</p>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council



Policies have been considered in the merit assessment of this application.

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

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

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

#### SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

**Note:** The Statement of Environmental Effects (SEE) submitted with the application conducted an assessment against the the SEPP only for two signs, namely the text stating 'Giraffe Early Learning Centre Warringah' and a giraffe graphic. However, Council has deemed the whole structure proposed meets the definition of business identification signage. 'Signage' is defined in the WLEP as:

*signage means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—*

- (a) *an advertising structure,*
- (b) *a building identification sign,*
- (c) *a business identification sign,*

The proposed structure has no other function or utility, but to draw attention to the commercially operated childcare centre and its text and graphics. Hence, it is considered that the structure is principally designed for the display of business identification signage.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment of the proposed business identification signage is provided:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal is not compatible with the existing or desired future character of the area. The size, scale and bright colour scheme are not consistent with the low density residential zone.	<b>NO</b>
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal is not consistent with a particular theme for outdoor advertising in the area. The proposal is not consistent with other business	<b>NO</b>



	identification signage in the low density residential zone.	
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site is not situated within an environmentally sensitive area, heritage conservation area. However, the site is located in a low density residential area and is visible from the Golf Course across the road. Hence, it is deemed that the bulk, scale and colour scheme would detract from the visual quality and amenity of the residential and open space areas in the surrounding vicinity.	<b>NO</b>
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The proposed signage does not impact on important views.	<b>YES</b>
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the skyline or reduce the quality of vistas.	<b>YES</b>
Does the proposal respect the viewing rights of other advertisers?	The proposed signage respects the viewing rights of other advertisers.	<b>YES</b>
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposal is not appropriate for a low density residential zone, adjacent to dwelling houses.	<b>NO</b>
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal detracts from the streetscape.	<b>NO</b>
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal increases the amount and size of existing signage at the site, thereby increasing clutter.	<b>NO</b>
Does the proposal screen unsightliness?	No screening of unsightliness is considered necessary.	<b>YES</b>
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposal proposal would protrude above the existing building at the site.	<b>NO</b>
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal is not compatible with the scale and proportion of the site and existing building. It takes up the entire width of the street frontage and exceeds the height of the existing building.	<b>NO</b>
Does the proposal respect important features of the site or building, or both?	The proposal does not respect important features of the existing building. It covers almost all elements of the existing building.	<b>NO</b>
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposal does show imagination and innovation. However, the scale at which it does is not appropriate for a low density residential area.	<b>YES</b>



<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No safety devices have been designed as part of the proposal.	YES
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No illumination is proposed.	YES
Can the intensity of the illumination be adjusted, if necessary?	No illumination is proposed.	YES
Is the illumination subject to a curfew?	No illumination is proposed.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposal will not reduce the safety for any public road, pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal will not reduce the safety for pedestrians, particularly children, by obscuring sightlines.	YES

Accordingly, the proposed signage is not considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be inconsistent with the provisions of this chapter and its underlying objectives.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. DA2022/0492 found that the site was capable of accommodating the approved childcare centre. The proposed external alterations and additions will not impact the findings of DA2022/0492. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the approved commercial land use.

## Warringah Local Environmental Plan 2011

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



#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.1m	19%	No (see comments)

#### 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	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

##### Zone R2 Low Density Residential

Relevantly, one of the objectives of the zone is 'to ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.'

The proposed development is not consistent with this objective of the zone.

##### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.1m
Percentage variation to requirement:	19%

##### 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 judgements 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 has not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not 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:

- '1. 'The existing building is non-compliant and the extent of additional variation is minor
  - a. As measured from the existing ground level, the current building is a maximum height of 9.7m (1.2m or 14.1%) to the parapet of the built form addressing Condamine Street. As the existing building has been in-situ for a considerable period of time, the height, bulk and scale on the subject site has been established.
  - b. The proposal is therefore designed to ensure consistency with the building height established onsite. That is, the proposed façade represents a minor increase in height of 0.34m when compared to the existing building, and will therefore maintain the bulk and scale already established on-site. Whilst the proposal will result in an increased variation, this pertains to the façade design which will significantly improve the character of the site, particularly as it relates to the approved childcare centre under DA2022/0492.
  - c. Ultimately, the proposed development seeks to substantially improve the character of the site through providing façade upgrades which are consistent with the building height established onsite. The proposed non-compliance will not result in any wholesale changes to the bulk and scale of the development, rather, will provide for improved visual interest and depth. Insisting on strict



*compliance, or maintaining the existing building height, will result in a subpar architectural outcome with no discernible benefit to the character or amenity of the surrounding locality.*

*2. The topography contributes to the extent of non-compliance*

*a. The topography is a site-specific reason that contributes to the extent of this variation. Specifically, the topography falls from the western (rear) boundary to Condamine Street and exacerbates, to a degree, the extent of non-compliance. That is, the rear portion of the existing building is compliant with the 8.5m height standard, and it is where the topography falls towards Condamine Street (and the existing building is non-compliant), that the proposed façade varies the standard.*

*b. Whilst the topographical variation increases the extent of non-compliance, it is considered acceptable as it predominantly pertains to a high quality, curved façade structure which does not contribute to any to any adverse increase of bulk and scale. As detailed, the existing building is non-compliant with the standard and the proposal will provide for wholesale improvements to the character of the development.*

*c. To request strict compliance will require significant modification to the façade which will create an incoherent architectural design and will not provide for any distinctive benefits to the character of the locality or amenity of surrounding properties. Strict compliance is therefore considered to be both unreasonable and unnecessary in the circumstances of the development.*

*3. The non-compliances achieve a high level of design*

*a. The proposed façade (and associated non-compliance) is designed so that it is open in form, light-weight in nature and will limit any adverse impact to the streetscape. The proposed structures respond to the topographical decline of the site and non-compliance of the existing building to significantly improve the character of the site as viewed from the public domain. Specifically, the existing building (including the non-compliant elements) does not provide any visual interest or depth as viewed from the public domain. The proposed façade upgrades will rectify this through the provision of a contemporary form which includes façade undulations and curved elements, with a complementary colour scheme and signage.*

*4. The non-compliance will contribute to the character of the locality*

*a. Object 1.3(g) of the EP&A Act 1979 is "to promote good design and amenity of the built environment". As detailed, the proposal will generally maintain the height of the existing building, however, substantially improves and enhances its architectural design and character, consistent with that approved under DA/2022/0492. Whilst the proposal will remain as non-compliant, there will be a significant improvement to the visual appearance of the development, through curved elements, façade undulations, signage and an appropriate colour scheme.*

*b. As considered in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115, the desired future character is subjective and can be set by the existing, recently approved and proposed buildings within the neighbourhood. In this regard, the existing building, which has been in-situ for a considerable period of time, has established the building height of development onsite. Although the proposed development results in a minor increase in building height, it provides an architectural design which will significantly improve the character of the development and represents a more skilful design when compared to the existing building.*

*5. The range of amenity impacts have been established by the existing development*

*a. As detailed, the proposed façade upgrade will generally maintain the height established by the existing building. Resultantly, the range of amenity impacts created by the proposed development are consistent with those already established on-site. That is, the non-compliance will not result in any adverse impact to the overshadowing, views or privacy of the surrounding locality beyond that created by the existing building.*

*b. It is therefore considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and character of the locality. Specifically:*



- i. The extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to the existing building envelope. That is, any additional overshadowing will be minor ensuring that the proposal will not impact the solar gain of the surrounding locality. Given the site orientation, shadows will be cast onto the existing building and streetscape. As such, any additional overshadowing caused by the non-compliant elements would be insignificant; and*
- ii. The height breach does not result in any additional privacy impacts as it pertains to nonhabitable façade structures; and*
- iii. The height of building breach does not result in adverse view loss when compared to the existing building on-site. That is, the proposal only results in a 0.34m increase in building height when compared to the existing building. As such, it is anticipated the extent of view loss caused by the non-compliant element would be insignificant or nil.*

**6. Orderly and economic use of the land**

Object 1.3(c) of the EP&A Act 1979 is "to promote the orderly and economic use and development of land." A compliant development would unnecessarily result in a suboptimal architectural design, without any discernible benefit to the amenity of neighbouring properties, thereby reducing visual interest and articulation as viewed from the public domain. It would be contrary to the public interest to deny the variation and require the redesign of the façade which is a response to the existing site conditions and topography.

**7. The proposal meets aims and objectives of key planning documents**

- a. The proposed development meets the objectives of the development standard and meets the objectives of the R2 Low Density Residential zone (as further detailed in Section 7 below); and*
- b. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
  - i. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));*
  - ii. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).'*

Council has considered the applicants request for a variation, and it is considered that no sufficient grounds are established as to why the proposed façade cannot comply with the the Height of Buildings development standard, or why a variation should be granted in this instance.

There is no impediment to providing a compliant design and the proposed façade is even higher than the existing building at the site, which causes an unacceptable visual bulk and streetscape appearance. It is not considered that the topography necessitates additional height or that the non-compliance will contribute to the character of the area. Furthermore, the proposal is inconsistent with numerous aims and objectives of key planning controls.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, thereby failing to satisfy clauses 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not 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 not satisfied that the applicant's written request is well founded and 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 R2 Low 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 WLEP 2011 are:

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

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

It is acknowledged that the existing building on site exceeds the current 8.5m building height standard. Cumulatively the footprint of the existing building and the proposed 10.1m high façade at the front of the site results in a built form that is inconsistent with the height and scale of development envisaged in the low density residential zone. The mere fact that the existing building on site exceeds the current height control does not mean that future developments borrow from that historical non-compliance. Council does not support any variation that seeks to extend the already non-compliant building height, especially considering the residential nature of the site where even a minor increase in height may have amenity impacts on adjoining neighbours. The extent of variation proposed, combined with the cubic volume of non-compliance, colours and materials that is not supported, and which would result in an incongruent streetscape. In that respect, the proposal cannot be said to be compatible with the height and scale of surrounding and nearby development.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

As detailed elsewhere in this report, there were no shadow diagrams submitted with the application. Therefore it was not possible for a detailed assessment of solar access to be undertaken.

In the absence of accurate and certified shadow diagrams it is concluded that the extent of overshadowing is unacceptable.

*c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:



The proposal is not situated in an area that would be considered as coastal or bush and therefore this objective is not relevant.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The proposed development is highly visible from Condamine Street which is a main arterial road and would be visible from the golf course on the eastern side of the street. The proposed height of the development in combination with colours and materials is not considered to appropriately manage the visual impact of development.

**Zone objectives**

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

This objective is not relevant to the proposal.

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

Comment:

The approved land use was granted under DA2022/0492 and is unaltered for this proposal.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed façade is not consistent with the above objective. The bulk, scale, colour scheme and materials are not in harmony with the low density residential zone or nearby dwelling houses. Rather than softening the existing non-compliant built form at the site through landscaping treatments, the proposal seeks to exacerbate and increase the height of development at the site and draw attention to building via eye catching elements, signage and structures.

It is considered that the development does not satisfy this objective.

Conclusion:



For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R2 Low 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 PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.1m	40%	No (see comments)
B3 Side Boundary Envelope	4m	outside envelope	N/A	No (see comments)
	4m	outside envelope	N/A	No (see comments)
B5 Side Boundary Setbacks	0.9m	0m	100%	No (see comments)
	0.9m	0m	100%	No (see comments)
B7 Front Boundary Setbacks	6.5m	4.7m	28%	No (see comments)
B9 Rear Boundary Setbacks	6m	>6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	24% (existing no change)	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	No	No
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	No	No
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **A.5 Objectives**

The overriding objective of the Warringah Development Control Plan 2011 (WDCP) is to create and maintain a high level of environmental quality throughout Warringah. Development should result in an increased level of local amenity and environmental sustainability.

The proposed development is not considered to provide an increased level of local amenity and is inconsistent with the following other objectives of the Warringah Development Control Plan 2011:

- The proposed development does not suitably respond to the characteristics of the site and the qualities of the surrounding neighbourhood, with respect to the proposed bulk and scale of the development in the low density residential zoning of the site.
- The proposed development does not present as a good neighbour, create a unified landscape, contribute to the street, or create an attractive design outcome, with respect to the resultant building bulk and scale and attributable amenity impacts.
- The proposed development does not inspire innovative commercial design, as it results in unreasonable amenity and character impacts directly attributable to the proposed bulk and scale.





For the reasons explained throughout this report, the proposal is found to be unacceptable and does not achieve the objectives of the WDCP.

## **B1 Wall Heights**

### Description of non-compliance

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 B1 Wall Heights of the Warringah Development Control Plan 2011 (WDCP 2011).

Clause B1 Wall Heights stipulates that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building

The proposed development includes a wall height of 10.1 metres on the northern and southern elevations, which is a variation of 40%.

### Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

### Comment:

The proposed development presents a maximum building height of 10.1 metres when measured from the existing ground level to the top of the proposed façade, significantly breaching the numerical development standard of 8.5 metres and relevant objectives under Clause 4.3 Height of Building of the *WLEP 2011*. The building height breach, in conjunction with the proposed wall height non-compliance discussed above, contributes to an unacceptable visual dominance of the building when viewed from both the public domain and adjoining properties.

The proposed development does **not** achieve this objective.

- *To ensure development is generally beneath the existing tree canopy level*

### Comment:

The proposed development does not contain any canopy trees at the front of the site, however, it is considered that the development may be situated below the height of surrounding canopy trees within the area.

- *To provide a reasonable sharing of views to and from public and private properties.*





Comment:

The extent of height breach when viewed conjointly with the numerically non-compliant wall height of the development does not give rise to unacceptable loss of views.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The development exhibits multiple WDCP 2011 and *WLEP 2011* non-compliances, which is discussed throughout the entirety of this report, particularly in relation to unacceptable building mass. This resultant dominance of the built form has been identified as generating unreasonable amenity impacts to surrounding properties.

The proposed development does **not** achieve this objective.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed façade does not involve extensive excavation and reasonably responds to the site topography.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed façade does not include any roof elements and therefore this objective is not relevant.

Having regard to the above assessment, it is concluded that the proposed wall height is inconsistent with the aims and objectives of the control. Therefore, the application is **not** supported, in this particular circumstance.

### **B3 Side Boundary Envelope**

Description of non-compliance

The non-compliance with the side boundary envelope is demonstrated in the figures below:

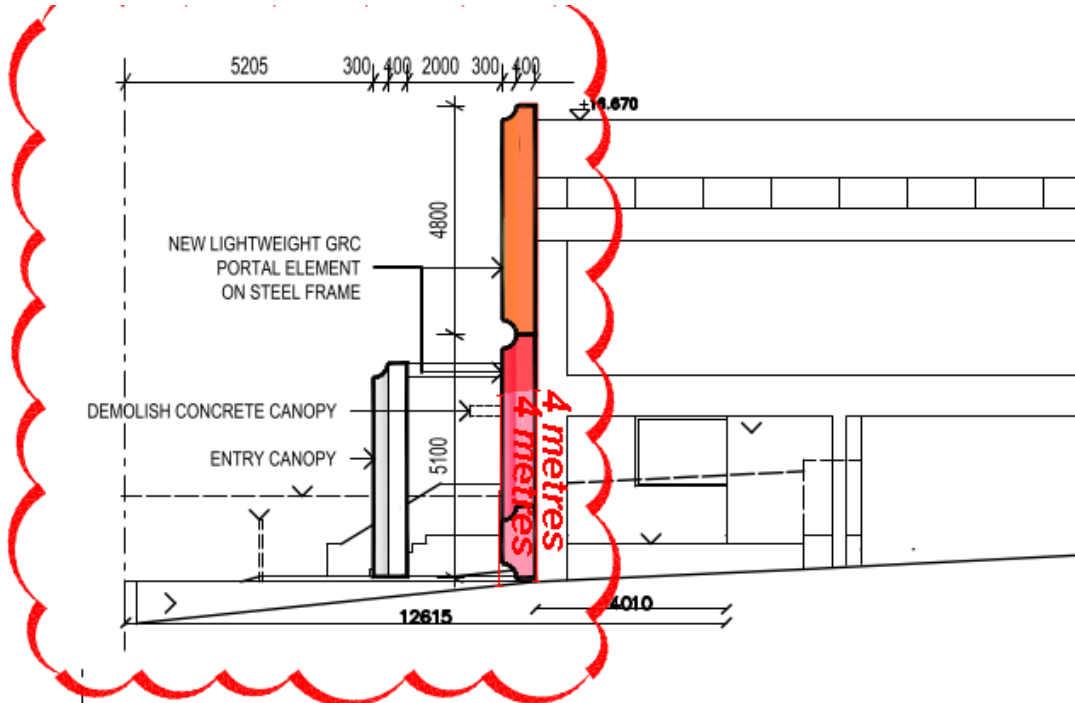


Figure 1: Northern elevation

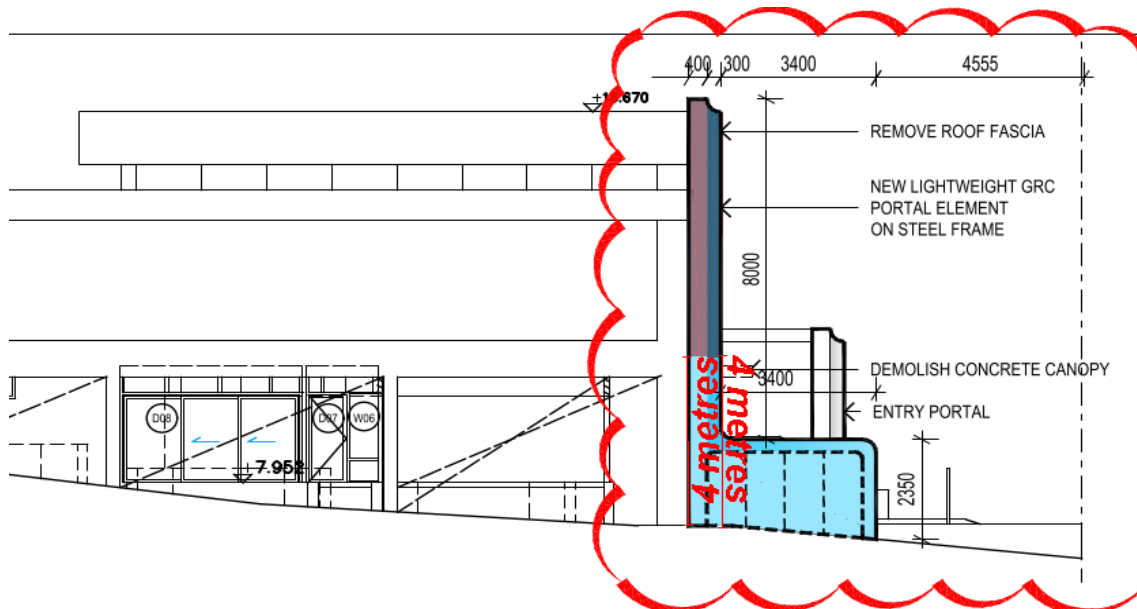


Figure 2: Southern Elevation

#### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying



Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposal seeks to add additional height and bulk to the front of the existing building. A large portion of the proposed façade is situated outside of the building envelope control and adjoins residential dwelling houses. The proposal would see the existing building become even more visually dominant by virtue of its height bulk, materials and colour scheme. The proposed development does **not** achieve this objective.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposed works to the building will create additional building bulk and may increase overshadowing to adjoining neighbours. The proposal to construct bright coloured facades without adequate spatial separation to adjoining residential neighbours is considered to impact on adjacent visual privacy and amenity. The proposed development does **not** achieve this objective.

- *To ensure that development responds to the topography of the site.*

Comment:

The existing non-compliance of the side boundary envelope is proposed to be extended further into the front setback of the site. It is not considered that the development responds to the topography of the site. The proposed development does **not** achieve this objective.

Having regard to the above assessment, it is concluded that the proposed wall height is inconsistent with the aims and objectives of the control. Therefore, the application is **not** supported, in this particular circumstance

## **B5 Side Boundary Setbacks**

### Description of non-compliance

The WDCP 2011 requires buildings be setback 0.9m from the side boundary. The WDCP 2011 requires side boundary setbacks to be landscaped and free of any above or below ground structures.

The proposed façade would have a nil setback from both the northern and southern side boundaries.

### Merit consideration

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



- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposal will limit opportunities for deep soil landscape areas. Hence, the proposal is inconsistent with this objective.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed façade will accentuate the visual impact of the building and result in the land being dominated by hard surfaces and structures, with limited landscaping to offset this visual impact. Hence, the proposal is not consistent with this objective.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

As stated previously, the extent of structures proposed will adversely dominate the land and the lack of sufficient landscaping will heighten the bulk and scale of the approved childcare centre. Therefore, the proposal is not consistent with this objective.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The lack of landscaped areas adjoining the boundary setbacks of the land will result in adverse amenity impacts in respect to visual impact and privacy. Insufficient information has been provided in regard to solar access, yet the additional bulk and height is considered to result in further overshadowing. Hence, this objective has not been achieved.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

It is unlikely that there will be any adverse loss of views from adjoining public or private properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **B7 Front Boundary Setbacks**

### Description of non-compliance



This clause requires a minimum setback to the front boundary (Condamine Street) of 6.5m. The proposal includes structures within the front boundary setback area as follows:

- Entry portal structure 4.9m from the boundary, and
- Façade element (southern side boundary) 4.5m from the boundary.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposed development retains a relatively open front setback to the street frontage on Condamine Street. However, some of the large proposed structures are within the 6.5 front setback and clutter the site. The non-compliant elements allow some openness, though also disrupt the visual continuity of built form, as below.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed development presents unreasonable building bulk to Condamine street frontage, attributable in part to the non-compliant front boundary setbacks. The proposed entry portal provides an unacceptable protrusion into the front setback that is not replicated in the visual catchment of the subject site, such that it disrupts the visual continuity and pattern of buildings and landscape elements along Condamine Street.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed development does not protect or enhance the visual quality of the Condamine street frontage, in that the development is of excessive and unacceptable bulk in the low-density context of the site and area. The proposed development presents unreasonable visual imposition from the street, as well as from surrounding points within the visual catchment of the site.

- *To achieve reasonable view sharing.*

Comment:

The proposal is not anticipated to have any impact on reasonable view sharing.



Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance. The proposed non-compliance with the front setback control is included as a reason for refusal.

### **D6 Access to Sunlight**

The objectives of D6 are considered as follows:

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To promote passive solar design and the use of solar energy.*

#### Planning comment

Shadow diagrams were not submitted with the application.

However, the proposal seeks to extend the height and overall bulk of an already out of context building in a low density residential neighbourhood. Hence, any additional shadows cast in this instance are not considered to be maintaining reasonable access to sunlight.

The design is not innovative, insofar that it seeks to vary almost all setback, envelope and height controls without giving due consideration to the amenity impacts of adjoining neighbouring properties.

Having regard to the above assessment, it is therefore concluded that the proposed development cannot meet the objectives of Part D6 of the WDCP 2011 and the accordingly, this forms a recommended reason for refusal of the application.

### **D9 Building Bulk**

#### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

#### Comment:

For the reasons discussed above and elsewhere in this report, the proposal is not considered to represent a good or innovative design that would improve the surrounding environment. The existing building is already a big and bulky structure that is not in character with the low density residential character of the area. Hence, any additional height and bulk is not considered to improve the urban environment.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*



Comment:

The visual impact of the development has not been minimised which is reflected in the substantial built form non-compliances documented in this assessment.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

### **D10 Building Colours and Materials**

Merit consideration

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

- *To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.*

Comment:

The proposed red, blue, yellow and white colours are not sympathetic to the surrounding natural and built environment. The image below demonstrates the proposed colours and materials in the context of adjoining low density residential neighbouring properties:



*Figure 3: Perspective of Proposal*

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the



Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## D23 Signs

### Description of non-compliance and/or inconsistency

The application proposes a large façade structure to be attached to the frontage of the existing building. As stipulated earlier in this assessment report, the SEE argued that only the areas consisting of text or graphics were to be included as signage. However, Council has deemed the whole structure meets the definition of signage. 'Signage' is defined in the WLEP as:

**signage** means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—

- (a) an advertising structure,
- (b) a building identification sign,
- (c) a business identification sign,

The proposed structure has no other function or utility, but to draw attention to the commercially operated childcare centre and its associated text and graphics identifying it. Hence, it is considered that the structure is principally designed for the display of business identification signage.

The signage is assessed against the following requirements:

Sign	Requirement	Complies
Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	Shall not extend within 200mm of the top and sides of the wall. Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.	No No No N/A No

### Merit consideration

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

- To encourage well designed and suitably located signs that allow for the identification of a land use, business or activity to which the sign relates.





Comment:

The proposed business identification signage is not suitably designed or located. The large structure spans the entire width of the front property boundary and is over 10m in height. The proposed signage is excessive for the identification of a childcare centre that adjoins low density residential dwellings.

- *To achieve well designed and coordinated signage that uses high quality materials.*

Comment:

The signage is not designed well giving consideration to the low density residential zoning that is located in.

- *To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.*

Comment:

The proposed signage would have significant visual impacts on the streetscape. The bulk and scale of the signage is not consistent with other approved business identification signage within low density residential zones.

- *To ensure the provision of signs does not adversely impact on the amenity of residential properties.*

Comment:

The signage, by virtue of its bulk, scale and colour scheme would adversely impact on the amenity of residential properties.

- *To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.*

Comment:

The proposed signage will not cause adverse impacts to heritage items or conservation areas. The signage would cause visual impact to users of the Golf Course located on the other side of Condamine Street.

An assessment of the application has also found the development to be inconsistent with the requirements of *State Environmental Planning Policy (Industry and Employment) Chapter 3 – Advertising and Signage*.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES



The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$ 805 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 160,906.

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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 not 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 not 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 not be in the public interest because it is not 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.

## PLANNING CONCLUSION

This proposal, for alterations and additions to an approved childcare centre has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal contravenes Clause 4.3 Building Height development standard by greater than 10% and it doesn't relate to a Class 1 Building.

The concerns raised in the objections have been addressed within this assessment report and the matters raised form part of the reasons for refusal.

The critical assessment issues included inconsistency and non-compliance with Objectives of the R2 Low Density Zone of WLEP, Clause 4.3 Height of Building of WLEP and Clause 4.6 Exceptions to development standards of WLEP. In addition, the proposed development has been as being inconsistent with the provisions of the following WDCP clauses: A.5 Objectives, Clause B1 Wall Heights, B5 Side Boundary Setbacks, B7 Front Boundary Setbacks, D6 Access to Sunlight, D9 Building Bulk, D10 Building Colours and Materials and D23 Signs. Lastly, the proposal was deemed to be inconsistent with Chapter 3 of the Industry and Employment SEPP and its underlying objectives.

Overall, the proposal indicates excessive development of the subject site that does not perform well against the relevant Clauses and Controls of the WLEP, WDCP and Chapter 3 of the Industry and Employment SEPP. The proposal would result in unreasonable visual and amenity impacts upon adjoining properties and public spaces.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

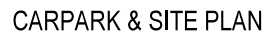
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1232 for the Alterations and additions to a childcare centre on land at Lot 1 DP 624845,397 Condamine Street, ALLAMBIE HEIGHTS, for the reasons outlined as follows:

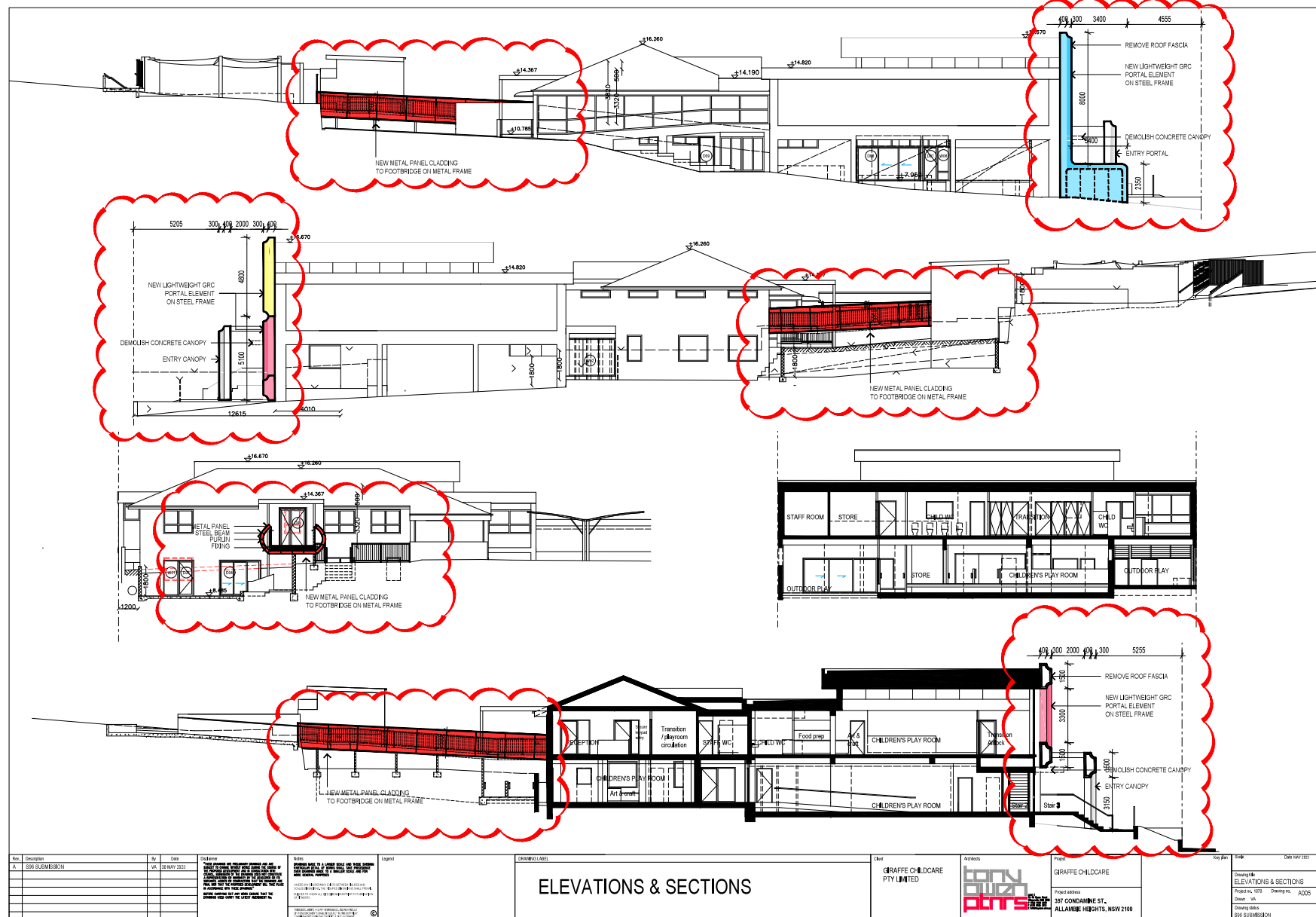
1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011 as the applicant's written request for variation has not demonstrated sufficient environmental planning grounds to



justify a variation to the Height of Buildings development standard.

3. 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 A.5 Objectives of the Warringah Development Control Plan.
4. 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 B1 Wall Heights of the Warringah Development Control Plan.
5. 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 B3 Side Boundary Envelope of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D6 Access to Sunlight of the Warringah Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D10 Building Colours and Materials of the Warringah Development Control Plan.
11. 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 D23 Signs of the Warringah Development Control Plan.







## ANNEXURE A

### Clause 4.6 Variation – Building Height





## Clause 4.6 Variation Statement – Maximum Height (Clause 4.3)

### 1. Height of Buildings standard

Clause 4.3 (2) of Warringah Local Environmental Plan 2011 (WLEP) relates to the maximum height requirements and refers to the Height of Buildings Map. Building height is defined as:

**building height** (or **height of building**) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The relevant map [sheet HOB\_008] indicates that the subject site contains a maximum building height of 8.5m, as demonstrated in **Figure 14** below.



Figure 14 Extract from Height of Buildings Map [1:8.5m]

### 2. Proposed variation to height of buildings development standard

The proposed development has a maximum height of 10.04m to the upper edge of the façade structure, as measured from the existing ground level, and is therefore non-compliant. The non-compliance is a maximum of 1.54m or 18.11%.





The existing building (as approved to be altered per DA2022/0492) contains a maximum height of 9.7m to the upper edge of the parapet, resulting in a variation of 1.2m or 14.1%. Of relevance, at the time of approval for DA2022/0492, a maximum building height of 9.5m applied to the subject site. Since that time, the WLEP has been amended and now an 8.5m height limit applies.

Figure 15 provides a section which demonstrates the maximum building height, noting that the existing building has a height of 9.7m.

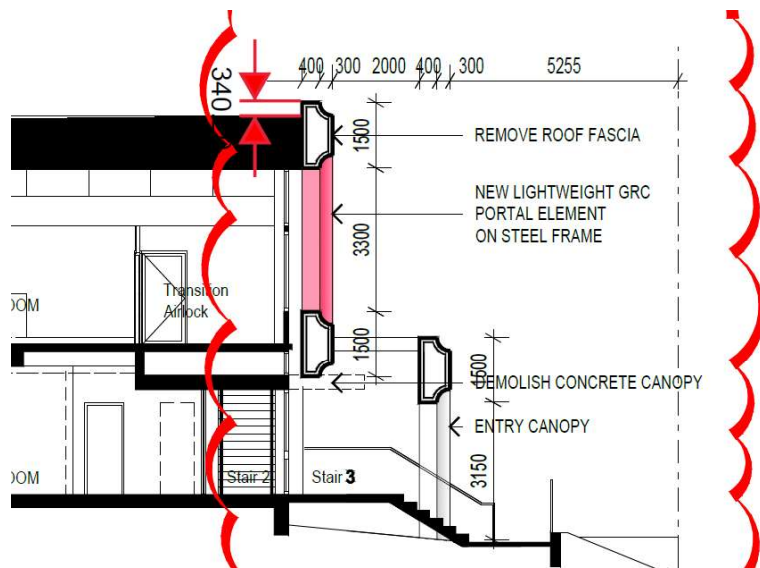


Figure 15 Section illustrating maximum height non-compliance

### 3. Clause 4.6 to WLEP 2011

The objectives and provisions of clause 4.6 are as follows:

(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.

(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 Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note—***When this Plan was made it did not contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy*

*(Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(ba) clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,*

*(c) clause 5.4,*

*(caa) clause 5.5.*

*(d) (Repealed)*

*(8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.*

*(8B) Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.*

The development standards in Clause 4.3 are not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 10.04m where the 8.5m height limit applies, which equates to a numerical variation of 1.54m or 18.11%, noting that the maximum height relates to the façade structures as the development addresses Condamine Street, as measured from the existing ground level.

#### **4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))**

Of relevance to Clause 4.6(3)(a), in *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

*"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 and 5 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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;
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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

*"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

#### **5. Sufficient environmental planning grounds (Clause 4.6(3)(b))**

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum building height:

**1. The existing building is non-compliant and the extent of additional variation is minor**

- a. As measured from the existing ground level, the current building is a maximum height of 9.7m (1.2m or 14.1%) to the parapet of the built form addressing Condamine Street. As the existing building has been in-situ for a considerable period of time, the height, bulk and scale on the subject site has been established.
- b. The proposal is therefore designed to ensure consistency with the building height established on-site. That is, the proposed façade represents a minor increase in height of 0.34m when compared to the existing building, and will therefore maintain the bulk and scale already established on-site. Whilst the proposal will result in an increased variation, this pertains to the façade design which will significantly improve the character of the site, particularly as it relates to the approved childcare centre under DA2022/0492.
- c. Ultimately, the proposed development seeks to substantially improve the character of the site through providing façade upgrades which are consistent with the building height established on-site. The proposed non-compliance will not result in any wholesale changes to the bulk and scale of the development, rather, will provide for improved visual interest and depth. Insisting on strict compliance, or maintaining the existing building height, will result in a subpar architectural outcome with no discernible benefit to the character or amenity of the surrounding locality.

**2. The topography contributes to the extent of non-compliance**

- a. The topography is a site-specific reason that contributes to the extent of this variation. Specifically, the topography falls from the western (rear) boundary to Condamine Street and exacerbates, to a degree, the extent of non-compliance. That is, the rear portion of the existing building is compliant with the 8.5m height standard, and it is where the topography falls towards Condamine Street (and the existing building is non-compliant), that the proposed façade varies the standard.
- b. Whilst the topographical variation increases the extent of non-compliance, it is considered acceptable as it predominantly pertains to a high quality, curved façade structure which does not contribute to any to any adverse increase of bulk and scale. As detailed, the existing building is

non-compliant with the standard and the proposal will provide for wholesale improvements to the character of the development.

- c. To request strict compliance will require significant modification to the façade which will create an incoherent architectural design and will not provide for any distinctive benefits to the character of the locality or amenity of surrounding properties. Strict compliance is therefore considered to be both unreasonable and unnecessary in the circumstances of the development.

### 3. The non-compliances achieve a high level of design

- a. The proposed façade (and associated non-compliance) is designed so that it is open in form, light-weight in nature and will limit any adverse impact to the streetscape. The proposed structures respond to the topographical decline of the site and non-compliance of the existing building to significantly improve the character of the site as viewed from the public domain. Specifically, the existing building (including the non-compliant elements) does not provide any visual interest or depth as viewed from the public domain. The proposed façade upgrades will rectify this through the provision of a contemporary form which includes façade undulations and curved elements, with a complementary colour scheme and signage.

### 4. The non-compliance will contribute to the character of the locality

- a. Object 1.3(g) of the EP&A Act 1979 is "*to promote good design and amenity of the built environment*". As detailed, the proposal will generally maintain the height of the existing building, however, substantially improves and enhances its architectural design and character, consistent with that approved under DA/2022/0492. Whilst the proposal will remain as non-compliant, there will be a significant improvement to the visual appearance of the development, through curved elements, façade undulations, signage and an appropriate colour scheme.
- b. As considered in *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115*, the desired future character is subjective and can be set by the existing, recently approved and proposed buildings within the neighbourhood. In this regard, the existing building, which has been in-situ for a considerable period of time, has established the building height of development on-site. Although the proposed development results in a minor increase in building height, it provides an architectural design which will significantly improve the character of the development and represents a more skilful design when compared to the existing building.

### 5. The range of amenity impacts have been established by the existing development

- a. As detailed, the proposed façade upgrade will generally maintain the height established by the existing building. Resultantly, the range of amenity impacts created by the proposed development are consistent with those already established on-site. That is, the non-compliance will not result in any adverse impact to the overshadowing, views or privacy of the surrounding locality beyond that created by the existing building.

b. It is therefore considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and character of the locality. Specifically:

- i. The extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to the existing building envelope. That is, any additional overshadowing will be minor ensuring that the proposal will not impact the solar gain of the surrounding locality. Given the site orientation, shadows will be cast onto the existing building and streetscape. As such, any additional overshadowing caused by the non-compliant elements would be insignificant; and
- ii. The height breach does not result in any additional privacy impacts as it pertains to non-habitable façade structures; and
- iii. The height of building breach does not result in adverse view loss when compared to the existing building on-site. That is, the proposal only results in a 0.34m increase in building height when compared to the existing building. As such, it is anticipated the extent of view loss caused by the non-compliant element would be insignificant or nil.

#### 6. Orderly and economic use of the land

- c. Object 1.3(c) of the EP&A Act 1979 is “to promote the orderly and economic use and development of land”. A compliant development would unnecessarily result in a suboptimal architectural design, without any discernible benefit to the amenity of neighbouring properties, thereby reducing visual interest and articulation as viewed from the public domain. It would be contrary to the public interest to deny the variation and require the redesign of the façade which is a response to the existing site conditions and topography.

#### 7. The proposal meets aims and objectives of key planning documents

- a. The proposed development meets the objectives of the development standard and meets the objectives of the R2 Low Density Residential zone (as further detailed in Section 7 below); and
- b. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
  - i. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));
  - ii. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the existing building exceeds the maximum building height and the site contains a topographical fall from the rear boundary towards Condamine Street. Insistence on strict compliance with the height will result in an incoherent architectural design and removal of the high quality contemporary façade, which is a

disproportionate outcome given the limited impacts of the proposal. Importantly, the additional height does not significantly impact the amenity of the public domain or surrounding properties (when compared to the existing building) and has been designed ensure the non-compliance is compatible with the public domain.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

**6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), (Clause 4.6(4)(a)(i))**

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly





satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. **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 (Clause 4.6(4)(a)(ii))**

#### Height of Buildings Objectives

The objectives and relevant provisions of Clause 4.3 of WLEP are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.

#### **(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,**

Objective (a) seeks to ensure that buildings are compatible with the height and scale of the surrounding and nearby development.

It is noted that objective (a) refers to being 'compatible' with the above mentioned elements. It is considered that "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of *Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*:

*"22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."*

The variations to the height of buildings development standard are limited to a maximum 1.54m to the façade structure, or 0.34m when measured from the parapet of the existing building. Whilst the neighbouring properties to the north and south comprise of one and two storey residential dwellings, the building height on-site has already been established by the existing building, formerly utilised as the Warringah Golf Club. Specifically, the existing building contains a maximum height of 9.7m as it addresses Condamine Street, featuring an unarticulated and harsh façade (**Figure 16**).





Figure 16 Photograph of existing building from Condamine Street

Accordingly, the proposed variation is considered acceptable and will not be alarming to the visual aesthetic of the streetscape, given it is generally consistent with the bulk, scale and height established by the existing building on-site. Whilst the extent of variation is increased, the proposed façade includes curved elements, undulations and signage, with a complementary colour scheme (**Figure 17**). This ultimately ensures that the variation will be compatible with the height and scale established on-site, and will not be visually obtrusive or jarring when viewed along the streetscape.



Figure 17 Photomontage of proposed development



Accordingly, the non-compliance to the façade structure will not give rise to any visual issues and given the proposal is consistent with the height established on-site, is compatible to the scale of the locality, satisfying objective (a).

***(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,***

In terms of visual bulk, the height and scale of the proposed development has largely been addressed in objective (a). For the reasons discussed in objective (a), including design, materiality and consistency with the existing building, the proposed development represents a bulk and scale which is compatible with the existing and future character of the locality. Furthermore, when viewed from the neighbouring properties, the nature of the non-compliance and its orientation towards Condamine Street provides appropriate visual and physical separation thus mitigating any potential sense of enclosure.

In terms of views, the area of non-compliance will not have any adverse view loss when compared to the existing building. That is, the proposal represents a minor increase of 0.34m in height when compared to the parapet of the existing building. Furthermore, no significant views are currently enjoyed across the subject site from the neighbouring properties and public domain, and therefore the extent of the height breach will not result in any unreasonable loss of views.

In terms of privacy, the height breach only pertains to non-habitable elements. This ensures that despite the variation, there will be no visual or aural impact to the neighbouring properties and is also considered acceptable.

With regards to overshadowing, the proposed height breach will not result in any adverse overshadowing when compared to the established built form. As discussed, the proposal results in a minor 0.34m increase when compared to the existing building and is located addressing Condamine Street. Given the established building height and orientation of the site, the overshadowing impact will be insignificant.

Accordingly, the examination of the height breach demonstrates that there will be no adverse impact to adjoining properties in relation to visual bulk, overshadowing, views or privacy. Therefore objective (b) is achieved.

***(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,***

The subject site is not situated within close proximity to any coastal or bush environments. It is noted however, that the site is located opposite the Warringah Golf Club. As discussed, while the proposal exceeds the maximum building height, it is consistent with the existing building on-site. Further to this, the proposal will significantly improve the architectural character of the site and as such, will to the character locality. As the height breach forms part of a well-articulated design, it will not have any adverse impact to the scenic quality of Warringah, or the Warringah Golf Club.

The proposal is therefore consistent with objective (c), despite the minor height breach.

***(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.***

The visual impact of the development has been considered under Objectives (a) and (b) above. As detailed, the proposed non-compliance will bring with it significant improvements to the visual quality and articulation of the existing (and approved) building on the site. Whilst the proposal is non-compliant with the development standard at a maximum height of 10.04m, this represents a relatively minor increase of 0.34m over the existing building. This ensures that the perceived visual bulk and scale of the proposed development will be consistent with that established on-site, and will not create any adverse visual impact.



Following the above, whilst the non-compliance will be visible from the opposing RE1 Public Recreation zone (Warringah Golf Club), the increase is minor when compared to the existing building. In fact, the proposal represents a significant visual and physical improvement over the existing and approved on-site, through the provision of an architectural form which creates visual interest as viewed from the public domain. Accordingly, the proposal is considered to satisfy objective (d) despite the variation.

#### **Objectives of the Zone**

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of zone R2 Low Density Residential, and a response as to how the proposal meets the objective is provided as follows:

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

The proposal, including the non-compliance, will provide for high quality upgrades to the existing (and approved) façade of the childcare centre. The approved use, whilst not directly providing residential accommodation, will serve the needs of the locality.

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

The proposed upgrade works to the approved childcare centre will provide for a facility that will meet the day to day needs of residents, as approved under DA2022/0492.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed height non-compliance will have no bearing on the provision of landscaped area and vegetation on-site, and is therefore acceptable.

The proposed development, including those parts of the building that breach the height of buildings development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

#### **8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))**

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Per the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

#### **9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))**

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

#### **10. The public benefit of maintaining the development standard (Clause 4.6(5)(b))**

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building height exceeds the maximum permitted on the site by 1.54m (18.11%), the





proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

#### **11. Conclusion**

This written request has been prepared in relation to the proposed variation as it pertains to the height of buildings development standard contained in Clause 4.3 of WLEP.

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



## 5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2022/2199 - 19 SYDNEY ROAD, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF SHOP TOP HOUSING
AUTHORISING MANAGER	Claire Ryan – Acting DA Manager
TRIM FILE REF	2024/026059
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plan &amp; Elevations</a> 3 <a href="#">↓ Clause 4.6</a> 4 <a href="#">↓ Design &amp; Sustainability Advisory Panel Report</a>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies, and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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### 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. DA2022/2199 for Demolition works and construction of shop top housing on land at Lot 20 DP 235980, 19 Sydney Road, MANLY subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/2199
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 20 DP 235980, 19 Sydney Road MANLY NSW 2095
<b>Proposed Development:</b>	Demolition works and construction of shop top housing
<b>Zoning:</b>	Manly LEP2013 - Land zoned E1 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Hampic Management Pty Ltd Cinemeccanica Australia Pty Ltd
<b>Applicant:</b>	MHN Design Union Pty Ltd

<b>Application Lodged:</b>	11/01/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	18/01/2023 to 01/02/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: up to 22.5%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 4,653,709.00
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a four (4) storey shop top housing development at 19 Sydney Road, Manly.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the building is subject to *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65), and due to the proposal breaching the maximum building height development standard of 12 metres by more than 10% (a 14.7 metres building height is proposed or 18.58% variation with minor areas of lift overrun up to 22.5%). The proposal is similar in height to the existing building to be demolished and therefore will not significantly change the visual bulk. A large lift overrun/plant structure which is visually dominant from Central Avenue will not be replaced with the



proposal.

During the notification period, six (6) objections were received in response to the proposal. Concerns raised in the objections predominantly relate to bulk and scale, construction impacts and the plant room. A detailed assessment has been conducted and the matters raised in the submissions have been addressed in detail. The issues identified within the submissions were not found to warrant the refusal of the subject application.

The height variation has been supported by a written Clause 4.6 variation request. It argues that, despite the breach of the MLEP 2013's maximum building height, the proposed development is otherwise consistent with the established scale and character of development within the immediate vicinity.

Council's Design and Sustainability Advisory Panel (DSAP) reviewed and supported the proposal, subject to minor recommendations. In response to the issues raised by DSAP and Council, the Applicant elected to amend the proposal. It is considered that the development as amended adequately resolves the issues identified.

A detailed assessment has been undertaken within this report regarding the amenity impacts on the immediately adjoining buildings to the north, south, east and west and the assessment finds the reasonable retention of amenity for these properties. The applicant has provided sufficient information from a qualified geotechnical engineer to address geotechnical risk for the excavation and general works during construction.

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

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of a four (4) storey **shop top housing** development and basement level.

Specifically, the proposal consists of:

- Demolition of the existing shop top housing building and associated structures.
- The construction of a four storey shop top housing development containing:
  - 10 x one-bedroom apartments
  - 1 x two-bedroom apartments
  - 2 x ground floor commercial premises
- Single-level basement containing:
  - Commercial premise
  - Bicycle parking
  - Commercial waste and plant room
- Site link between Sydney Road and Market Place.
- Ground floor awnings to the Market Lane and Sydney Road frontages.
- Associated landscaping.

## AMENDED PLANS

Following a preliminary assessment of the application, Council wrote to the applicant on 27 April 2023 outlining concerns that would not allow for Council to support the application. The issues raised included:





- Building Height non-compliance
- Outstanding internal referral (Building compliance, waste)
- Design and Sustainability Advisory Panel comments

Further heritage concerns were also raised with the applicant on 14 June 2023.

The applicant lodged amended plans and additional information to address concerns on 9 September 2023. The amended plans incorporated the following changes:

- The relocation and redesign of the residential waste holding room,
- The redesign of the basement residential waste room,
- The introduction of fixed and obscure glazing to bathrooms, and
- A reduction in the height of the roof parapets to RL 16.65m AHD.

Council's Heritage Advisor (while satisfied with the demolition of the building) raised further concern with the reduction of the roof parapets. Further amended plans reinstating the height of the parapets to originally proposed where submitted on 12 December 2023.

Re-notification of the proposed development was not required, in accordance with the Northern Beaches Council Community Participation Plan (CPP).

The site is currently zoned E1 Local Centre zone, formally B2 Local Centre Zone. At time of lodgement the application the site was B2 Local Centre Zone and is referenced as such within the report.

## **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 - 5.21 Flood planning



Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils  
 Manly Local Environmental Plan 2013 - 6.2 Earthworks  
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.12 Essential services  
 Manly Local Environmental Plan 2013 - 6.13 Design excellence  
 Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2  
 Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)  
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 20 DP 235980 , 19 Sydney Road MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Sydney Road.</p> <p>The site is regular in shape with a frontage of 12m along Sydney Road and a frontage of 12m to Market Place. The site has a surveyed area of 379.28m<sup>2</sup>.</p> <p>The site is located within the E1 Local Centre zone under the MLEP 2013. The site is currently occupied by a three-storey commercial building.</p> <p>The site is relatively level and contains no landscaping.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by various business premises.</p>

Map:



## SITE HISTORY

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

- **DA 5217/1992** - Development application for unilluminated flush wall sign. Approved 14 July 1992.
- **DA 296/1995** - Development application for strata subdivision. Approved 20 March 1997.
- **DA 602/1999** - Development application for office fit-out within existing building. Approved 30 November 1999.
- **DA 220/2002** - Development application for new building fire upgrade. Approved 25 July 2002.
- **DA 279/2011** - Development application for alterations and additions, shop fitout, flood lighting and signage. Approved 29 November 2011.
- **DA 39/2014** - Development application for alterations and additions, change of use to a cafe, fitout, signage. Approved 23 April 2014.
- **DA2023/1293** - Use of premises as an educational establishment. Approved 8 January 2024

## 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 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to heritage, waste and built form non-compliance.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. /</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b></p>



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

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 18/01/2023 to 01/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mrs Mona Monique Kalt	5 Coutts Crescent COLLAROY NSW 2097
Baka Ahmet Bakamovic	10 / 21 Sydney Road MANLY NSW 2095
Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Ray Caryl Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Peter Stephen Trainer	76 Lady Penrhyn Drive BEACON HILL NSW 2100
Ms Zina Dybac	509 / 9 - 15 Central Avenue MANLY NSW 2095

The following issues were raised in the submissions:

- **Bulk and scale**
- **Location of plant and machinery**
- **Construction impacts**
- **No Parking**
- **BCA non-compliance**



The above issues are addressed as follows:

- **Bulk and scale**

The submissions raised concerns that proposed development is a overdevelopment of the site noting the bulk and scale to be unreasonable.

Comment:

The application proposes a maximum height of 14.7 metres, representing of a 22.5% departure from the 12 metres maximum building control. The proposed building mass is similar in height to the existing building to be demolished and the existing lift overrun/plant room which has a current height over 15 metres is not being replaced. The non-compliant portion of the development does not result in any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height the proposal is supported in this instance. The matter of non-compliance with the Height of Buildings Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the MLEP 2013 section of this report).

The bulk and scale of the development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are appropriate in this residential context and satisfy the requirements and objectives of the MLEP and MDCP 2013. All relevant provisions of MLEP and MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed building deemed satisfactory.

- **Location of plant and machinery**

The submissions raised concerns about the location of plant and machinery.

Comment:

A condition has been imposed as part of the recommendation ensuring not plant or associated structures are to be allowed on the roof if the application is to be approved.

- **Construction impacts**

Concern was raised in regard to the extent of the proposed basement and the potential impacts from excavation and general works.

Comment:

Significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions have been included as part of the recommendation to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours. In relation to excavation specifically this matters have been considered against Clause 6.2 (Earthworks) and 6.4 (Development on sloping land) of the MLEP 2013. In summary, the proposal is consistent



with the relevant underlying objectives of each of these clauses, subject to recommended conditions. Further, the recommendations proposed under the Geotechnical report (prepared by Crozier Geotechnical Consultants dated October 2022) are imposed as part of this report/recommendation. Notwithstanding this, dilapidation reports pre and post construction have been conditioned as part of this recommendation for Nos. 17 and 21 Sydney Road.

- **No Parking**

The submissions raised concerns that no parking is provided for both the commercial and residential aspects of the development.

Comment:

The subject site is isolated from any street access. Given its location within the Manly Town Centre with ample access to public transport, and noting the site is isolated, the lack of parking is deemed to be satisfactory. This position is supported by Council's Traffic Engineer, as detailed in the section of this report relating to internal referral comments.

- **BCA non-compliance**

The submissions raised concerns that the proposed development is non-compliant with the Building Code of Australia (BCA).

Comment:

The proposed development application was referred to the internal building surveyor at Council. The Council officer noted that any non-compliance can be determined at Construction Certificate stage if the application is to be approved.

## REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><b>Supported, no conditions</b></p> <p><b>General</b> The site is zoned B2 Local Centre under the provisions of Manly Local Environmental Plan 2013 and the proposed development (shop top housing) is permissible with consent. The application proposes the demolition of the existing site structures, with the retention and expansion of the existing basement, and erection of a four (4) storey shop top housing development consisting of:</p> <ul style="list-style-type: none"> <li>• Basement storage, services / utility space, and commercial floor space associated with above commercial unit</li> <li>• Two (2) ground floor commercial units</li> <li>• Ten (10) x one (1) bedroom residential units and one (1) x two (2) bedroom residential unit above commercial space.</li> </ul>





Internal Referral Body	Comments
	<p>The commercial units are located on the ground floor, with the northern unit accessed from Sydney Road, and the southern unit accessed from Market Place. The northern unit includes an internal staircase to access additional commercial space in the basement. At ground level, through site access is provided on the western side of the site, where access to residential units via lift and stairs is provided.</p> <p><b>Strategic context, urban context: surrounding area character</b> The proposal is located in the Manly town centre and enjoys excellent and convenient access to public transport, the beach and community and retail services. Given the desirability and advantages of the location, it is the Panel's view that it is acceptable for the internal amenity of the units to be lower than would normally be expected by SEPP65 and the ADG on the basis that residents will make a conscious decision to 'trade-off' the lack of car parking and internal amenity of the bedrooms for the advantages of the location.</p> <p><b>Scale, built form and articulation</b> The Panel supports the re-instatement and re-interpretation of the exist parapet and introduction of the 'cut-outs' in the façade.</p> <p><b>Access, vehicular movement and car parking</b> The Panel supports the provision of zero parking given the location and accessibility.</p> <p><b>Landscape</b> Full advantage should be made of all upper terraces and roof spaces to maximise planting through either intensive (usable) open space (either common or private) or extensive (non-trafficable) green roofs. Extensive green roofs can be effectively combined with PV Solar electric arrays and in fact increase efficiency. Cyathea australis are not coastal tolerant and are increasing stressed in Sydney as summer temperatures get hotter. Replace with more suitable species e.g. Howea forsteriana</p> <p><b>Recommendations</b> 1. Provide planting to all potential large roof areas planting through either intensive (usable) open space (either common or private) or extensive (non-trafficable) green roofs 2. Replace Cyathea australis with more suitable species e.g. Howea forsteriana</p> <p><b>Planner Comment:</b> The proposed landscape incorporates planting to the lightwell to the residential levels (1,2 and 3) to offset the visual impact of the development. Council's Landscape Officer has reviewed the proposal and supports the proposal, subject to conditions.</p> <p><b>Amenity</b></p>





Internal Referral Body	Comments
	<p>The Panel noted that acoustic privacy for the rooms facing into the lightwells on the north and to a lesser extent the south are a matter for concern.</p> <p><i>Recommendations</i></p> <p>3. Engage an acoustic consultant to find suitable treatments to the light wells to ensure acoustic privacy</p> <p><b>Planner comment:</b> The glass roof proposed between the windows and lightwell will offset any unreasonable acoustic impact from the ground floor site link.</p> <p><b>Façade treatment/Aesthetics</b></p> <p>The panel commends the design of the façade and appearance of the building in terms of articulation, composition, material selection and detailing. It is the Panel's view that the building will be an attractive and complementary addition to the streetscapes of both the Corso and Market Place.</p> <p><b>Sustainability</b></p> <p><i>Recommendations</i></p> <p>4. Replace the gas use with heat pump hot water and induction cooktops</p> <p>5. Increase the amount of PV on the roof</p> <p>6. Give consideration to re-use of demolition material from the site.</p> <p><b>Planner Comment:</b> The BASIX Certificate and conditions dictating colours and materials have been incorporated into the recommendations to ensure sustainability and a suitable colour scheme and finish for the development.</p> <p><b>PANEL CONCLUSION:</b></p> <p><b>The Panel supports the proposal in its current form but notes that further consideration needs to be given to the acoustic privacy of the rooms opening to the small light wells.</b></p> <p>The Panel refer the applicant to the Apartment Design Guide for aspects related to amenity and internal planning of apartments.</p> <p><b>PLANNER CONCLUSION:</b> The development has been satisfactorily amended and refined to address the issues raised by DSAP and as such the proposal is supported.</p>
Building Assessment - Fire and Disability upgrades	<p><b>Supported, with conditions</b></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>



Internal Referral Body	Comments
	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.
Environmental Health (Acid Sulfate)	<p><b>Supported, no conditions</b></p> <p><b>General Comments</b></p> <p>The Crozier Geotechnical Consultants states</p> <p>The soils underlying the site are not considered to be ASS and lowering of the water table is not envisaged therefore an ASS Management Plan will not be required.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (Contaminated Lands)	<p><b>Supported, no conditions</b></p> <p><b>General Comments</b></p> <p>the potential for contamination is considered to be extremely unlikely. The site is not identified as a contaminated site on the NSW EPA's list of notified sites, nor is it in the vicinity of any listed sites.</p> <p>The application is supported by a Stage 1 Preliminary Site Investigation by Edwards Blasche Group Pty Ltd, which confirms that historical uses have not impacted the site and that a Stage 2 Detailed Investigation is not required.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (Industrial)	<p><b>Supported, with conditions</b></p> <p><b>General Comments</b></p> <p>Environmental Health has reviewed this application and will recommend conditions to protect the amenity of neighbors</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>



Internal Referral Body	Comments
Landscape Officer	<p><b>Supported, with conditions</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have assessed the application against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, Apartment Design Guide, Manly Local Environment Plan under Land Zoned B2 Local Centre, and against the landscape controls of Manly DCP.</p> <p>The landscape proposal is generally supported and all on slab landscaping shall meet Council's minimum soil depth requirements.</p>
NECC (Development Engineering)	<p><b>Supported, with conditions</b></p> <p>The proposal is for demolition works and the construction of commercial and residential premises. The submitted stormwater plan with the proposal to discharge to Council's system in Market Place is satisfactory. No objections to approval subject to conditions as recommended.</p>
NECC (Flooding)	<p><b>Supported, with conditions</b></p> <p>The development proposes to demolish the existing structure with retention of the existing basement and construct a 4 storey shop top housing development.</p> <p>The site is affected by the Low and Medium flood risk precinct. Subject to conditions the development is complying to Section 5.4.3 of the Manly DCP.</p>
NECC (Water Management)	<p><b>Supported, with conditions</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WM Policy) and;</li> <li>• Relevant LEP and DCP clauses;</li> </ul> <p>The site drains to nearby Manly Beach. Wherever possible, the proposal should seek to minimise the impacts of urban stormwater on the receiving waters of manly beach. This can be achieved by following the principles of Water Sensitive Urban Design (WSUD). Geotechnical investigation found groundwater below the proposed level of excavation. However, groundwater monitoring was advised out of recognition that groundwater levels can fluctuate. Groundwater monitoring should be undertaken to determine potential seasonal groundwater variation and assess the need for a basement tanking. If dewatering is required, the applicant must contact <a href="mailto:catchment@northernbeaches.nsw.gov.au">catchment@northernbeaches.nsw.gov.au</a> for advice on Council's groundwater dewatering permit prior to excavating. Approvals must be obtained from WaterNSW to undertake construction if large quantities of groundwater are to be removed.</p>



Internal Referral Body	Comments
	<p>Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>On assessment the proposal is considered acceptable.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	<b><i>Supported, with conditions</i></b>
	<p>The proposal has been referred to heritage as the subject property sits within the <b>C2 - Manly Town Centre Conservation Area</b> and is within the vicinity of a number of heritage items:</p> <p><b>Item I106 - Group of commercial buildings</b> - All numbers, The Corso, Manly</p> <p><b>Item I108 - Group of commercial buildings</b> - 41–45 The Corso, Manly</p> <p><b>Item I234 - Group of 5 commercial buildings</b> - 39–47 Sydney Road, Manly</p> <p><b>Item I233 - Commercial and residential building</b> - 12 Sydney Road, Manly</p>
	Details of heritage items affected
	<p><b>C2 - Manly Town Centre Conservation Area</b>  <u>Statement of significance</u>                      The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today.</p> <p><b>Item I106 - Group of commercial buildings</b>  <u>Statement of significance</u>                      The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description</u>                      The Corso acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements.</p>



Internal Referral Body	Comments		
	<b>Item I108 - Group of commercial buildings</b>		
	<u>Statement of significance</u>		
	The group is of major significance for its contribution to the streetscape of The Corso and as extant 19th century commercial architecture.		
	<u>Physical description</u>		
	Group of (originally) five two storey brick buildings with painted stone face and mixture of slate, iron and tiled roofs. The buildings were originally constructed as a symmetrical group: the two end buildings bearing paired gabled ends over first floor with mock Tudor design in timber and render on the western end and intaglio design on the eastern. The buildings either side of the centre had triangular pediments above first floor windows and the central building has a segmental pediment of the same width containing tow semi-circular windows with multi-paned glazing. The central building also has heavily ornamented pilasters at first floor level. Two (of a possible four) tall stone (?) chimneys survive. Two halves of the eastern end buildings have been demolished and the space infilled. Ground floor shopfronts are modern. (originally 41 The Corso entry SoS)		
	<b>Other relevant heritage listings</b>		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No		
Other	No		
<b>Consideration of Application</b>			
The proposal seeks consent for the demolition of the existing structures and the construction of a three storey shop top housing development. The existing building on the subject site is not a listed heritage item but it is considered to be a contributory building, which is a three-storey inter-war shop building with contemporary shopfronts at the ground floor level and offices to the first and second floor.			
The existing building is not a heritage item, however it is a contributory building, located within the Town Centre Conservation Area, therefore the proposed demolition is not supported. During the pre-lodgement meeting, Heritage advised to retain the front facade unless structural issues dictate that the façade on Sydney			



Internal Referral Body	Comments
	<p>Road is to be demolished, then a reconstruction may be acceptable. However, the submitted documents do not include any statements for structural issues that support the demolition. The HIS submitted with the application concludes that <i>"The demolition of the building and construction of a sympathetically designed modern infill will not detract from the significance of the HCA. The proposed new building is contemporary in character but demonstrates respect for the key forms, architectural proportions, and materials of contributory buildings in the HCA."</i> This approach could had been acceptable only if the proposal was for an infill building located in the HCA. However, the existing building is considered to be a contributory building; and contributory buildings are to be retained and conserved; alterations and additions to contributory buildings are to be designed to conserve the original form, scale, fenestration and fabric where visible from the public domain. All original elements and details of contributory or neutral buildings should be retained, especially on front façades. Loss of any building that contributes to the significance and character of a heritage conservation area would reduce the integrity and heritage values of the heritage conservation area, therefore, Council will not approve the demolition of the front facade unless it would not be technically feasible to retain it.</p> <p>The proposed rear facade is considered acceptable, however, the retention or reconstruction-if the demolition is justified, of the front facade is required from a heritage perspective and the setback of Level 3 from the front boundary is required to be minimum 3m.</p> <p><b>Revised comments - 19 October 2023</b></p> <p>Amended documents, submitted on 15 September 2023, includes a structural report by Northwood Consulting Engineers to justify the proposed demolition of the existing contributory building, which is considered to address earlier concerns. Therefore, the proposal can be assessed as an infill building. The proposed massing of the building and the use of a parapeted roofline - as seen from the street level and the materiality of the façades is considered to respond to the existing context, but the proposed Sydney Road facade could be improved with the reinterpreted corbelling details, which is considered to be an expression of the existing horizontal elements as part of the historical development of the existing building. The amended architectural drawings include a reduction to the height of the parapet walls, which have been reduced to be lower than the permissible height limit. Heritage recommends to not lower the parapet wall below the 12m height plane as this will allow the interpretation of the existing parapet wall treatment and help to reduce the visibility of the third level, otherwise the setback to the third level will have to be increased. The Market Place facade would also interpret the existing openings on the ground floor by replacing the proposed large opening with smaller openings, interpreting the existing ratio of solid to void.</p>



Internal Referral Body	Comments
	<p><b>Revised comments - 14 December 2023</b></p> <p>Amended drawings with Revision C, dated 12 December 2023 resolved some issues that heritage had with the proposal. The new design should also be sympathetic to the predominant form of the site and the streetscape, by responding parapet lines. Heritage recommended to reinterpret the corbelling detail between the proposed Level 1 and 2, referencing the form of the original building and the horizontal form of the neighbouring buildings along the southern side of Sydney Road. The front setback of the upper level must be provided (from the outer face of the balcony parapet wall to the outer face of the unit wall) and this dimension needs to be minimum 2.6m to ensure the visibility of Level 3 from the public domain is minimised.</p> <p>Given the compromised structural integrity of the existing building and the sympathetic nature of the proposed infill building, the impact of the proposal upon the significance of the heritage items in the vicinity and the significance of the HCA is considered manageable.</p> <p>Therefore, no objections are raised on Heritage grounds subject to three conditions.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? Yes  Has a Heritage Impact Statement been provided? Yes</p>
Traffic Engineer	<p><b><i>Supported, with conditions</i></b></p> <p>Proposal description: Demolition works and construction of shop-top housing</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>Plans (Master Set) – Revision A, designed by WMHNDUNION Architect, Project No. 21-048, dated December 2022,</li> <li>Statement of Environmental Effects prepared by Boston Blyth Fleming Pty Ltd, dated December 2022,</li> <li>Traffic Impact Assessment (TIS) report, Reference 22.461r01v02, prepared by Traffix dated December 2022,</li> </ul>



Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>Operational Waste Management Plan report prepared by Elephants Foot Consulting Pty Ltd dated 22/11/2022, and</li> <li>Pre-Lodgement Advice (PLM2021/0164) dated 22 July 2021.</li> </ul> <p><b><u>Parking Requirements and Design</u></b></p> <ul style="list-style-type: none"> <li>The parking requirements for the development comprising 11 residential units (made up of 10 x one-bedroom apartments; and 1 x two-bedroom apartments) and 365.8m<sup>2</sup> commercial premises are 7 resident spaces, 3 visitor spaces, 10 commercial users = 20 spaces. In response, the proposal does not contain any car spaces. This discourages private car use and encourages active and public transport.</li> <li>It is noted that the site is located within the Manly Local Centre and has excellent access to public transport. Bus stops and the ferry wharf are located within close walking distance. The provision of off-street parking servicing this site is impractical as its street frontage is predominantly pedestrianised areas. For the commercial premises, the majority of customers will be passing trade, many undertaking combined-purpose trips to Manly and in general, the absence of parking will encourage customers and staff of the proposed commercial sites to visit by means other than private motor vehicles.</li> <li>Given the above and considering the PLM referral comment, an exception to the parking requirements of the DCP is appropriate and it will be acceptable that no parking for the residences and commercial floor space be provided.</li> <li>The use of a Green Travel Plan will be of use in reducing private motor vehicle trips and its use is supported.</li> <li>As outlined in the PLM Referral comments, on and off-street parking in the vicinity of the site is subject to permit parking, pay parking and time-restricted parking restrictions. To ensure that private car ownership by residents is minimised and to encourage travel by active travel or public transport, a condition will be imposed preventing residents of the development from obtaining resident parking permits. This will be conditioned.</li> <li>Any businesses and/or tenants of the subject site are also not eligible for business parking permits. This condition is to be provided on the property Title.</li> <li>Bicycle parking stands are required at a minimum rate of one (1) stand for every three car parking spaces, with a minimum provision of one (1) stand for each premise,</li> </ul>





Internal Referral Body	Comments
	<p>i.e., one (1) bicycle stand for the proposed development. Bicycle parking for four (4) spaces in the form of racks has been shown on the plan in the basement level, there are also 11 basement storage areas that could be utilised for any additional bikes. This provision exceeds the requirements of the DCP, and therefore satisfying Council's DCP requirements and catering for alternate travel mode options. It is also noted that Council has provided a large number of publicly accessible bicycle parking spaces within close proximity to this development.</p> <ul style="list-style-type: none"> <li>• Loading bays must be provided in sufficient numbers to meet anticipated demand. This demand is related to the total amount of floor space, the intensity of use and the nature of the activity. As noted in the Operational Waste Management Plan report, the proposal is not expected to require deliveries in large quantities, rendering a loading bay unnecessary.</li> <li>• As reported in the Traffic report, Sydney Road will be used for vehicular access between 5:00am and 8:00am each day. Waste collection for both retail and residential uses will occur between these times up to twice per week. Any occasional servicing such as deliveries and removalists will be undertaken from Loading Zones on Central Avenue directly opposite the site as would be occurring for the existing development. As such, the development is expected to have minimal additional impacts on surrounding loading zones.</li> <li>• It is also reported in the Operational Waste Management Plan report that: <ul style="list-style-type: none"> <li>◦ On the nominated waste collection day, Council's waste collection vehicle will pull-up on Market Place. Collection staff will service the bins via a wheel-in/wheel-out strategy.</li> <li>◦ Once bins are serviced, allocated staff will transport the bins back to the Residential Waste Room to resume their operational use. Once the bins are serviced, the collection vehicle will continue onto Market PI in a forward direction.</li> <li>◦ On the day of bulky waste collection, Council collection vehicle will pull up at Market PI. The building caretaker transports bulky waste items to the collection area for the contractors to load items onto the vehicle.</li> <li>◦ Staff will be responsible for waste management back of the house during daily operations. On completion of each trading day or as required, nominated staff or contracted cleaners will transport all general waste, recyclables and food</li> </ul> </li> </ul>



Internal Referral Body	Comments
	<p>waste to the retail/commercial waste room and place them into the appropriate collection bins.</p> <p><b><u>Pedestrian through Site Link</u></b></p> <ul style="list-style-type: none"> <li>The pedestrian through site link is supported</li> </ul> <p><b><u>Traffic Impact</u></b></p> <ul style="list-style-type: none"> <li>The proposal will generate minimal vehicular traffic during the peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance.</li> </ul> <p><b><u>Conclusion</u></b></p> <p>Subject to conditions, the application can be supported on traffic grounds.</p>
Waste Officer	<p><b><i>Supported, with conditions</i></b></p> <p>Waste Management Assessment - amended plans (submitted 15/9/2023) Supported, Subject to conditions.</p>

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

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),



Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

#### **SEPP 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.

As previously outlined the proposed development is for the erection of a four storey shop top 'housing' development plus basement car parking for the provisions of 11 (10 x one bedroom and 1 x 2 bedroom) self-contained dwellings and 2 commercial premises.

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.

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**



Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP).

The application was referred to DSAP on 2 February 2023. The Panel at its meeting concluded that the proposed development is generally supportable. Minor changes to the proposal were recommended ensure acoustic privacy was maximised for the proposed apartments. Full comments from DSAP are provided earlier in this report.

## **DESIGN QUALITY PRINCIPLES**

### **Principle 1: Context and Neighbourhood Character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

#### Comment:

The subject site is located within an established town centre in Manly. Development located within the town centre is predominantly characterised by a mix of commercial and shop top housing developments varying between 3 to 5 storeys in height.

The proposed building, a four storey shop top housing building, appropriately responds to, and fits comfortably within, this context. The design of the building will enhance the qualities of the area and is reflective of a modern shop top housing development which is a high quality design.

The development satisfies this Principle.

### **Principle 2: Built Form and Scale**

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

#### Comment:

The proposed building achieves a scale, bulk and height that is appropriate to the existing and desired future character of the street and surrounding buildings. The development provides a built form and scale that is reflective of its important location within the Corso and is contextually appropriate when viewed in the context of other recently constructed developments within the town centre.

### **Principle 3: Density**

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.



Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The design of the building affords future residents a high level of amenity. The resultant density is therefore appropriate to the site and its context given its location to existing infrastructure, services, public transport, location within the Manly town Centre and ease of access to community facilities and the surrounding environment.

**Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The design of the building allows for adequate natural cross ventilation and sunlight for the amenity and liveability of future residents and provides passive thermal design for ventilation, heating and cooling which will reduce the reliance on technology and operation costs.

The application is supported by a Waste Management Plan which includes suitable details for the disposal and recycling of demolition and excavation materials should the application be approved.

In addition, a BASIX certificate has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

**Principle 5: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

There is no minimum landscaped open space provision required for such development within this zone. This is due to the dense urban environment and envisaged character of development in the town centre.

**Principle 6: Amenity**



Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The design of the building provides sufficient amenity for future residents and residents in neighbouring properties. A sufficient level of sunlight, natural ventilation, views, privacy and private open space is afforded to future dwelling occupants and maintained for occupants of surrounding residential properties. Further, as detailed below, the development satisfies the Apartment Design Guidelines that relate to internal and external amenity.

**Principle 7: Safety**

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

All apartments provide balconies and windows which provides passive surveillance to both Sydney Road and Market Lane.

The development satisfies this Principle.

**Principle 8: Housing Diversity and Social Interaction**

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The provision of a mix of one and two bedroom apartments in this location is considered reasonable due to the site's close proximity to public transport, commercial facilities and opportunities within the Manly Town Centre.

**Principle 9: Aesthetics**

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.



The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The building provides a modern and contemporary form with a well-considered use of physical and material articulation and modulation to provide a front facade that will contribute to the Manly Townscape.

### APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Consistent</b> The proposal is orientated, sited and setback appropriately in accordance with the controls and site constraints.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Consistent</b>
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	<b>Consistent</b> The development provides an appropriate transition between the public and private domain without compromising safety and security.  The development provides further and enhanced street level activation through the introduction of activation on both street frontages thereby enhancing the amenity of the public domain.
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows:  1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts	<b>Consistent</b>



	of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)													
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Inconsistent</b></p> <p>The proposed development does not provide any deep soil zones. However, no deep soil zones currently exist on the subject site, or on surrounding sites, so the proposal does not worsen the existing scenario.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Inconsistent</b></p> <p>With attached dwellings in the B2 Local Centre zoned land to both sides of the subject site, the 6m minimum side setback prescribed by this objective would essentially sterilise the site. Objective 3F-1 aims to ensure that adequate separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. The proposed development will extend the nill setback, consistent with neighbouring development along Sydney Road, to ensure that reasonable levels of privacy are achieved between properties.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												





<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>Retail premises from both Sydney Road and Market Lane frontage provide pedestrian access to the site.</p>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>N/A</b></p> <p>No vehicular access is proposed in this application.</p>
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><b>N/A</b></p> <p>No vehicular access is proposed in this application.</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Consistent</b></p>



	<ul style="list-style-type: none"><li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li></ul>	Consistent												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li></ul>	Consistent												
	<ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>	Consistent												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><thead><tr><th colspan="2">Minimum ceiling height</th></tr></thead><tbody><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></tbody></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p><b>Inconsistent</b></p> <p>The proposed ground floor and first floor have a ceiling height of 3.2m (ground level) and 2.7m (first floor).</p> <p>The minor non-compliance to both controls noting that each apartment has access to one of the frontages (Sydney Road and Market Lane). Both the residential and retail areas will have an abundance of natural light, with a high internal amenity for occupants and visitors alike.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
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Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><thead><tr><th>Apartment type</th><th>Minimum internal area</th></tr></thead><tbody><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr></tbody></table>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	<p><b>Consistent</b></p> <p>1 bedroom minimum - 50sqm 2 bedroom minimum - 90sqm</p>				
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													



	3 bedroom	90m <sup>2</sup>	
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.		
	A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each.		
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		<b>Consistent</b> All habitable rooms have suitably sized windows.
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		<b>Consistent</b> Habitable room depths are of appropriate size.
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		<b>Consistent</b> Open plan depths do not exceed 8m from a window.
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).		<b>Consistent</b> Bedroom sizes meet minimum requirements.
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.		<b>Consistent</b>
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>3.6m for studio and 1 bedroom apartments</li> <li>4m for 2 and 3 bedroom apartments</li> </ul>		<b>Consistent</b>
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts		<b>Consistent</b>
<b>Private Open Space and Balconies</b>	All apartments are required to have primary balconies as follows:		<b>Consistent</b> One bedroom apartments - 2m depth, minimum 11sqm Two bedroom apartment - 3.9m depth, 46sqm
	<b>Dwelling Type</b>	<b>Minimum Area</b>	
	Studio apartments	4m <sup>2</sup>	
	1 bedroom apartments	8m <sup>2</sup>	
	2 bedroom apartments	10m <sup>2</sup>	
	3+ bedroom apartments	12m <sup>2</sup>	



	The minimum balcony depth to be counted as contributing to the balcony area is 1m											
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	N/A										
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent										
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A										
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Consistent										
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>
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	2 bedroom apartments		8m <sup>2</sup>									
3+ bedroom apartments	10m <sup>2</sup>											
At least 50% of the required storage is to be located within the apartment.												
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The development will provide 10 x 1 bedroom apartments, 1 x 2 bedroom apartments, which will contribute to catering for the market demand within the Manly Town Centre and surrounds.										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A										
Facades	Ensure that building facades provide visual interest along the street and neighbouring	Consistent The use of a a mix of										



	buildings while respecting the character of the local area.	contemporary materials and finishes and effective building articulation will ensure appropriate visual interest is provided along Market Lane and Sydney Road whilst respecting the heritage character of the local area.																														
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	<b>Consistent</b> The proposed design is consistent with other recent development within along Sydney Road and the general townscape. The roof elements will not be visually dominant in terms of bulk and scale.																														
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Consistent</b> Suitable planting is proposed across the development																														
Planting on Structures	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		<b>Consistent</b> The landscape plan submitted responds appropriately to the site conditions and context. It is considered that further amendments to the landscape plan incorporating public
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																												
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Shrubs			500-600mm																													
Ground Cover			300-450mm																													



	Turf			200mm	
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				<b>Consistent:</b> At least 20% of the apartments contained within the development are capable of providing adaptable living arrangements.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				<b>Consistent:</b> The proposed shop top housing development integrates a new contemporary building style while being sympathetic to the heritage significant of the site.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				<b>Consistent</b> The development is accessible through public transport and is appropriately designed to respond to the public domain.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.				<b>Consistent</b> The proposed awnings to Market Lane and Sydney Road complement the building design and townscape.
Performance					
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?				<b>Consistent</b> The proposal was accompanied by a BASIX Certificate and BASIX stamped plans to ensure energy efficiency.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?				<b>Consistent</b> Council's Development Engineer has reviewed the design and recommended appropriate conditions to ensure the suitable management of water within the locality.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?				<b>Consistent</b> Councils Waste Management Officer has reviewed the drawings and



		is satisfied that the proposal is designed to allow for suitable waste management, subject to conditions.
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Consistent</b> The proposal incorporates suitable materials to ensure the longevity and sustainability of the building. The proposal also incorporates suitable access pathways to allow for building maintenance

#### STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

#### Comment:

The application is not recommended for refusal for the reasons of carparking (a), internal area (b) or the ceiling heights (c).

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and



(b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Adequate regard has been given to the matters raised under subclause (2) and the application is recommended for approval subject to recommended conditions.

**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1357649M dated 6 December 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	35

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

**SEPP (Transport and Infrastructure) 2021**

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.





## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

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

### Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	12m	13.8m (Roof level 4) 14.7m (Skylight) 14.23m (Top of the lift overrun)	15% 22.5% 18.58%	No
Floor Space Ratio	FSR: 3:1 (1111.8sqm)	FSR: 2.8:1 (1020.7sqm)	-	Yes
Gross Floor Area in Zone B2	Min. 25% GFA as Commercial (278sqm)	36% (364.5sqm)	-	Yes
	Max. 1,000sqm per premises	<1000sqm	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes





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 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 Clause 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.'

Section 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:

***"Sufficient environmental planning grounds***

***Ground 1 - Existing excavation***

*The extent of the proposed height breach is compounded by existing excavation associated with a basement at the southern half of the site. As demonstrated in Figure 2, the extent of non-compliance*



with the height plane is considerably reduced when measured to finished floor levels and existing ground levels around the perimeter of the building. Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

### **Ground 2 - Contextually responsive building design**

Despite non-compliance with the building height development standard, the proposed development is consistent and compatible with the height of the existing building at the site, other development within the visual catchment of the site and other development subject to the same height provisions.

Although the site is not subject to a number of storeys control, it can be assumed that a four storey development is anticipated within the 12m portion of the site. This assumption is confirmed by nearby and adjoining development that are subject to the same height limits including:

- The 4 storey development approved at 36-46 Sydney Road (12m height limit),
- The 4 storey development at 27 Sydney Road (12m height limit),
- The 4 storey development at 63-67 The Corso (12m height limit),
- The 4 storey development at 69-71 The Corso (12m height limit),
- The 6 storey development at 36 Sydney Road (12m height limit),
- The four storey street façade at 28-29 South Steyne (12m height limit),
- The four storey street façade at 30-32 South Steyne (12m height limit),
- The four storey street façade at 33 South Steyne (12m height limit),
- The three-five storey building at 43-45 South Steyne (10m-12m height limit),
- The three-five storey building at 46-47 South Steyne (10m-12m height limit),

The proposed development is limited to 4 storeys, consistent with the perceived height and scale of nearby and surrounding development.

The proposed development also maintains consistency with the dominant height of the existing development, with a parapet at RL17.75m AHD retained in the proposed development. Furthermore, it is noted that the overall maximum RL of development is ultimately reduced as a result of the proposal, by virtue of the removal of the lift overrun (RL20.56m AHD).

Allowing for a height breach that is consistent with the existing height of development at the site and nearby development is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.

### **Ground 3 - Compliance with the FSR**

Strict compliance with the height control would unreasonably constrain the development potential of the site in light of the 3:1 maximum FSR prescribed. Even with basement commercial floor space proposed, the proposal has a FSR of 2.8:1, or 89.8m<sup>2</sup> shy of the maximum permitted on the site. The removal of the upper floor would further reduce the FSR by 201.8m<sup>2</sup> to 2.2:1, being 291.6m<sup>2</sup> less than the maximum FSR prescribed.

Allowing for the height breach in consideration of the application of other standards and controls is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.

### **Ground 4 - Improved Amenity**



*The maximum height proposed occurs when measured to the top of the skylight over Unit 204. Unit 204 is a south facing unit, that if not for the skylight, would not receive direct solar access to the living room in midwinter.*

*The support of the breach associated with the skylight promotes good amenity of the built environment the health and safety of occupants of the development, consistent with the Objects (g) and (h) of the EP&A Act.*

**Ground 5 - Public Benefit**

*The proposed development comprises a pedestrian through-site link, that will significantly improve pedestrian connectivity throughout the town centre. The voluntary inclusion of the site link, which is highly endorsed/supported by Council, reduces the area of floor space at the ground level of the subject site, which has a premium rental return noting the site's location within the town centre.*

*The provision of additional floor space partially above the height plane is considered to be justified in consideration of the public benefit associated with the incorporation of the through site link at the ground floor.*

*Overall, there are sufficient environmental planning grounds to justify contravening the development standard."*

**Council's Assessment of the Clause 4.6 Request**

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed replacement of ageing elements and access of a ageing building is an orderly response to the development of the site;
- The development promotes good design and amenity of the built environment, noting that the lift overrun will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed non-compliance wholly relates to necessary maintenance of the ageing development.
- The proposed alterations allow for re-development of the shop top housing development without unreasonable impact upon the heritage significance or amenity of adjoining development.

The existing building encroaches above the 12m height control. The incorporation of a new level further encroaches on this height control. It is accepted that, whilst the proposal seeks to further exceed the height plane, the resulting development will maintain an appropriate visual relationship with the surrounding built environment. In this instance, there is a public benefit in permitting a degree of flexibility to the standard. The proposal works will regenerate an ageing building, whilst maintaining the heritage significance of the building.

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 B2 Local Centre 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 addressed as follows:

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

Comment:

The proposed development is located within a local centre where buildings are of varying heights and roof forms. Development located within the town centre is predominantly characterised by a mix commercial and shop top housing developments varying between 3-5 storeys in height.

The building height, while non-compliant, is generally consistent with the height of the existing building. It is noted that the existing building represents the centre of Sydney Road and it is a noted building of heritage significance. The additional bulk from the lift overrun and skylight will not be largely visible from either Sydney Road or Market Lane given it is centralised on the site.

The proposed development includes a roof form consistent with and complementary to surrounding existing and approved roof forms. The proposed fourth floor is generally not visible from the street level, so does not unreasonably impact upon the streetscape.

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

Comment:

The overall building bulk and scale has been effectively controlled by way of effective building setbacks, building separation, building articulation and manipulation of building elements and through the use of appropriate materials and finishes. The proposed building height will not result in unreasonable building bulk or scale and does not result in any unreasonable physical or visual impacts on surrounding lands. The proposal is also compliant with the floor space ratio control.





*c) to minimise disruption to the following:*

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

Comment:

The proposed development is designed and sited so as not to cause unreasonable view loss to or from public or private 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 development is considered to be designed and sited in a manner that adequately mitigates solar access impacts to adjacent properties. The proposed design complies with the relevant controls for sunlight under the MDCP 2013.

*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:

Not applicable. The subject site is zoned B2 Local Centre.

## **Zone Objectives**

The underlying objectives of the B2 Local Centre zone are addressed as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposed development retains the use of the site as shop top housing, so includes retail premises at ground level. This supports the needs of the people who live in, work in, and visit the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

As above, the proposed development retains retail premises at ground level, which will provide employment opportunities. The subject site is accessible in that it is located within short walking distance of regular bus, ferry services and courtesy bus services.

- *To maximise public transport patronage and encourage walking and cycling.*





Comment:

The subject site is conveniently located within short walking distance of bus and ferry services, as well as walking and cycling paths.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

Not applicable. The subject site does not adjoin any other zones.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the 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.

**5.21 Flood planning**

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The subject site is partially classified as flood prone land (medium risk). The proposed development has been reviewed by Council's Stormwater and Floodplain Engineering team, who are supportive of the proposal, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is acceptable in relation to the matters above at (a) through (e).



In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The subject site is partially classified as flood prone land (medium risk). The proposed development has been reviewed by Council's Stormwater and Floodplain Engineering team, who are supportive of the proposal, subject to recommended conditions of consent. As such, it is considered that the proposed development is acceptable in relation to the matters above at (a) through (d).

#### **6.1 Acid sulfate soils**

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metre below the natural ground surface within a Class 4 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 3.7m below the natural ground level. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by Crozier Geotechnical Consultants dated October 2022. In the assessment, Crozier found that The excavation will not result in the lowering of the groundwater table, as such, an Acid Sulphate Soils Management Plan will not be required for the site.

#### **6.2 Earthworks**

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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



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

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

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

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

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

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

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

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

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

*(f) the likelihood of disturbing relics*

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

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

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

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2013, MDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **6.4 Stormwater management**

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

*(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil*



*characteristics affecting on-site infiltration of water, and*

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, 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.

#### **6.9 Foreshore scenic protection area**

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

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed development is unlikely to have any significant impact upon the harbour or coastal foreshore. The development will not have readily visible from the coastline. The development meets the criteria above listed from (a) to (d).

#### **6.12 Essential services**

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

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

Comment:



The subject site is supplied with the above essential services, except for vehicular access, as the site abuts pedestrianised land at its two frontages (Sydney Road and Market Place). The proposed development retains and relies upon these existing services.

### 6.13 Design excellence

Under this clause, development consent must not be granted to development unless the consent authority considers that the development exhibits design excellence.

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and
- (e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and
- (g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and
- (h) promotes vistas from public places to prominent natural and built landmarks, and
- (i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and
- (j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and
- (k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.

#### Comment:

As discussed in detail throughout this report the proposed development generally considers and achieves the matters listed above at (a) through (k).

### 6.16 Gross floor area in Zone B2

The proposed development complies with the numeric requirements under this clause.

#### Manly Development Control Plan

##### Built Form Controls

Built Form Controls - Site Area: 370.5sqm	Requirement	Proposed	% Variation*	Complies
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Minimum height: 3.5m Maximum height: 4.5m	3.6m	-	Yes
Schedule 3 Parking and Access	7 resident spaces, 3 visitor spaces, 10 commercial users = 20 spaces.	0	100%	No

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 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
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.2.5.6 Late Night Venues	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment



#### **4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)**

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposed height of the development is acceptable.

#### **4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor**

The proposed development would require 20 parking spaces based on the density of the the proposed development (10 x one-bedroom apartments; and 1 x two-bedroom apartments and 365.8m<sup>2</sup> commercial premises). Given the site is not accessible from any public road, no on site parking has been proposed. As discussed in the ADG section of this report and Council's Traffic officer, the proposed arrangement is deemed to be satisfactory given that the site is located within the Manly Town Centre and as such well serviced by public transport (Buses and Ferries).

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$46,537 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,653,709.

### **CONCLUSION**

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

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

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



conditions contained within the recommendation.

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

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

Council is satisfied that:

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.

## PLANNING CONCLUSION

This proposal, for demolition works and construction of a four (4) storey shop top housing development at 19 Sydney Road, Manly has been referred to the NBLPP due to proposed development being subject to SEPP 65.

The concerns raised in the objections have been addressed and resolved by the amended plans and special conditions to mitigate impacts upon heritage and bulk and scale.

The critical assessment issues are building height and heritage. The variation to the planning controls in relation to the building height non-compliance is supported.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for **approval**.

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 DA2022/2199 for Demolition works and construction of shop top housing on land at Lot 20 DP 235980, 19 Sydney Road, MANLY, subject to the conditions printed below:

### Terms and Reasons for Conditions

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

### GENERAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA1002	A	Site Plan	MHNDUNION	2 December 2022
DA2006	A	Demolition Plans	MHNDUNION	2 December 2022
DA3001	C	Basement Plan	MHNDUNION	12 December 2023
DA3002	C	Ground Floor Plan	MHNDUNION	12 December 2023
DA3003	C	Level 1 Plan	MHNDUNION	12 December 2023
DA3004	C	Level 2 Plan	MHNDUNION	12 December 2023
DA3005	C	Level 3 Plan	MHNDUNION	12 December 2023
DA3006	A	Roof Plan	MHNDUNION	2 December 2022
DA4001	C	Section AA + BB	MHNDUNION	12 December 2023
DA4002	C	Elevations North + East	MHNDUNION	12 December 2023
DA4003	C	Elevations South+ West	MHNDUNION	2 December 2022
DA5001	C	Arcade Link - Detail	MHNDUNION	2 December 2022



DA6001	A	External Finishes	MHNDUNION	2 December 2022
DA7005	A	Pre + Post Adaption Plans	MHNDUNION	2 December 2022
Plan of subdivision/ Sheet 1 of 6	-	Location Plan	Copland C. Lethbridge	23 August 2022
Plan of subdivision/ Sheet 2 of 6	-	Basement	Copland C. Lethbridge	23 August 2022
Plan of subdivision/ Sheet 3 of 6	-	Ground Floor	Copland C. Lethbridge	23 August 2022
Plan of subdivision/ Sheet 4 of 6	-	Level 1	Copland C. Lethbridge	23 August 2022
Plan of subdivision/ Sheet 5 of 6	-	Level 2	Copland C. Lethbridge	23 August 2022
Plan of subdivision/ Sheet 6 of 6	-	Level 3	Copland C. Lethbridge	23 August 2022
LPDA - 138/1	B	Landscape Plan/L1	Conzept	1 December 2022
LPDA - 138/2	B	Details	Conzept	1 December 2022
LPDA - 138/2	B	Specifications	Conzept	1 December 2022

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Access Design Assessment Report	2	Design Confidence	6 December 2022
Adaptable Housing Assessment Report	2	Design Confidence	6 December 2022
Flood Risk Management Plan	A	SGC	10 November 2022



Geotechnical investigation and preliminary acid sulfate soils assessment	0	Crozier Geotechnical Consultants	October 2022
Traffic impact assessment (TIA)	V02	TRAFFIX	12 December 2022
BCA Design Assessment Report	2	Design Confidence	6 February 2023
Operational Waste Management Plan	B	Elephants Foot Consulting	22 November 2022

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

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## 2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

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

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

## 3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of **shop top housing**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

**shop top housing** means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

## 4. Prescribed Conditions



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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.



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

Reason: Legislative requirement.

**5. Future Development Applications for Commercial Lot 1 and 2**

Food or beauty premise fit out of commercial units 1 and 2 requires development applications. The fit-out of any commercial tenancies that intend to provide food for sale or beauty premise that conducts skin penetration shall require a separate development application to be lodged.

Reason: To ensure that food and beauty premises have appropriate and hygienic fit-outs and hours of operation are established to maintain amenity of the surrounding area.

**6. 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 an 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 \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.



- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (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

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$46,537.09 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$4,653,709.00.

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

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

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

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

### 8. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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



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

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

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

9. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$2 000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

10. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping as proposed: 600mm.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

11. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 5.73m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level 5.73m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.





**Building Components and Structural Soundness – B3**

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.73m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

**Storage of Goods – G1**

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 5.73m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

**12. Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

**13. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

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

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

Reason: Protection of the receiving environment.



**14. 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 a TfNSW 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. All Staff and Contractors are to use the basement parking once available
- 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 safety
- 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
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- 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.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**16. Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Building Code of Australia Audit Report prepared by Design Confidence (Sydney) P/L, dated 6/2/2023, Report Ref No. P221\_387-02(BCA) JR, are to be considered as part of the assessment of the Construction Certificate. 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 Health, Amenity, access and Fire safety for building occupant health and safety.

**17. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.



**18. Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being existing pit in Market Place and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

**19. Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to the existing Council pit in Market Place which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au) > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

**20. Corbeling detail**

The new design shall respond to the predominant form of the site and the streetscape, by responding the parapet lines. Between the proposed Level 1 and 2, a corbelling detail is to be inserted, referencing the form of the original building and the horizontal form of the adjacent buildings.

Details demonstrating compliance are to be submitted to the Council Heritage Advisor prior to the issue of a Construction Certificate.

Reason: To respond the predominant built form in the HCA.

**21. Front setback to Level 3**

The front setback of the upper level must be provided on the plans from the outer face of the balcony parapet wall to the outer face of the unit wall and this dimension needs to be minimum 2.6m to ensure the visibility of Level 3 from the public domain is minimised.

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



Construction Certificate.

Reason: To minimise the visibility of Level 3 from the public domain.

**22. Noise - Design of Mechanical Plant and Equipment**

Prior to the issuing of any Construction Certificate, the design and location of mechanical plant and the specifications of all noise generating equipment including the sound power contribution is to be provided to the Principal Certifying Authority. An acoustic assessment from a suitably qualified professional such as an acoustic engineer is to be undertaken to determine acoustic treatments to control noise emissions from all mechanical plant noise. Any recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate. Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect surrounding residence and occupants from any noise generated by the operation of the development.

**23. Compliance with Standards**

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

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

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

**24. Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**25. Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**



**26. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

**27. Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition



Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

**28. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: Nos 15 and 21-25 Sydney Road, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

**29. Photographic Archival Recording**

A full photographic archival recording of the site is to be made of the fibro cottage (including interiors and exteriors). This record is to be prepared generally in accordance with the guidelines issued by NSW Heritage and must be submitted to Council's Heritage Officer for approval, prior to the issue of a Construction Certificate.

The photographic record should be made using digital technology and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which fully document the site (including items of moveable heritage), cross referenced in accordance with recognised archival recording practice to catalogue sheets.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: To provide an archival photographic record of the historic cottage, prior to the commencement of any works.





## DURING BUILDING WORK

30. **Road Reserve**

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

Reason: Public safety.

31. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

32. **Implementation of Demolition Traffic Management Plan**

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

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

33. **During the course of demolition and building works**

All construction vehicles associated with the development must obtain a permit from Council on a daily basis, for access into pedestrian only areas. E.g. The Corso and Sydney Road Plaza.

Reason: To manage and minimise disruption to the area.

34. **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 TfNSW 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.

**35. 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.

**36. Demolition Works - Asbestos**

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

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

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

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

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

**37. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.



Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

**38. Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 68 are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

**39. Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

**40. Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**41. Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

**42. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing LPDA 23-138/1 by Conzept Landscape Architects dated 01/12/22).

Prior to the issue of an Occupation Certificate, details from a landscape architect, landscape designer or qualified horticulturalist shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.



Reason: Environmental amenity.

43. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

44. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

45. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

46. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.



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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

**47. Certification of groundwater monitoring**

Groundwater monitoring investigation and report are required to confirm if dewatering for construction is required.

Report to includes if WaterNSW for construction dewatering approvals are required.

Reports and findings must be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the environment and receiving waters.

**48. Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Access Design Assessment Report	2	Design Confidence	6 December 2022
Adaptable Housing Assessment Report	2	Design Confidence	6 December 2022
Flood Risk Management Plan	A	SGC	10 November 2022
Geotechnical investigation and preliminary acid sulfate soils assessment	0	Crozier Geotechnical Consultants	October 2022
Traffic impact assessment (TIA)	V02	TRAFFIX	12 December 2022
BCA Design Assessment Report	2	Design Confidence	6 February 2023

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

Reason: To ensure compliance with standards.



49. **Mechanical Ventilation certification**

Prior to the issuing of an Occupation Certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

50. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

51. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

52. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

53. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

54. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of an Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Principal Certifier, a



Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

55. **Landscape Maintenance**

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To maintain local environmental amenity.

56. **Transfer of bins between the basement bin room and the street level bin holding bay.**

Bins are to be available for collection from the street level bin holding bay between 5.00am to 6.00pm on the scheduled day/s of collection.

Bins are to be transferred from the basement bin room to the street level holding bay no earlier than 4.00pm on the day prior to the scheduled day of collection.

Bins are to be transferred from the street level holding bay to the basement bin room as soon as possible after collection but no later than the evening of the day of collection.

Reason: To ensure bins are available for collection staff at the appropriate time. To ensure bins do not remain in the street level holding bay for an excessive period of time.

57. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

58. **Proposed Outdoor Dining Condition**

No plant, air-conditioning units or associated machinery on the roof is approved in this consent.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

59. **Commercial Waste Collection Procedure**

Commercial waste and recycling bins are not to be placed at the kerbside on Sydney Road awaiting collection.

Waste collection arrangements must include a procedure whereby the collection contractor enters the property to retrieve the bins from the dedicated bin storage area and then returns the bins to the dedicated bin storage area immediately after emptying.

Reason: To maintain public amenity in Sydney Road.

60. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly



managed.

61. **Businesses Parking Permits**

Any businesses and/or tenants of the subject site are not eligible for business parking permits. This condition is to be provided on the property Title.

Reason: to ensure businesses premises/tenants are aware that they are not entitled to permits irrespective of the location of the development within a permit parking area.

62. **Resident Parking Permits**

Any residents and/or tenants of the subject site are not eligible for resident parking permits even if they reside in a Permit Parking Scheme area. This condition is to be provided on the property Title.

Reason: to encourage sustainable transport alternatives and ensure that residents/tenants are aware that they are not entitled to a permit

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**

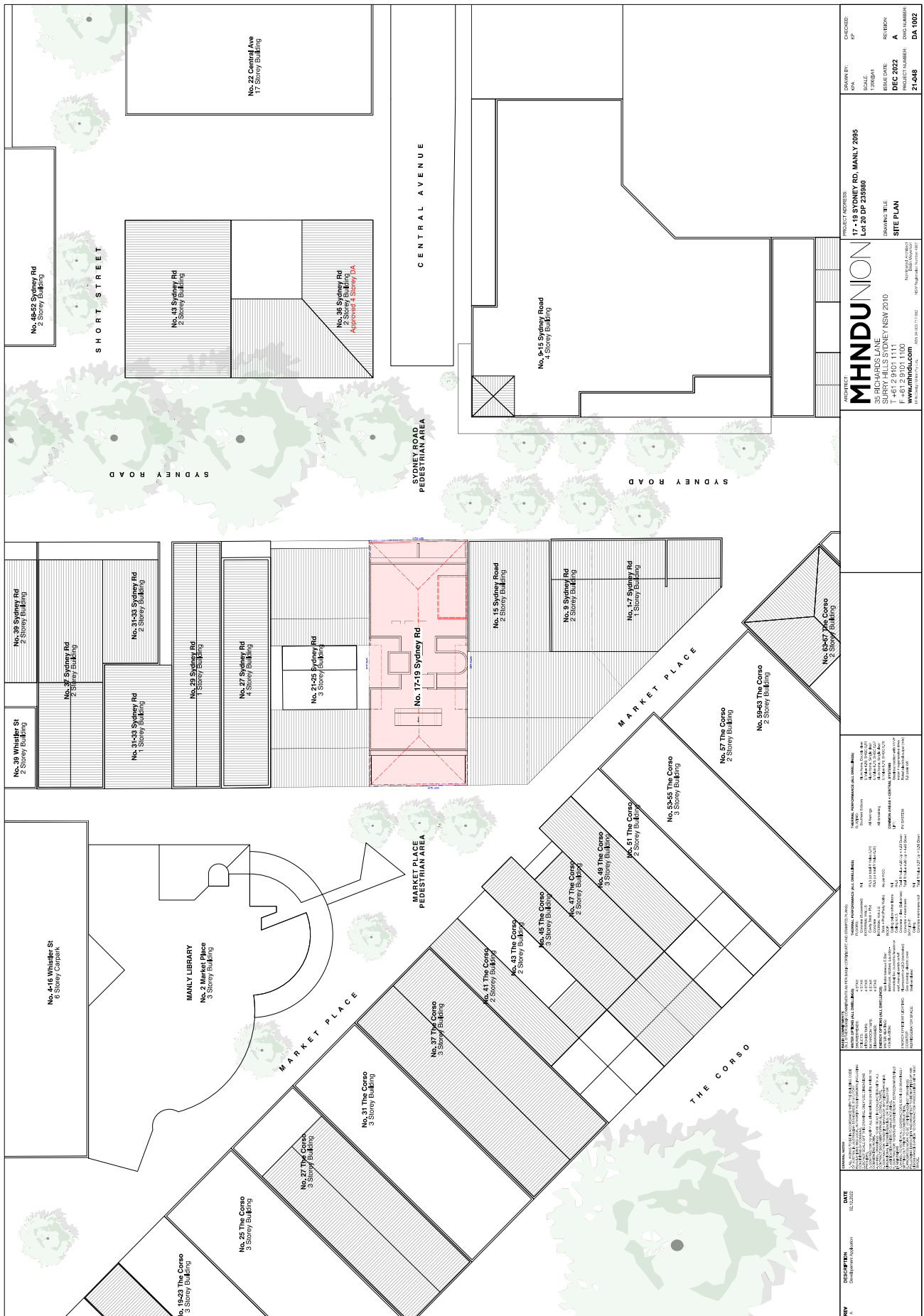
A handwritten signature in black ink, appearing to read "M. D. Ryan".

The application is determined on //, under the delegated authority of:

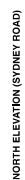
**Claire Ryan, Acting Development Assessment Manager**

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**Peter Robinson, Executive Manager Development Assessment**

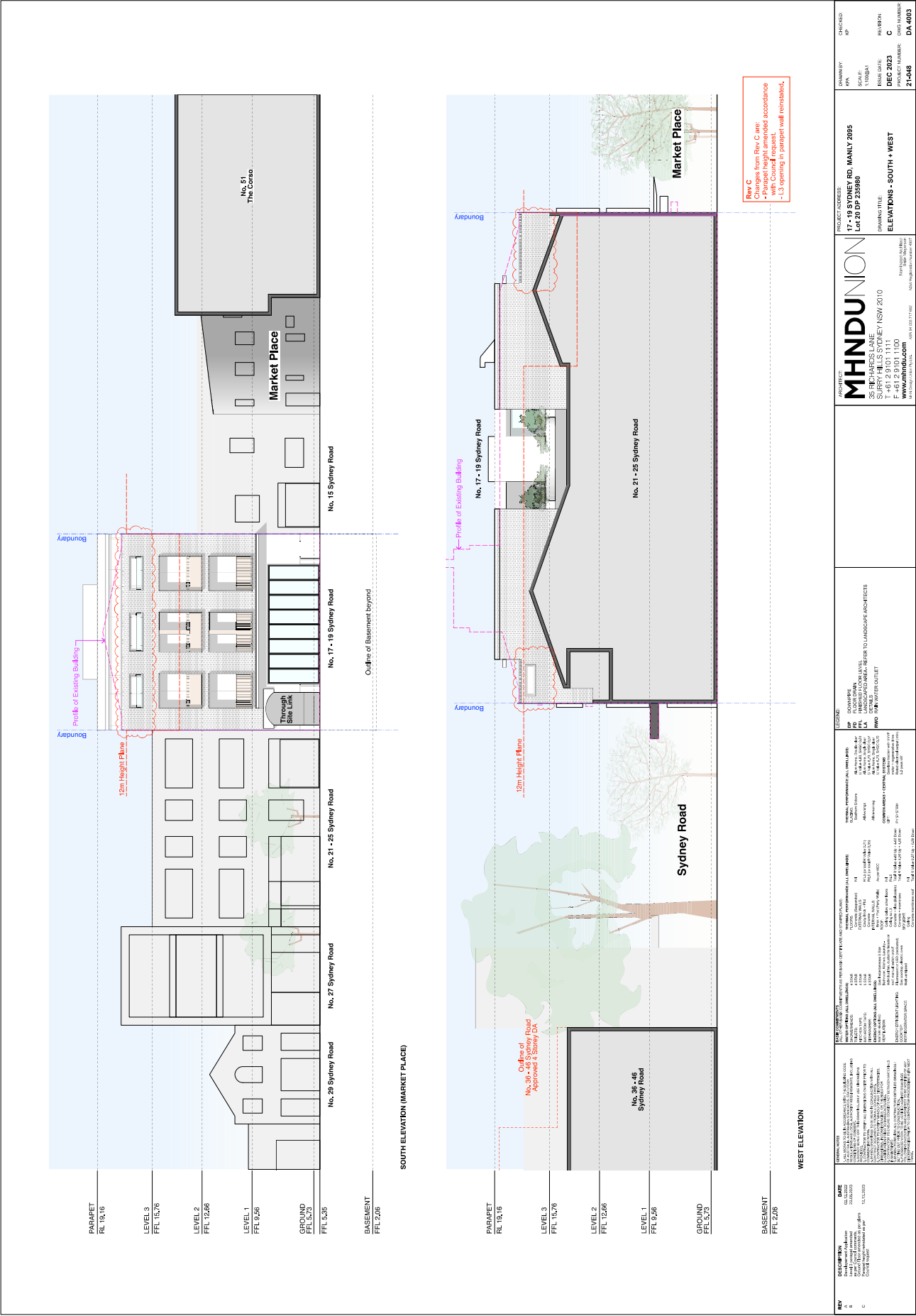






**Rev C**  
Changes from Rev C are:  
- Parapet height amended accordance with Council request.  
- L3 opening in parapet wall reinstated.

[illegible]





## 1 Clause 4.6 variation request – Height of Buildings

### 1.1 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

### 1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

#### 1.2.1 Clause 4.3 – Height of Buildings

Pursuant to the Height of Buildings Map of MLEP 2013, the site has a maximum building height limit of 12m.

The objectives of this control 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.*



Building height is defined as follows:

**building height (or height of building)** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

**ground level (existing)** means the existing level of a site at any point.

The subject site contains an existing basement, which constitutes existing ground level. The proposed development reaches a maximum height of 18m when measured from the finished floor level of the existing excavated basement to the top of the skylight over Unit 204. The varied extent of the height non-compliance when measured to the finished floor level of the basement is shown in Figure 1.



**Figure 1: Extent of height breach when measured to existing ground levels**

The extent of the proposed variations can be summarised, as follows:

- Dominant parapet height to Sydney Road = 12.43m, 0.43m or 3.6% variation
- Dominant parapet height to Market Place = 15.69m, 3.69m or 30.75% variation
- Level 4 parapet roof (north) = 13.83m, 1.83m or 15.25% variation
- Level 4 parapet roof (south) = 17.1m, 5.1m or 42.5% variation
- Lift overrun = 14.23, 2.23m or 18.58% variation
- Skylight over Unit 204 = 18m, 6m or 50% variation

When existing excavation is excluded, the proposed development reaches a maximum height of 14.23m, measured from the finished floor level of the ground floor and adjacent footpaths to the top of the lift overrun. The varied extent of the height non-compliance when measured to the finished floor level of the ground floor is shown in Figure 2.



**Figure 2: Extent of height breach when measured to finished ground levels**

### 1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

*The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*



The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP 2013 provides:

*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.*

This clause applies to the building height development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

*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.*

The proposed development does not comply with the building height development standard at clause 4.3 of MLEP 2013 which specifies a building height of 12m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP 2013 provides:

*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 Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.





The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10%.

Clause 4.6(5), which relates to matters that must be considered by the Secretary in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP 2013 from the operation of clause 4.6.

### 1.3 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

*The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*



*A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of MLEP 2013 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP 2013?

#### **1.4 Request for variation**

##### **1.4.1 Is clause 4.3 of MLEP 2013 a development standard?**

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision 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:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 of MLEP 2013 prescribes a height limit for development on the site. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

#### 1.4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

#### **Consistency with objectives of the building height development standard**

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is 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 dominant parapet height presenting to Sydney Road and Market Place is consistent with the dominant parapet height of the existing building, with the RL of the upper floor roof generally consistent with the maximum RL of the existing roof form.

Furthermore, the height and scale of the proposed 4 storey development is not inconsistent with that of existing and approved development, including:

- The 4 storey development approved at 36-46 Sydney Road (DA 30/2014)
- The 4 storey development at 27 Sydney Road
- The 4 storey development at 63-67 The Corso
- The 4 storey development at 69-71 The Corso
- The 6 storey development at 36 Sydney Road

A pre-lodgement meeting was held with Council with regard to the proposed height breach. It is noted that Council was supportive of the proposed fourth floor (Level 3) subject to increased setbacks from the boundaries with Sydney Road and Market Place, which have been incorporated into the design now before Council.



The non-compliant elements of the proposed development are generally screened by the dominant parapet, which is consistent with the height of the existing parapet, and do not detract from consistency with this objective.

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

**Comment:** The proposed development is well articulated with a height that is consistent with surrounding built form. Further, the proposed development is maintained well below the maximum permitted floor space ratio, which is the primary development standard to control the bulk and scale of development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the visual catchment of the site.

This is primarily due to the maintained height of the dominant parapets presenting to Sydney Road and Market Place, and the setbacks proposed at the upper level. As demonstrated in Section AA (Figure 3), the upper floor is screened from view from both Market Place and Sydney Road.



**Figure 3 – Extract of Section AA with sight lines**

The non-compliant elements of the proposed development do not detract from consistency with this objective.

(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: There are no apparent view corridors obtained over the subject site, and as such, it appears unlikely that the proposed development will result in any unreasonable impacts upon views.

If views are obtained over the roof of the existing buildings, it is noted that the height and form of the proposal is not dissimilar to the existing building, with any impacts reasonably minimised, consistent with the objectives and requirements of clause 3.4.3 of MDCP 2013.

The non-compliant elements of the proposed development do not detract from consistency with this objective.

- (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 non-compliant elements of the proposed development do not result in any adverse impacts upon the amount of sunlight received by adjoining properties.

- (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: Not applicable – the site is located within the B2 Local Centre zone and not within a recreation or environmental protection zone.

### **Consistency with zone objectives**

The subject property is zoned B2 Local Centre zone pursuant to MLEP 2013. The development's consistency with the stated objectives of the B2 zone is as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment: The proposed development provides 364.5m<sup>2</sup> of commercial floor space to contribute to the existing range of retail, business, entertainment and community uses within the Manly Town Centre.

- *To encourage employment opportunities in accessible locations.*

Comment: The subject site is in a highly accessible location, within walking distance of Manly Wharf and a number of bus stops serviced by differing bus routes.

- *To maximise public transport patronage and encourage walking and cycling.*

- Comment: The proximity of the site to public transport options and nearby pedestrian and cycle pathways, combined with the generally flat nature of the land within the Manly Town Centre, will actively encourage public transport patronage and walking and cycling. This is further encouraged by the specific design solution proposed, which provides bicycle parking within the basement.



- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment: The subject site adjoins land of the same B2 zoning.

The non-compliant development, as it relates to building height, demonstrates consistency with objectives of the zone and the building height development standard objectives. Adopting the first option in *Wehbe*, strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

#### 1.4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action* the Court found at [23]-[25] that:

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

*The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

#### **Sufficient environmental planning grounds**

##### **Ground 1 – Existing excavation**

The extent of the proposed height breach is compounded by existing excavation associated with a basement at the southern half of the site. As demonstrated in Figure 2, the extent of non-compliance with the height plane is considerably reduced when measured to finished floor levels and existing ground levels around the perimeter of the building.

Consistent with the findings of Commissioner O’Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly



described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

## **Ground 2 - Contextually responsive building design**

Despite non-compliance with the building height development standard, the proposed development is consistent and compatible with the height of the existing building at the site, other development within the visual catchment of the site and other development subject to the same height provisions.

Although the site is not subject to a number of storeys control, it can be assumed that a four storey development is anticipated within the 12m portion of the site. This assumption is confirmed by nearby and adjoining development that are subject to the same height limits including:

- The 4 storey development approved at 36-46 Sydney Road (12m height limit),
- The 4 storey development at 27 Sydney Road (12m height limit),
- The 4 storey development at 63-67 The Corso (12m height limit),
- The 4 storey development at 69-71 The Corso (12m height limit),
- The 6 storey development at 36 Sydney Road (12m height limit),
- The four storey street façade at 28-29 South Steyne (12m height limit),
- The four storey street façade at 30-32 South Steyne (12m height limit),
- The four storey street façade at 33 South Steyne (12m height limit),
- The three-five storey building at 43-45 South Steyne (10m-12m height limit),
- The three-five storey building at 46-47 South Steyne (10m-12m height limit),

The proposed development is limited to 4 storeys, consistent with the perceived height and scale of nearby and surrounding development.

The proposed development also maintains consistency with the dominant height of the existing development, with a parapet at RL17.75m AHD retained in the proposed development. Furthermore, it is noted that the overall maximum RL of development is ultimately reduced as a result of the proposal, by virtue of the removal of the lift overrun (RL20.56m AHD).

Allowing for a height breach that is consistent with the existing height of development at the site and nearby development is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.

## **Ground 3 – Compliance with the FSR**

Strict compliance with the height control would unreasonably constrain the development potential of the site in light of the 3:1 maximum FSR prescribed. Even with basement commercial floor space proposed, the proposal has a FSR of 2.8:1, or 89.8m<sup>2</sup> shy of the maximum permitted on the site. The removal of the upper floor would further reduce the FSR by 201.8m<sup>2</sup> to 2.2:1, being 291.6m<sup>2</sup> less than the maximum FSR prescribed.

Allowing for the height breach in consideration of the application of other standards and controls is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.



#### **Ground 4 – Improved Amenity**

The maximum height proposed occurs when measured to the top of the skylight over Unit 204. Unit 204 is a south facing unit, that if not for the skylight, would not receive direct solar access to the living room in midwinter.

The support of the breach associated with the skylight promotes good amenity of the built environment the health and safety of occupants of the development, consistent with the Objects (g) and (h) of the EP&A Act.

#### **Ground 5 – Public Benefit**

The proposed development comprises a pedestrian through-site link, that will significantly improve pedestrian connectivity throughout the town centre. The voluntary inclusion of the site link, which is highly endorsed/supported by Council, reduces the area of floor space at the ground level of the subject site, which has a premium rental return noting the site's location within the town centre.

The provision of additional floor space partially above the height plane is considered to be justified in consideration of the public benefit associated with the incorporation of the through-site link at the ground floor.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

- 1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the B2 Local Centre Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

*The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.*

*It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*



As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

#### 1.4.5 Secretary's concurrence

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10%.

Concurrence of the Secretary can therefore be assumed in this case.

### 1.5 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a building height variation in this instance.

**Boston Blyth Fleming Pty Limited**

**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**



Design + Sustainability Advisory Panel Meeting Report – Date 02 February 2023

## **6 - DA2022/2199 - 19 Sydney Road MANLY**

### **PANEL COMMENT AND RECOMMENDATIONS**

#### ***General***

The site is zoned B2 Local Centre under the provisions of Manly Local Environmental Plan 2013 and the proposed development (shop top housing) is permissible with consent.

The application proposes the demolition of the existing site structures, with the retention and expansion of the existing basement, and erection of a four (4) storey shop top housing development consisting of:

- Basement storage, services / utility space, and commercial floor space associated with above commercial unit
- Two (2) ground floor commercial units
- Ten (10) x one (1) bedroom residential units and one (1) x two (2) bedroom residential unit above commercial space.

The commercial units are located on the ground floor, with the northern unit accessed from Sydney Road, and the southern unit accessed from Market Place. The northern unit includes an internal staircase to access additional commercial space in the basement. At ground level, through site access is provided on the western side of the site, where access to residential units via lift and stairs is provided.

#### ***Strategic context, urban context: surrounding area character***

The proposal is located in the Manly town centre and enjoys excellent and convenient access to public transport, the beach and community and retail services. Given the desirability and advantages of the location, it is the Panel's view that it is acceptable for the internal amenity of the units to be lower than would normally be expected by SEPP65 and the ADG on the basis that residents will make a conscious decision to 'trade-off' the lack of car parking and internal amenity of the bedrooms for the advantages of the location.

#### ***Scale, built form and articulation***

The Panel supports the re-instatement and re-interpretation of the exist parapet and introduction of the 'cut-outs' in the façade.

#### ***Access, vehicular movement and car parking***

The Panel supports the provision of zero parking given the location and accessibility.

#### ***Landscape***

Full advantage should be made of all upper terraces and roof spaces to maximise planting through either intensive (usable) open space (either common or private) or extensive (non-trafficable) green roofs.





Extensive green roofs can be effectively combined with PV Solar electric arrays and in fact increase efficiency.

*Cyathea australis* are not coastal tolerant and are increasing stressed in Sydney as summer temperatures get hotter. Replace with more suitable species e.g. *Howea forsteriana*

#### **Recommendations**

1. Provide planting to all potential large roof areas planting through either intensive (usable) open space (either common or private) or extensive (non-trafficable) green roofs
2. Replace *Cyathea australis* with more suitable species e.g. *Howea forsteriana*

### ***Amenity***

The Panel noted that acoustic privacy for the rooms facing into the lightwells on the north and to a lesser extent the south are a matter for concern.

#### **Recommendations**

3. Engage an acoustic consultant to find suitable treatments to the light wells to ensure acoustic privacy

### ***Façade treatment/Aesthetics***

The panel commends the design of the façade and appearance of the building in terms of articulation, composition, material selection and detailing. It is the Panel's view that the building will be an attractive and complementary addition to the streetscapes of both the Corso and market place.

### ***Sustainability***

#### **Recommendations**

4. Replace the gas use with heat pump hot water and Induction cooktops
5. Increase the amount of PV on the roof
6. Give consideration to re-use of demolition material from the site.

## **PANEL CONCLUSION**

**The Panel supports the proposal in its current form but notes that further consideration needs to be given to the acoustic privacy of the rooms opening to the small light wells.**

The Panel refer the applicant to the Apartment Design Guide for aspects related to amenity and internal planning of apartments.

**ITEM 5.2****DA2023/1710 - 43 SYDNEY ROAD, MANLY - USE OF  
PREMISES AS A BUSINESS PREMISES (LAUNDROMAT),  
FITOUT AND SIGNAGE****AUTHORISING MANAGER Adam Richardson****TRIM FILE REF 2024/023680****ATTACHMENTS**  
**1 [↓](#)Assessment Report**  
**2 [↓](#)Site Plan & Elevations****PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as it is a development involving the demolition of a heritage item.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/1710 for Use of Premises as a Business Premises (Laundromat), fitout and signage on land at Lot 3 DP 445942, 43 Sydney Road, MANLY, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1710
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<b>Responsible Officer:</b>	Brittany Harrison
<b>Land to be developed (Address):</b>	Lot 3 DP 445942, 43 Sydney Road MANLY NSW 2095
<b>Proposed Development:</b>	Use of Premises as a Business Premises (Laundromat), fitout and signage
<b>Zoning:</b>	Manly LEP2013 - Land zoned E1 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Chang Liang Zhang Dan Yun Wei
<b>Applicant:</b>	J&B Collective Pty Ltd

<b>Application Lodged:</b>	24/11/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	01/12/2023 to 15/12/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 92,000.00
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### EXECUTIVE SUMMARY

This development application seeks development consent for 43 (Shop A) Sydney Road, Manly as a business premises (Laundromat) including an internal shop fit out and installation of signage.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal including partial demolition of a local heritage item, in particular penetration of the rear rear wall and the removal of heritage fabric to accommodate a hot water heater air discharge flue and the partial replacement of the existing shops exhaust ventilation for the dryers. No amendments to the front façade of the building is proposed with the exception of proposed business identification signage. The demolition works do not significantly affect the original building fabric and is minor in nature. However,

any form of demolition associated with a heritage item is defined as a form of Sensitive Development.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan. No submissions were received.

The critical assessment includes a detailed consideration of the relevant provisions under the *State Environmental Planning Policy (Industry and Employment) 2021* in relation to the proposed business identification signage. The application has also been assessed against other relevant State Environmental Planning Policy's, the *Manly Local Environmental Plan 2013*, and the Manly Development Control Plan 2013.

Based on a detailed assessment of the application, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

This report concludes with a recommendation that the NBLPP grant **approval** to the development application, subject to recommended conditions

## PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for 43 (Shop A) Sydney Road, Manly as a business premises (Laundromat) including an internal shop fit out and installation of signage.

Specially, the works comprise of the following:

**Operational Hours:** 6:00am - 10:00pm (seven days a week).

**Staff:** Maximum of one (1) staff member on site.

**Shop Fit-out:** Internal amendments including; installation of washers and dryers, services required for their operation, seating, laundry folding bench.

**Demolition works:** New penetrations in rear external wall to accommodate for air discharge (flue) and external duct/exhaust.

**Signage:** The installation of a new business identification sign to the existing tenancy awning fascia (non-illuminated) and under awning (illuminated).

The existing front façade is to remain and no changes are proposed.

## 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 - 5.10 Heritage conservation  
 Manly Local Environmental Plan 2013 - 6.11 Active street frontages  
 Manly Local Environmental Plan 2013 - 6.12 Essential services  
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor  
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access  
 Manly Development Control Plan - 4.4.3 Signage

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 3 DP 445942 , 43 Sydney Road MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Sydney Road and eastern side of Whistler Street.</p> <p>The subject site is legally identified as Lot 3 in Deposited Plan 445942, No. 43 Sydney Road, Manly. The subject tenancy is Shop A (western ground floor area).</p> <p>The site is regular in shape with a frontage of approximately 6.15 metres. Shop A has a surveyed area of approximately 45.0 metres.</p> <p>The site is located within the E1 Local Centre zone under the Manly Local Environmental Plan 2013 and accommodates a two (2) storey commercial building.</p> <p>The site is identified as a local heritage item and is located within the Manly Town Centre heritage conservation area.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by buildings of varied age, size and architectural styles with mixed residential and commercial land uses within the E1 Local Centre zoning.</p>

Map:



## SITE HISTORY

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

### 10.2004.479.1

Change of Use to Nail Salon incl. fitout & signage.  
Determined on 18 November 2004 by Manly Council.

### 16.2016.162.1

Fitout of existing retail tenancy.  
Approved by private certifier on 13 October 2019.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.

Section 4.15 Matters for Consideration	Comments
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 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended 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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 Matters for Consideration	Comments
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 01/12/2023 to 15/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><b><i>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.</i></b></p>
Environmental Health (Industrial)	<p><b><i>Supported, no conditions required.</i></b></p> <p><u>General Comments</u> This application is seeking consent for alterations to an existing</p>



Internal Referral Body	Comments
	<p>commercial premises to accommodate a laundromat.</p> <p>The Statement of Environmental Effects has stated, the rear laneway will incorporate a new short exhaust duct run which will connect to the existing exhaust riser.</p> <p>Environmental Health recommends approval.</p>
NECC (Flooding)	<p><b>Supported, no conditions required.</b></p> <p>The proposal is to change the use of the premises from an electronics repair and supply shop to a laundromat business, with internal fit-out alterations and awning signage.</p> <p>No changes are proposed to the shopfront or façade.</p> <p>The street in front of the shop is affected by the 1% AEP flood event, up to a depth of about 0.2m.</p> <p>There are no flood related objections to the change of use.</p>
NECC (Water Management)	<p><b>Supported, no conditions required.</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WMD Policy), and;</li> <li>• Relevant LEP and DCP clauses;</li> </ul> <p>The proposal is for change of use and associated fit-out and signage.</p> <p>No objections to the proposal regarding water management.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p><b>Supported, no conditions required.</b></p> <p>The proposal has been referred to Heritage as the subject property is part of a group listed heritage item, being <b>Item I234 - Group of 5 commercial buildings</b> at 39–47 Sydney Road, listed in Schedule 5 of the Manly LEP 2013. It is also located within the <b>Manly Town Centre Conservation Area</b> and in the vicinity of a heritage item:</p> <p><b>Item I231 - Congregational Church</b> - Sydney Road (corner of Whistler Street)</p>
	Details of heritage items affected
	<p>Details of the heritage items as contained within the Northern Beaches Heritage inventory are as follows:</p> <p><b>Item I234 - Group of 5 commercial buildings</b></p>

Internal Referral Body	Comments	
	<u>Statement of significance</u> A fine representative and unified group of Federation Queen Anne style shops.	
	<u>Physical description</u> Fine terrace of Federation Queen Anne style 2 storey shops, alternately brick and roughcast stuccoed, terminating in a 3 storey corner shop featuring a 2 storey oriel window.	
	<b>C2 - Manly Town Centre Conservation Area</b>	
	<u>Statement of significance</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.	
	<b>Item I231 - Congregational Church</b>	
	<u>Statement of significance</u> Congregational Church in Whistler Street is of significance for Manly area for its historical, aesthetic and social reasons, and for the rarity and representativeness of its qualities. The site has a long association with the local community for spiritual reasons, being a place of public worship since the 1860s when the current building was created. The church building is a major landmark visible from the direction of Sydney Road and Whistler Street and makes an important contribution to the townscape character. The building is representative of stone churches of its date of creation, particularly of Victorian Rustic Gothic architectural style, which is rare in the local area context. It is believed to be "the oldest church in Manly".	
	<u>Physical description</u> Sandstone Victorian Rustic Gothic style church with pointed arched leadlight windows with quatrefoil and trefoil motifs, and pointed arched doors. The church was extended east in 1907. The church has a gabled concrete tile roof with copper roof plumbing.	
	<b>Other relevant heritage listings</b>	
	SEPP (Biodiversity and Conservation) 2021	No

Internal Referral Body	Comments
	Australian Heritage Register
	No
	NSW State Heritage Register
	No
	National Trust of Aust (NSW) Register
	No
	RAIA Register of 20th Century Buildings of Significance
	No
	Other
	No
Consideration of Application	
	The proposal seeks consent for alterations to the existing commercial premises to accommodate a new business tenants who operate a commercial public laundry business, named Bubble Box. The proposed works involve internal fit-out works, replacement of the existing under awning signage and a new awning signage. The internal works are not considered to have an adverse impact on the heritage values of the heritage listed building or the conservation area.
	Given the proposed internal changes will not modify the existing walls and the proposal does not involve any changes to the shopfront - except the signage the proposal considered to not impact upon the significance of the heritage items and the conservation area.
	Therefore, no objections are raised on heritage grounds subject to one condition.
	<b>Planner Note:</b> Applicant supplied amended signage details, which involved removed the illumination to the awning fascia sign as requested via the Heritage Advisor. Heritage Advisor confirmed that the amended plans satisfy the requirements of the condition. Therefore, the condition has been removed.
	<u>Consider against the provisions of CL5.10 of MLEP 2013.</u>
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Addressed in SEE.

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

External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP (Transport and Infrastructure) 2021

##### Ausgrid

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

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

##### Comment

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

#### SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is generally consistent with the existing signage surrounding the premises and is consistent with the desired future character of the Manly Local Centre.	Yes
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal is consistent with the current theme for outdoor advertising of commercial premises.	Yes
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The premises is situated within a local heritage building and is located within the Manly heritage conservation area. The proposed signage remains consistent with the surrounding premises, and is compatible with the area. The signage is considered to achieve visual interest, enhancing the visual quality of the vicinity, and will not disrupt the surrounding environment. No concerns have been raised by the relevant internal or external referral bodies, in this regard.	Yes
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The signage does not protrude further than the built form, and will therefore not disrupt or obscure any significant views.	Yes
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage is modest in nature, and will be attached to the existing built structures. Therefore, no domination of the skyline or reduction in the quality of vistas shall occur.	Yes
Does the proposal respect the viewing rights of other advertisers?	The proposal does not disrupt the viewing rights of other advertisers.	Yes
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	One sign will be located under the awning with the other to be located on the awning fascia, with a scale, proportion and form, which is considered acceptable for Manly, given the several commercial/retail uses established within the vicinity.	Yes
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The scale and design of the signage respects the heritage values of the site, and has incorporated materials and finishes that will achieve an acceptable level of visual interest to the setting, street and landscape.	Yes

Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal does not result in visual clutter.	Yes
Does the proposal screen unsightliness?	The proposed signage will aid in visual enhancement.	Yes
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.	Yes
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal is considered compatible with the scale, proportion and characteristics of other signage within the Manly heritage conservation area, with Council's Heritage Advisor supporting the proposal. The signage is considered acceptable for the heritage building and surrounding heritage items.	Yes
Does the proposal respect important features of the site or building, or both?	The signage is considered simple and effective. The front facade of the heritage item and important external features of the building will not be altered and will remain the same as existing.	Yes
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage exhibits innovation and imagination in relation to the site and building.	Yes
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	One (1) sign will be illuminated (under awning).	Yes
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	One (1) sign will be illuminated (under awning). The signage to be illuminated will not result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation. The illumination is consistent to other premises, with the signage being acceptably placed.	Yes
Can the intensity of the illumination be adjusted, if necessary?	The illumination will not be intense, and is predominately related to the letters of the business name.	Yes
Is the illumination subject to a curfew?	Illumination of the signage will be switched off when the premises closes, subject to condition.	Yes
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No.	Yes

Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.	Yes
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Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

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

## Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	12.0 metres	No change to existing height (< 12.0 metres)	-	Yes
Floor Space Ratio	FSR: 3:1	FSR: No Change to existing FSR	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes

Clause	Compliance with Requirements
6.12 Essential services	Yes
6.13 Design excellence	Yes

#### Detailed Assessment

### **5.10 Heritage conservation**

Clause 5.10 applies to this application as the works are located on a site of Local Heritage Significance (Item I234 - Group of 5 commercial buildings at 39–47 Sydney Road), that is listed within Schedule 5 of Manly Local Environmental Plan 2013. It is also located within the Manly Town Centre Conservation Area and in the vicinity of heritage item (Item I231 - Congregational Church - Sydney Road).

Development consent is required as the works include altering a heritage item that is a building by making structural changes, altering the exterior and interior of the item. Therefore, the proposed works will be assessed as follows:

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

- (a) to conserve the environmental heritage of Manly,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, in*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

#### Comment

As the works are predominantly internal (in exception of signage), the works are not considered to adversely impact the heritage significance of the item or surrounding items.

#### **(4) Effect of proposed development on heritage significance**

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

#### Comment

Council's Heritage Officer has reviewed the proposal and has considered any effects of the proposed development on the heritage significance of the item.

#### **(5) Heritage assessment**

The consent authority may, before granting consent to any development—

- (a) on land on which a heritage item is located.

The consent authority may, before granting consent to any development require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

#### Comment

The proposed internal changes will not modify the existing shopfront in exception of signage. The proposal is not considered to impact upon the significance of the heritage items and the conservation area. Therefore, Council's Heritage Officer has not requested any Heritage Impact Statements.



### 6.11 Active street frontages

Under this clause, development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

#### Comment

The existing front façade will not be altered in exception of the proposed signage. The signage is deemed acceptable and similar to that of surrounding development, having been reviewed and supported by Council's Heritage Advisor. It is considered that the development maintains the existing level of street activation.

### 6.12 Essential services

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

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

#### Comment

The proposed works are located within an existing building previously being used as a commercial premises. The works do not increase the building foot print of the site, and does not propose any significant changes to the existing stormwater, sewerage, vehicular access, water supply or electricity systems.

The proposal does not seek an increase to the overall floor area of the premises. Further, given the lack of opportunity to provide new on-site parking, the current parking situation is appropriate of the proposed use (on-street and use of Whistler Street Carpark). Additionally, the proposed premises is in close vicinity to public transport including a bus station and ferry terminal.

### Manly Development Control Plan

#### Built Form Controls

The proposed development seeks consent for the use of premises, internal fit-out and signage. The works will be located within the existing footprint of the building. Therefore, no built form controls shall apply in this instance.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

#### **4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor**

The subject site is located in the Manly Town Centre. As such, an exception to the car parking requirement is permitted under Clause 4.2.5.4 of the MDCP 2013. Car parking for the proposal is discussed in detail in Section 4.2.5.4, elsewhere in this report.

#### **4.2.5.4 Car Parking and Access**

##### Merit Consideration

Schedule 3 Parking and Access of the Manly DCP 2013 requires Commercial Premises (including business, offices and retail premises) to provide one (1) parking space for every 40m<sup>2</sup> of gross floor area. As such, the premises is required to provide two (2) parking spaces.

Clause 4.2.5.4 Car Parking and Access includes exceptions to parking rates/ requirements in Manly Town Centre, if the site is constrained by the following:

- The required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or
- The movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.

The premises is located within a building that is situated within the Manly Town Centre and does not include any existing areas or spaces for car parking, as per many other commercial premises in the area. Opportunities (if any) would interfere with the existing shop frontages and cause conflict in the area in regard to both other vehicles and pedestrians. The current parking situation is appropriate of the proposed use (on-street and the available use of the public Whistler Street Carpark). Additionally, the proposed premises is in close vicinity to public transport including a bus station and ferry terminal.

Therefore, the provision of no car parking spaces is considered acceptable in this circumstance, recognising that the commercial / retail nature of the land use proposed is consistent with the former land use and prevailing character of the development.

#### **4.4.3 Signage**

##### Merit Consideration

The proposal includes two (2) business identification signs to the northern elevation (shop frontage). One (1) sign will be attached under the awning, with the other to be attached to the awning fascia. Only the under awning sign will be illuminated.

The proposal includes one (1) under awning sign and is compliant with the clause requirements. The business identification signage will be installed within the same location and same dimensions as the existing under awning lightbox structure. The proposal includes one (1) awning fascia sign which will not project above or below the fascia. Council's Heritage Advisor has reviewed the signage design and is in support, with no concerns being raised.

Having regard to the above, it is concluded that the proposal complies with the requirements of this clause. Furthermore, an assessment against *The State Environmental Planning Policy (Industry and Employment) 2021*, has concluded that the proposed signage aligns with the requirements of the SEPP.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2022**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

## PLANNING CONCLUSION

This proposal, seeks development consent for 43 (Shop A) Sydney Road, Manly as a business premises (Laundromat) including an internal shop fit out and installation of signage, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to demolition of part of a Local Heritage item. Therefore, meets the requirements for the determination by the NBLPP for Sensitive Development.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan. No submissions were received.

The critical assessment included a detailed consideration of the relevant provisions under the *State Environmental Planning Policy (Industry and Employment) 2021* in relation to the proposed business identification signage. The application has also been assessed against other relevant State Environmental Planning Policy's, the *Manly Local Environmental Plan 2013*, and the Manly Development Control Plan 2013.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the NBLPP with a recommendation 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/1710 for Use of Premises as a Business Premises (Laundromat), fitout and signage on land at Lot 3 DP 445942, 43 Sydney Road, MANLY, subject to the conditions printed below:

**Terms and Reasons for Conditions**

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

**GENERAL CONDITIONS****1. Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
A 02	Revision B	Perspectives & Signage	Alphaplus	6 December 2023
A 04	Revision A	Floor Plan & Setout Plan	Alphaplus	3 October 2023
A 05	Revision A	Services Plan	Alphaplus	3 October 2023
A 06	Revision A	Reflected Ceiling Plan	Alphaplus	3 October 2023
A 07	Revision A	Section B-B & Elevation A	Alphaplus	3 October 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
BCA Capability Statement (Ref. 23000841)	Revision 01	MBC GROUP	20 November 2023
Waste Management Plan	-	-	-

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

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	4 December 2023

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

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

#### 4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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 an 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 following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall

notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Security Bond

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

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

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

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

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

#### **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**6. 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 Certifier 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.

**7. Compliance with Standards**

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

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

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

#### **DURING BUILDING WORK**

**8. 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.

**9. Demolition Works - Asbestos**

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

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and

is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

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

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

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

10. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

11. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

12. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

13. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

**14. Hours of Operation**

The hours of operation are to be restricted to:

- **Monday to Sunday** (*including Public Holidays*): 6:00am - 10.00pm.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

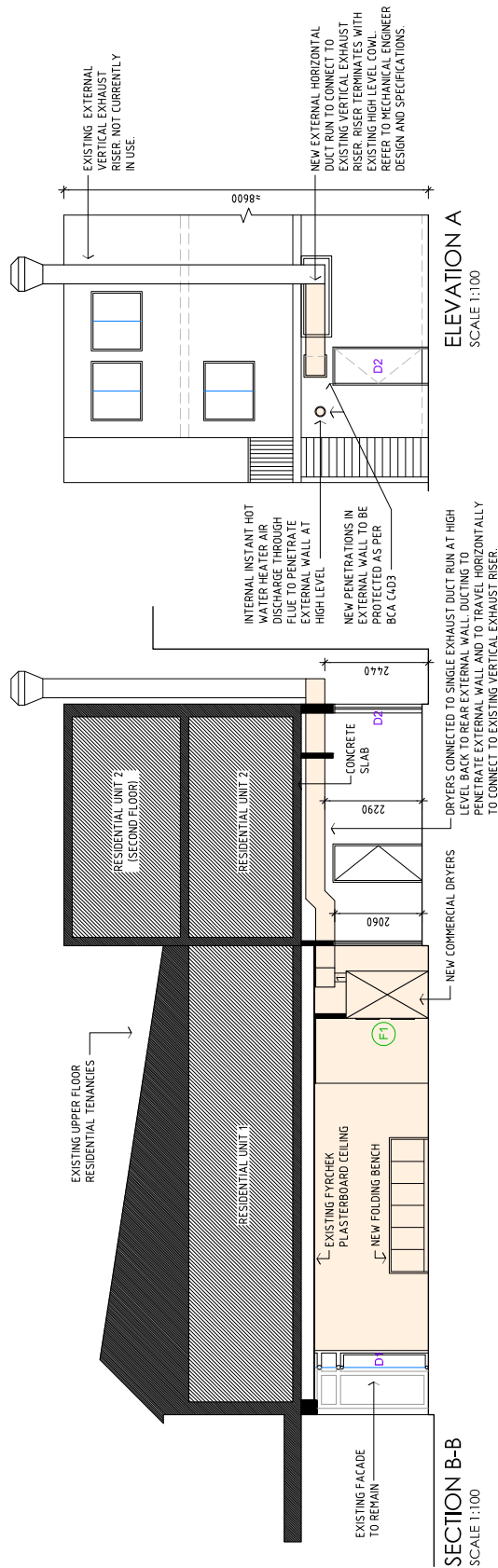
**15. Commercial Waste Collection & Deliveries**

Waste and recyclable material, generated by this premises, must not be collected and any deliveries to the premises outside the approved hours of operation.

Reason: To protect the acoustic amenity of surrounding properties.



Rev	Description	Initial	Date
A	Issued for DA	DM	03.10.23



ALTERED PORTION

FURNITURE/FITTING ITEM - REFER TO FURNITURE & FITTINGS SCHEDULE FOR SPEC

DOOR OR WINDOW NUMBER, REFER TO DOOR/WINDOW SCHEDULE

FINISHES CODE - REFER TO FINISHES SCHEDULE FOR SPEC

NOTES

- All dimensions are to be confirmed by the client prior to construction.
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<b>BUBBLE BOX</b> c. Jane Russell (Roberts Copart) e. jane@bubbox.com.au p. 0433 887 087	<b>CLIENT</b>	<b>ARCHITECT</b> c. Jane Russell (Roberts Copart) e. jane@bubbox.com.au p. 0433 887 087	<b>PROJECT</b> BUBBLE BOX MORLEY 2.0 Project Address 45A Sydney Road MORLEY 2025	<b>DRAWING</b> SECTION B-B & ELEVATION A		<b>Revision No.</b> A 07 <b>Scale</b> 1:50 @ AS <b>Date</b> 15/08/23 <b>Checked</b> DM <b>Project No.</b> B003
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**ITEM 5.3****PROPOSED DELEGATION TO COUNCIL'S CHIEF EXECUTIVE OFFICER (GENERAL MANAGER) FOR VARIATIONS TO A DEVELOPMENT STANDARD IN EXCESS OF 10% OF HEIGHT OF BUILDING AND FLOOR SPACE RATIO FOR CLASS 2-9 BUILDINGS.****AUTHORISING MANAGER** Peter Robinson**TRIM FILE REF** 2024/043568**ATTACHMENTS** NIL**PURPOSE**

Under the Section 2.20(8) of the Environmental Planning and Assessment Act 1979

**2.20 Miscellaneous provisions relating to local planning panels**

(8) A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council. Section 381 of the Local Government Act 1993 does not apply to any such delegation.

Delegation is proposed to be given to the Chief Executive Officer (General Manager) of Northern Beaches Council for development applications and applications for modifications of consent where the development contravenes the numerical development standard by more than 10% for Class 2-9 buildings associated with height and floor space ratio under the Manly LEP 2013, Warringah LEP 2011 and Pittwater LEP 2014

The conditions for use of the delegation would be that there is an existing contravention of the development standard, which is not increased further by the proposed development, and that such developments are minor in nature.

Delegation in the manner described above will enable council staff to determine such Class 2-9 development applications. This type of application is becoming more frequent as buildings age and require upgrades and refits which do not significantly change the height, bulk or form of these structures, constructed under former planning regimes where they have pre-existing nonconformity with current planning controls.

Delegating determination functions of these types of applications to the CEO will reduce the number of applications that require referral to the Northern Beaches Local Planning Panel, where this is little in the way of impact and generally a technical requirement that the application is referred to the Panel.

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**RECOMMENDATION OF EXECUTIVE MANAGER DEVELOPMENT ASSESSMENT**

The following delegations be given to the Chief Executive Officer (General Manager) of Northern Beaches Council in relation to development applications and modification applications:

- (1) where there is a pre-existing non-compliance of more than 10% for a class 2-9 building under clause 4.3 Height of buildings of the Manly Local Environmental Plan 2013, Pittwater Local Environmental Plan 2014 or Warringah Local Environmental Plan 2011, and the development does not result in any increase in the overall/maximum non-compliance,



- (2) where there is a pre-existing non-compliance of more than 10% for a class 2-9 building under clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013, Pittwater Local Environmental Plan 2014 or Warringah Local Environmental Plan 2011 and the development does:
- a. not result in changes to the extent of the building envelope; and
  - b. results in only minor increase to the gross floor area (for example balcony enclosure or similar).