

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-395
DA Number	DA2022/1910
LGA	Northern Beaches
Proposed Development	Demolition work and construction of a residential flat building including basement car parking.
Street Address	Lot CP SP 2492, 61 North Steyne MANLY NSW 2095
Applicant/Owner	Manly Property Developments Pty Ltd Proprietors of Strata Plan 2492
Date of DA lodgement	15/11/2022
Number of Submissions	22
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	CIV > \$5M – Council interest
List of all relevant s4.15(1) (a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979; • Environmental Planning and Assessment Regulations 2021; • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; • State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development); • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Transport and Infrastructure) 2021; • State Environmental Planning Policy (Biodiversity and Infrastructure) 2021 • Manly Local Environmental Plan 2013; • Manly Development Control Plan 2013;
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> - Architectural Plans - Statement of Environmental Effects - Clause 4.6 - Height of Buildings - Clause 4.6 - Floor Space Ratio - Design Statement - Visual Impact Assessment - Survey Plan
Clause 4.6 requests	Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Summary of key submissions	<ul style="list-style-type: none"> - Building Height and Floor Space Ratio non-compliance - View Loss - Privacy - Solar Access - Site Isolation - Traffic and Safety - Construction impacts

Report prepared by	Maxwell Duncan, Principal Planner
Responsible Officer	Maxwell Duncan, Principal Planner
Report date	26 July 2023

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **YES**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **YES**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **YES**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **YES**

Conditions

Have draft conditions been provided to the applicant for comment? Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report **YES**

EXECUTIVE SUMMARY

The application seeks consent for demolition works and construction of a five (5) storey residential flat building including basement carparking.

The proposal is Nominated Integrated Development, requiring a Water Supply Work approval under the *Water Management Act 2000*.

The application is referred to the Sydney North Planning Panel (SNPP) for determination as the development has a capital investment value (CIV) of more than \$5 Million and the site is partially located on Council owned land. Council is the owner of the road reserve which is subject of a resolution of Council which allows the closure of the road reserve and transfer of the residual land to 61 North Steyne.

The application proposes a variation to both the Height of Buildings and Floor Space Ratio development standards of Manly LEP. A variation of 25% is proposed in the case of the building height development standard and 19% in the case of the FSR development standard. The written clause 4.6 variation request to the Height of Buildings and Floor Space Ratio development standards is based on the development, despite the breach, being consistent with the established character of development within the immediate vicinity of the development site. The resultant bulk and scale are consistent with the height and bulk and scale of other buildings along North Steyne and is in fact lesser than those in the immediate vicinity.

As a result of the public exhibition of the development application, 22 objections were received. Concerns raised in the objections predominantly relate to the visual impact on the character of the locality due to the height and size of the development, impact on the adjoining heritage item, the exceedance of the LEP building height, parking concerns, geotechnical risks, view impacts, overshadowing and privacy impacts upon adjoining private properties.

Council's Design and Sustainability Advisory Panel (DSAP) reviewed the proposal and recommended design changes. In response to the issues raised by DSAP, the Applicant elected to amend the proposal to directly address the matters raised by DSAP.

A detailed assessment has been undertaken within this report regarding the amenity impacts on the immediately adjoining residential flat buildings to the north, south 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. The recommendations of the geotechnical report will be referenced in the proposed conditions.

On the balance, the assessment finds that the proposal is acceptable for the site and concludes with a recommendation that the SNPP, as the consent authority, grant **approval** to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of a five (5) storey residential flat building including basement carparking.

Specifically, the proposal consists of:

- The demolition of the existing residential flat building and associated structures.
- The construction of a five storey residential flat building containing:
 - i 4 x three-bedroom apartments,
 - i 1 x two-bedroom apartment;
- Two levels of common basement containing parking for 10 vehicles and 6 bicycles.
- Associated landscaping.
- Site preparation works; and
- Use of the road reserve for landscaping and pedestrian access.

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 28 February 2023 outlining concerns that would not allow for Council to support the application in its current form. The issues raised included:

- Site consolidation
- Building Height and Floor Space Ratio non-compliance
- View loss
- Privacy
- Outstanding internal referral (Development engineers, water management)
- Design and Sustainability Advisory Panel comments

The applicant lodged amended plans and additional information to address concerns on 21 April 2023.

The amended plans incorporated the following changes:

- Master bedroom replaced with a terrace, rooftop planting and unenclosed roof area.
- Reduced curved slab edge adjacent to the southern neighbour.
- Reduction of the extent of terrace fronting North Steyne, as well as rooftop planting.
- Minor internal and external alterations.

On 5 May 2023, the application was re-notified and advertised to neighbouring properties in accordance with the Northern Beaches Community Participation Plan.

Road Reserve

There is a road reserve that adjoins the subject site which is to be used as landscaped open space for the development. This parcel of land, previously intended for road widening has been closed through resolution of Council and is in the process of being transferred to the owners of the subject site and consolidated into 61 North Steyne. This land area, which is approximately 50.1sqm has been considered as part of the Manly Development Control Plan (MDCP) 2013 built form calculations.

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 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.10 Fencing

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

Manly Development Control Plan - 5.5 Road Widening and Realignment

SITE DESCRIPTION

Property Description:	Lot CP SP 2492, 61 North Steyne MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) corner allotment located on the western side of North Steyne and the southern side of Denison Street.

The site is irregular in shape with a frontage of 12m along North Steyne and 25.7m along Denison Street. The site has a surveyed area of 407.3m².

The site is located within the R3 Medium Density Residential zone and accommodates a residential flat building containing 4 apartments.

The development is integrated development assessment process for construction dewatering.

The site is relatively flat across the site and approximately between reduced levels (RL) 5.3m and 5.7m.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential flat buildings.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

PLM2022/0111 - Demolition works and the construction of a residential flat building.

Design and Sustainability Advisory Panel (DSAP)

Following the lodgment of the development application was referred to DSAP, who provided the following comments:

General

The Panel notes the height and FSR non-compliances of the proposal and that the justification is that compliance is unnecessary based on the compatibility with, and minimal impacts to, existing adjoining development.

In the Panel's view the non-compliances with planning controls do not result in a reduced impact on adjoining sites, however the landscaping of the road reserve area is considered a contribution to the public domain and the larger balcony areas and extent of landscaped area beyond compliance result in high amenity outdoor recreational spaces for the occupants. The project does deliver reasonable environmental performance, better than minimum compliance, though there is room for improvement to contribute to justification for non-compliance.

For the reasons stated below the Panel does not support the proposal in its current form and makes recommendations that would result in support by the Panel.

Strategic context, urban context: surrounding area character

The site has two main contextual interfaces which have been considered by the Panel in detail.

North Steyne: In terms of building height and scale the proposed development is acceptable in the North Steyne streetscape subject to the recommendations set out in *Scale, built form and articulation* below.

Denison Street: Given the lower scaled development to the west, including the school site (11m height limit), it is considered the proposed development can be modified to provide a suitable scale transition with lower building heights that reflect the desired future character sought by the controls.

Recommendations are set out in *Scale, built form and articulation* below.

Scale, built form and articulation

The scale and height of the building is generally acceptable in the North Steyne context. The Panel notes the additional setback (about 1m) provided from the south boundary to the upper level and notes that living room terraces to the adjacent property will retain reasonable amenity including winter sunlight and access to views from the principle useable areas on those terraces. No. 59 has a three-storey street wall before an upper-level setback and the proposed building form does not respond to or articulate itself at this interface.

In Denison Street the Level 4 master bedroom extension is of a scale and bulk that does not provide a transition to the lower scaled buildings or future height compliant development to the west.

The Panel considers that the overall approach to the built form, with the benefit of modifications recommended below will be acceptable.

Recommendations

1. Remove the built form containing the Master Bedroom at level 4 and replace with an open landscaped roof terrace. This will ensure an appropriate scale transition when looking along the Denison Street view corridor from North Steyne and vice versa.

2. Articulate the interface with the built form at No. 59 by reducing level 4 curved planter to generally reflect the profile of terrace forms on Levels 1-3 and modify the built form to provide vertical articulation with planters in the slot to Bedroom 2. This will also result in a more interesting and therefore contributory built form.

PLANNER COMMENT:

1. The proposed master bedroom to the northern side of level 4 has been deleted and replaced with a terrace.
2. This recommendation has been adopted in the amended plans.

Access, vehicular movement and car parking

No further comment.

Landscape

The Panel notes the very preliminary landscape proposals that need further development.

While there may be concern about large trees blocking views, the Panel recommends the proposal find a way of including trees with canopy, to contribute to the need for this in the area.

Recommendations

3. With improved carpark layout to enable deep soil planting, reconsider landscape plan to include appropriate coastal trees with effective shade canopy.
4. The panel recommend that the proposed fire hydrant location not be located in the deep soil zone along Denison Street and a more appropriate location be explored.
5. With improved garbage design, reconsider driveway access and enable planting to western boundary of an appropriate small coastal native tree on this significant corner. A cabbage tree palm could be a suitable species and form for this location.
6. Consider design for best use and public benefit for eastern parklet to be dedicated to Council.
7. Remove pebbles to roof areas and replace with low maintenance green roof.
8. Consider a low maintenance green roof solution for the upper roof, with PV panels over.
9. Put any planter boxes and green roofs on common title so they can be maintained.
10. Engage a landscape architect with particular expertise in species selection to ensure the proposed plants will survive and thrive in the coastal location. Suggest, request the current consulting landscape architect review their current planting schedules based around the sites salt and sand laden winds, minimal available sun at ground level. Endemic coastal species are encouraged as appropriate and site hardy species.

PLANNER COMMENT:

Recommendations 3-5-and 7-10. The amended architectural plans and landscape plan have generally adopted the recommended changes. Council's landscape officer has reviewed the amended landscape plans and supports the development as proposed, subject to conditions.

6. The road widening in this part of the Manly has been abandoned. The proposed landscaping in this area is satisfactory.

Amenity

The Panel commends the design that enables solar access and natural ventilation for all apartments.

With the great public amenity available across the road and the generous private open space for the 5 apartments, the Panel agrees there is no need for the provision of common space.

Servicing of the bin storage ideally would be undertaken using the car lift rather than the passenger lift if regulations permit.

Façade treatment/Aesthetics

The Panel acknowledges the façade treatment and aesthetics are aligned with and appropriate for the locale. The material selection for the privacy screens and well as the overall construction should consider rusting and maintenance in this coastal location.

Recommendations

11. Metal screens and framing should not be mild steel. Provide copper, aluminum or stainless-steel bases with coatings and subframe structures suited to extreme coastal environments.

PLANNER COMMENT:

11.A condition of consent has been imposed, ensuring mild steel is not utilised as a material.

Sustainability

The Panels notes the development:

- achieves an Average 6.8-star NatHERS rating with Unit 05 having a star rating of 5.4.
- is fully electrified gas free
- incorporates 5kw of PV

Higher BASIX thermal performance standards that will commence on 1 October 2023 will be an average 7 stars NatHERS, with no unit below 6 stars. This consistent with the National Construction Code for 2022.

Given the extent of non-compliance, the Panel is of the view that further commitments are required to match the future standards and achieve a higher level of environmental performance, partly offsetting emissions generated by the larger built form.

Recommendations

12. Provide EV charging capability. All spaces are to be 'EV ready'. e.g., the provision of a

backbone cable tray and a dedicated 15A circuit within an EV Distribution Board enabling future installations of a smart EV charger and cabling to the EV Distribution Board.

13. Modify the design as necessary so that Unit 05 will achieve a minimum 6-star NatHERS rating.

14. Provision of ceiling fans to all bedrooms and living areas.

PLANNER COMMENT:

12 - 14. 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.

PANEL CONCLUSION

The Panel does not support the proposal in its current form without incorporation of all the measures set out in the recommendations above.

PLANNER CONCLUSION: The comments made by DSAP have been satisfactorily addressed by the applicant, and as such the proposal is supported.

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&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&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&A Regulation 2021 allow Council to request additional information. Additional</p>

Section 4.15 Matters for Consideration	Comments
	<p>information was requested in relation to built form non-compliance, amenity and insufficient information.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered 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 05/05/2023 to 02/06/2023 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 22 submission/s from:

Name:	Address:
Mr Cameron John Friend	10/62-65 North Steyne MANLY NSW 2095
Mr Justin Allan Shupe	40 / 41 Roseberry Street MANLY VALE NSW 2093
Mrs Leisa Anne Barry	32 / 29 The Crescent MANLY NSW 2095
Ms Patricia Anne Taylor	2 / 1 Denison Street MANLY NSW 2095
Mr Eiji Kawamura	4 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr John Collis Barry	153 Seaforth Crescent SEAFORTH NSW 2092
Anna Barry	2 / 3 Cross Street BALGOWLAH NSW 2093
Mr Graham Reece Murray	12 / 2 Denison Street MANLY NSW 2095
Heidi Brondal	Address Unknown
Manly Pacific	55 North Steyne MANLY NSW 2095
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
St Mary's Catholic Primary School Manly	6 Raglan Street MANLY NSW 2095
Dr John James Miller	1A Hinkler Street GREENWICH NSW 2065
Beverley Murray	Address Unknown
The Diocese Of Broken Bay	Address Unknown
Mr Ettienne Reinecke	67 Gordon Street CLONTARF NSW 2093
Mrs Miriam Constance Pearce	12 / 62 North Steyne MANLY NSW 2095
Mrs Sally Fiona Schokman	6 / 62 North Steyne MANLY NSW 2095
Lindy Bell	Address Unknown
Gerald Gregory Richard Santucci	19 Banvard Place CHAPMAN NSW 2611
Mr Chad Laurence Lieberman	1 / 61 North Steyne MANLY NSW 2095
The Trustees of the Roman Catholic Church for the Diocese of Broken Bay	CatholicCare Diocese of Broken Bay Po Box 966 PENNANT HILLS NSW 1715

The following issues were raised in the submissions:

- **Height of Buildings non-compliance**

- **Bulk and scale**
- **DCP and SEPP 65 built form non-compliance**
- **Privacy**
- **Solar Access**
- **View loss**
- **Impact of excavation and construction**
- **Heritage significance**
- **Stormwater management**
- **Traffic and safety**
- **Inadequate basement**
- **Use of road reserve**

The above issues are addressed as follows:

- **Height of buildings and Floor Space Ratio non-compliance**

A number of submissions raised concerns with the height of the proposed development.

Comment:

As discussed in detail within this report under clause 4.6 of MLEP 2013, the application seeks consent for a variation to both the height of buildings and floor space ratio (FSR) development standards. The application proposed a maximum height of 16.3m, representing of a 25% departure from the 13m control. The application also seeks a total FSR of 1.79:1 (728.9sqm), representing of a 19% departure from the 1.5:1 (611.85sqm) control. 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 and FSR of the proposal is supported in this instance.

- **Bulk and scale**

Concern is raised in regard to the overall bulk of the residential flat building.

Comment:

This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed 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 Manly DCP 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **MDCP and SEPP 65 built form non-compliance**

Concern is raised in regard to general non-compliance with controls under the MDCP 2013 and SEPP 65.

Comment:

This matter is addressed in detail elsewhere within this report (refer to the respective assessments in relation to SEPP 65 and 4.1 of Manly DCP 2013 section of this report). With

specific regard to the MDCP 2013, 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.

- **Privacy**

Concern was raised about privacy impacts (acoustic and visual) from the proposed building particularly to outdoor living areas and living room windows of adjoining properties. A detailed assessment has been undertaken against the solar access provisions of SEPP 65 within this report. The proposal results in satisfactory privacy outcomes.

Comment:

A detailed assessment has been undertaken against the provisions of SEPP 65 within this report. In summary, the proposal generally complies with the relevant provisions of SEPP 65 where reasonable and adequate privacy is retained, subject to conditions.

- **Solar Access**

Concerns have been raised in relation to the potential overshadowing created by the proposed development.

Comment:

The revised shadow diagrams, detail the shadowing impacts upon No. 59-60 North Steyne. A detailed assessment has been undertaken against the solar access provisions of SEPP 65 within this report. In summary, the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of SEPP 65.

- **View Loss**

Concern was raised in regard to loss of water views from private open space from the adjoining properties to the north, south and west as well as the Manly Town Centre.

Comment:

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 Planning Principle '*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 proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Impact of excavation and construction**

Concern was raised in regard to the extent of the proposed two basement levels and the potential impacts from excavation works including vibration, soil stability and waste disposal.

Comment:

Concern was raised in regard to potential impacts from excavation works including

vibration, soil stability and waste disposal. These matters have been considered against Clause 6.2 (Earthworks) of the MLEP 2013 and 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 Geotechnics dated 18 May 2021) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction.

- **Heritage significance**

The submissions raised concerns about the impact upon the heritage impact on the area and heritage significance of the site.

Comment:

The application was reviewed by Council heritage advisor who raised no issue with the proposed development, subject to conditions.

- **Stormwater Management**

The submissions raised concerns with the management of stormwater.

Comment:

The application was referred to Council's Development Engineers for comment in regard to stormwater management. Suitable conditions have been recommended to ensure adequate stormwater management for the boarding house and adjoining properties.

- **Traffic and Safety**

Concern is raised in regard to traffic and potential dangers in regards to pedestrian safety, noting the proximity of the site to St. Mary's Catholic Primary School which is located to the west of the subject site.

Comment:

A traffic report was lodged as part of this application and reviewed by Council Traffic and Development Engineers. In summary, the proposed development will allow for the safe pedestrian access during construction and future use, subject to recommended conditions of consent.

- **Inadequate basement**

The submissions raised concerns that the proposed basement parking does not comply with the NCC/Building Code of Australia (BCA). The submission notes that the proposal relies on performance solutions to be determined as Construction Certificate stage. The submission notes that this should be considered and determined under this development application.

Comment:

The application was referred to Council building control team for consideration. Building control raised no issue with the proposed development, subject to conditions and noted that the final determination of the NCC requirements is a matter to be determined by the Certifier if the

application is to be approved. It is not reasonable for Council to require compliance at this stage, which as a result would restrict the Certifier from being able to consider Alternative Solutions consistent with the NCC.

- Use of the road reserve

Concern has been raised with regards to the proposed use of the road reserve for landscaping purposes.

Comment:

As stated previously in this report, the road reserve is no longer proposed to be utilised for road widening as the road has been closed. As such, no concern is raised with use of this area for the purpose of landscaping and access. It is consistent with the current land use requirements.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Contaminated Lands)	<p>Supported, subject to conditions</p> <p>The extensive Contamination report supplied states in summary: Potential sources of contamination identified in this investigation include imported fill, former and existing buildings / structures, and dry cleaning businesses upgradient from the site. As the current investigation was limited to a desktop study, comments on the actual contamination status of the site cannot be provided unless intrusive investigations are undertaken to obtain quantitative data on the contamination status of the soil.</p> <p>Published ASS risk mapping indicates that the site has a low probability of having ASS. However, given the proposed depth of excavation, site specific risk of ASS should be assessed with an intrusive soil investigation, which may involve sampling if indicators of ASS are observed.</p> <p>Accordingly, based on the results of this PSI, the following is recommended:</p> <ul style="list-style-type: none"> • Detailed Site Investigation - A detailed site investigation (DSI) for contamination with intrusive soil sampling to evaluate the potential for contamination and ASS at the site and assess the site's suitability (from a contamination standpoint) for the proposed land use; and

Internal Referral Body	Comments
	<p>• Given the proposal for two basement levels, it is likely that groundwater will be intercepted by the basement excavation and that dewatering will be required. As such, the proposed DSI should include the assessment of groundwater contamination both in terms of site risk and dewatering management.</p> <p>The DSI could feasibly be undertaken in conjunction with the geotechnical investigation recommendations outlined in DP (2022). Based on the results of the PSI, it is considered that the site can be made suitable for the proposed development, subject to implementation of the recommended intrusive investigation and remediation and/or management of contamination, if identified.</p> <p>Environmental Health supports the proposal subject to conditions.</p>
Landscape Officer	<p><i>Supported, subject to conditions</i></p> <p>Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (a) (b) and (c), including Schedule 1, Principle 5: Landscape, • the associated Apartment Design Guide, including the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and • Manly Local Environment Plan (MLEP) and the following Manly Development Control Plan (MDCP) controls (but not limited to): 3.3.1 Landscaping; Design; and 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable <p>Landscape Plans are submitted with the development application in accordance with Council's DA Lodgement requirements.</p> <p>The landscape proposal as documented in the Landscape Plans submitted generally provides adequate landscape treatment to satisfy Schedule 1 Design quality principles of SEPP65, including: Principle 5: Landscape - positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood; 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; optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p> <p>Additionally, the objectives of the Apartment Design Guide are generally satisfied as follows: 2G Street Setback: landscape proposal contributes to the landscape character; 3C Public domain interface: the deep soil zone fronting North Steyne contributes to the quality and character of the streetscape; 3E Deep Soil Zone: provides the greening of the North Steyne frontage with mass planting as a transition between public space and private space, as well as achieving environmental benefits and stormwater management; 4O</p>

Internal Referral Body	Comments
	<p>Landscape Design: landscape proposal contributes to the setting of the property within the locality; and 4P Planting on Structures: provides greening to roof and terrace planters.</p> <p>Landscape Referral, subject to ownership clarification of the land proposed as the deep soil zone, raise no objections.</p> <p>Amended Landscape Plans are required to satisfy landscape controls listed under MDCP including: proposed surface treatments and materials, including but not limited to structures, features, walling, fences, pavements, gardens, lawns, ground stabilisation, drainage, irrigation etc; location, height and materiality of proposed retaining walls and fences; soil depth of planter boxes on-slab; proposed planting scheme including species selection, location, quantities, mature heights and pot sizes; specific location and selection of any tree planting based on preserving existing prominent views from adjoining properties; outline of proposed buildings, driveways and structures, pavements, walls and fences, all consistent and co-ordinated with building and services plans; location of any underground services or basements; and any irrigation systems; and additionally conditions shall be imposed regarding the selection of some species that should be removed from the schedule and replaced with hardy coastal species.</p>
NECC (Coast and Catchments)	<p>Supported, subject to conditions</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i> and State Environmental Planning Policy (Resilience & Hazards) 2021. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Ethos Urban dated</p>

Internal Referral Body	Comments
	<p>4 November 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Ethos Urban dated 4 November 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p><i>Supported, subject to conditions</i></p> <p>The amended stormwater plans are acceptable subject to conditions. The proposed access is satisfactory. It is noted Council's Road Asset team have recommended amendments to the proposed works along the frontage of North Steyne to improve the pedestrian amenities. As such conditions are included to reflect the requirements of the Asset team.</p>
NECC (Flooding)	<p><i>Supported, subject to conditions</i></p> <p>The development proposes to demolish the existing dwelling and construct a 5 storey building with basement with landscaping. Subject to conditions the development is complying to Council's development controls.</p>
NECC (Water Management)	<p><i>Supported, subject to conditions</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.8 and 2.12); • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses, in particular LEP 2013 6.4 Stormwater management and DCP 2013 3.7 Stormwater Management

Internal Referral Body	Comments
	<p>The proposed infiltration/absorption tank is demonstrating compliance with LEP clause 6.4(3) and DCP 2013 3.7 Stormwater Management objectives 1)</p> <p>The development has been identified in the geotechnical report (Douglas and Partners, Project 216903.01, September 2022) with groundwater interference. Refer report section 7.4.3 Further Groundwater Investigation and Assessment and 7.4.2 Groundwater Disposal.</p> <p>The development is to be referred to WaterNSW (refer DPE Water referral response).</p> <p>To undertake construction dewatering, the following approvals must be obtained from WaterNSW.</p> <ul style="list-style-type: none"> - water supply work approval - water access licence (WAL) - unless the project qualifies for an exemption, please refer to the fact sheets for more information - water use approval - unless there is a development application from a local government authority. <p>Refer WaterNSW guidelines for dewatering construction https://www.watarnsw.com.au/customer-services/water-licensing/dewatering.</p>
Parks, reserves, beaches, foreshore	<p>Supported, subject to conditions</p> <p>The proposed development fronts Manly Beach zone RE1 Public Recreation land, and Parks Reserves and Foreshores Referral have assessed the application against the following:</p> <ul style="list-style-type: none"> • Manly Local Environmental Plan zone RE1 objectives, including: to ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses. • Manly Development Control Plan clause 3.1.1 Streetscape. <p>The development is not detrimental to the landscape and recreational character of the fronting zone RE1 Public Recreation land, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>
Property Management and Commercial	<p>Supported, subject to conditions</p> <p>The proposal includes deep soil landscaping on Council's road reserve. Property has no objection to the proposal as submitted, however the landowner will need to enter into a Road Reserve Consent agreement with Council for this landscaping. A condition of consent to this effect has been included.</p>
Road Reserve	<p>Supported, subject to conditions</p> <p>There is limited impact on existing road infrastructure assets. The proposed landscaping of this area on public road reserve is noted however given the proximity of the pedestrian crossing and Dension St intersection, it is recommended that the landscaping proposal be</p>

Internal Referral Body	Comments
	<p>amended to increase the pedestrian thoroughfare in consultation with Council's engineering team, including localised widening adjacent to the crossing together with a 45degree splay corner at the intersection of Denison/North Steyne. Any paving works on the footway to accommodate reconstruction and realignment of the kerb ramp crossing of Denison St.</p> <p>DP522298 shows the land on the North Steyne frontage has been dedicated as public road. This application walls this 44.3sqm off, providing boundary plants to the residents, and gives the impression this is private land although this approach appears consistent with former Manly Council's management of this beach frontage. The front wall must be a low wall less than 1m in height.</p> <p>The landscaping and retaining walls together with the geometric layout requirements can be conditioned by Council's Development Engineering Team with the requirement to submit a s138 Road Act Application for Civil Works.</p> <p><i>Planner note: A condition of consent has been imposed reduced the size of the fence facing North Steyne. Council has provided owners consent for the use and works on the this part of the road reserve as part of this Development Application. As noted elsewhere within the report, previously proposed road widening for this site has been abandoned and the road reserve closed and this parcel of land incorporated into No. 61 North Steyne.</i></p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p><i>Supported, subject to conditions</i></p> <p>The proposal has been referred to Heritage as the subject site is located within the vicinity of C1 – Pittwater Road Conservation Area and a number of heritage items:</p> <p>Item I254 - St Mary's Church, presbytery and school - Whistler Street (corner Raglan Street)</p> <p>Item I174 – Beach Reserve—Merrett Park North Steyne and South Steyne</p> <p>Item I224 – Public shelters - South Steyne and North Steyne</p> <p>Item I168 – Ocean foreshores - Manly municipal area, boundary adjacent to the ocean</p>
	Details of heritage items affected
	<p>Pittwater Road Conservation Area</p> <p><u>Statement of Significance</u></p> <p>This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment,</p>

Internal Referral Body	Comments
	<p>although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical Description</u></p> <p>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 such as the four storey private hotel. The streetscape provides a 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 story residential cottages, with the 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.</p> <p>Item I254 - St Mary's Church, presbytery and school - Whistler Street (corner Raglan Street)</p> <p><u>Statement of significance</u></p> <p>The listing covers a significant group of five religious and school buildings dating from circa 1890 to the 1950s, complementary in style. The group is of significance for Manly area for its historical, aesthetic and social reasons, and for the rarity and representativeness. The site has a long and ongoing spiritual association with the local Roman Catholic community since c.1890 when the church building was created. The site is a major landmark visible from a distance from both Raglan Street and Whistler Street. The complex makes a major contribution to the streetscape and to the townscape character, augmented as the group of buildings are adjoining each other at the site. The Church building, the Presbytery and School are each representative of their respective type of building around the date of creation, and the complex as a whole is a rare collection of five fine buildings with spiritual associations in the local area.</p> <p>St Mary's Catholic Church, school and presbytery have social significance at a Local level because they are cherished by past and present members of the church community. St Mary's Catholic Church, school and presbytery have maintained their original purpose. The church and school have undergone a number of changes reflecting the growth of the congregation and increases in pupil numbers.</p> <p>Item I174 – Beach Reserve</p> <p><u>Statement of significance</u></p> <p>High significance as natural sand beach and cultural backdrop of paved promenade and first coastal plantings of Norfolk Island Pines.</p> <p><u>Physical description</u></p> <p>Beachfront, promenade, sandstone retaining wall, paved, grassed and/or planting beds and remnant plantings of Norfolk Island Pines</p>

Internal Referral Body	Comments		
	planted from the 1850's to the 1880's.		
	Item I224 – Public shelters		
	<u>Statement of significance</u>		
	An important reminder of the historic role of Manly's ocean beach, the shelters remain useful for both seating and wind protection. (4 Public Shelters)		
	<u>Physical description</u>		
	A total of 4 public shelters, constructed of weatherboard, 3 at South Steyne between an area opposite Wentworth Street and Victoria Parade. And one opposite Denison Street, towards North Steyne. Of the group of three, the two end shelters (both recently restored) feature semi-circular headed multi-paned timber fixed windows and hipped metal roofs.		
	Item I168 – Ocean foreshores		
	<u>Statement of significance</u>		
	Natural landscape. Part of coastal zone east coast of Australia. Part entrance to Sydney Harbour. Listed due to its aesthetic, historic, and scientific significance to the area.		
	<u>Physical description</u>		
Ocean foreshores, mostly rocky edge and cliff or beach sand system. Natural environment. High scenic quality.			
Other relevant heritage listings			
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
Consideration of Application			
	This application seeks consent for the demolition of the existing structures on the site and the construction of a five storey residential flat building with two levels of basement car parking accessed from Denison Street with a low stone clad boundary wall to North Steyne and Denison Street.		
	It is noted in the PLM that the proposed bulk and scale was required to be reduced and articulation should be provided to the western portion of the norther elevation of the development: "...not complementary to the building adjacent to its west and the heritage		

Internal Referral Body	Comments
	<p><i>listed item St Mary's Church, presbytery and school. Heritage recommends a reduction and further articulation to the bulk and scale of the proposed building to respond better to its context, considering the relationship with the heritage item and Pittwater Conservation Area within the vicinity."</i> It is considered that the DA drawings do not respond the heritage concerns in relation with the bulk and scale and the articulation.</p> <p>Heritage conservation requires the retention of an appropriate visual setting, that contributes to the streetscape and considerations should be given to respect to the context, the heritage values of the adjacent building, the heritage item and the conservation area.</p> <p>Revised Comments - 05 June 2023</p> <p>The amended drawings responded to the DASP recommendations in relation to the North Steyne context, and the setback to level 4 at the western portion of the north elevation which has improved the Denison Street elevation. Although, the bulk and scale is still not providing a careful response that supports the significance of the heritage context along Denison Road, given the proposed works are mainly within the existing building's footprint, the impact of the proposal upon the heritage items in the vicinity is considered to be tolerable.</p> <p>Therefore, no objections are raised on heritage grounds subject to an archival photographic recording.</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> <p>Further Comments</p>
Traffic Engineer	<p><i>Supported, subject to conditions</i></p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> - Plans (Master Set) – issue for DA, designed by Platform Architects, dated 28/10/2022, - Transport Impact Assessment report, Project Number 2221, prepared by JMT Consulting dated 01 November 2022, - Statement of Environmental Effects prepared by Ethos

Internal Referral Body	Comments
	<p data-bbox="676 315 1161 344">Urban dated 04 November 2022, and</p> <ul data-bbox="616 349 1385 416" style="list-style-type: none"> - Pre-Lodgement Advice (PLM2022/0111) dated 07 July 2022. <p data-bbox="520 495 1299 524">It is noted in the Transport Impact Report and The SEE that:</p> <ul data-bbox="616 566 1430 1854" style="list-style-type: none"> - ten residential (10) parking spaces are proposed across two basement levels. - visitor parking is proposed to be off-site, given the restriction of a car lift and the availability of off-street parking in close proximity to the site. - the car lift is positioned greater than 6 metres inside the property boundary. - the driveway width has been determined with reference to clause 3.2.2 from AS2890.1-2004 which notes that driveway ramps can be designed with reduced widths that do not permit unobstructed two-way traffic movements in situations where there are expected to be less than 30 vehicle movements (two way) per hour. Traffic movements have been anticipated to be between two and three vehicles per hour (worst case) which is well below the threshold noted in AS2890.1. The proposal therefore includes a 3.8-metre-wide driveway. - clause 3.5 of AS2890.1 - 2004 regarding Access to Mechanical Parking Installations requires the 98th percentile queue to be accommodated on-site. For the development, the probability that one car or less will be using the lift at any one time is calculated to be 99.64%. As there is a probability of 99.64% that the lift will be in use by one car or less, the proposed access arrangements whereby a waiting area capable of accommodating one vehicle is provided in front of the lift complies with the requirements of Australian Standards. Given that there is less than a 0.36%, chance that two cars will be waiting on-site at the one time, no dedicated waiting bay is proposed to service the development. - six (6) bicycle parking spaces are proposed. Additionally, basement storage areas can be utilized for additional bicycle parking. - consistent with current conditions and commensurate for a residential building containing just five dwellings, all site servicing (including waste collection) will take place via Denison Street. <p data-bbox="520 1933 967 1962"><u>Parking requirement and design</u></p> <ul data-bbox="616 2004 1422 2107" style="list-style-type: none"> - The land is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013 (LEP). The parking requirements for the development comprising 5

Internal Referral Body	Comments
	<p>apartments (4 x 3-bedroom and 1 x 2-bedroom apartments) are 7.2 residential parking spaces (rounded up to 8) and 1.25 visitor parking spaces (rounded up to 2).</p> <ul style="list-style-type: none"> - The development proposes a total of 10 residential car parking spaces including one disabled parking space. The plans do not make allowance for visitor parking spaces. - Residential parking in excess of DCP requirement is proposed (10 residential spaces, exceeding the residential spaces requirement by 2 spaces), while the additional residential spaces are not opposed, given the shortfall in visitor parking spaces, the reallocation of one (1) of the residential spaces for visitor use is considered appropriate. This will be conditioned. - The shortfall of visitor parking spaces is not considered acceptable given that: <ul style="list-style-type: none"> o section 4.2.5.4 of Manly DCP gives some exceptions to parking rates/ requirements in Manly Town Centre where the constraints of the site preclude the provision of some or all of the required parking spaces and where the movement of vehicles to/from the site would cause unacceptable conflict with pedestrian movements. This is not applicable to this site as the site is not constrained in terms of its ability to provide parking. o there is a very high parking demand on the street nearby and public car parks (especially during summer or during events). Any increased parking demand on-street as a result of parking shortfall for this development will exacerbate existing high levels of parking congestion in the Manly Town Centre. o there is no longer any capacity to levy contributions for parking from the Manly Section 94 Contributions plan, therefore each DA must now be considered on its merits in terms of the adequacy of parking. - Given that residential parking supply meets DCP requirements, the parking needs of residents have been adequately addressed and residents of the development will therefore not be eligible for resident parking permits. This will be conditioned. - As outlined in the PLM referral, visitor parking spaces will need to be accessed via the car lift. The car lift must therefore be accessible to visitors via an intercom or similar measures. Details will be conditioned to be provided prior to release of a construction certificate. - An accessible parking spaces is proposed which meets the requirements of the DCP (Section 3.6.3.2) and will

Internal Referral Body	Comments
	<p>provide access to the premises for persons with a disability.</p> <ul style="list-style-type: none"> - Bicycle parking stands are also 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, i.e., three (3) bicycle stand for the proposed development. Bicycle parking for six (6) bikes has been shown on the plan for basement 1, there are also basement storage areas which 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. <p><u>Traffic generation</u></p> <ul style="list-style-type: none"> - The proposal will generate minimal traffic during peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. <p><u>Conclusion</u></p> <p>The traffic report and plans require minor amendments which will be conditioned however the amendments required are not sufficient to prevent the application from being supported.</p>
Waste Officer	<p><i>Supported, subject to conditions</i> Recommendation - supported, subject to conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Nominated Integrated Development - WaterNSW - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	<p><i>Supported, subject to conditions</i> The proposal was referred to WaterNSW under Section 90(2) of the Water Management Act 2000. WaterNSW raised no objections to the development, and provides General Terms of Approval (ref:IDAS1149020 dated 20 June 2023) as endorsed by the recommendation of this report.</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 five (5) storey residential flat 'housing' development plus basement car parking for the provisions of five (5) self-contained dwellings.

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 the Environmental Planning and Assessment 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 and fulfils the requirements of the Regulations.

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). Refer to the DSAP referral comments section within 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 proposed building, a five storey residential 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.

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 along North Steyne and is contextually appropriate when viewed in the context of other recently constructed developments.

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 sizing of the units is appropriate given the location of the site and likely demographic in the locality.

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 livability 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 livability 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:

The proposal has been provided with a landscape plan that has responded to the initial comments provided by Council's landscape officer and the DSAP. The proposed landscape overall will contribute to the desired landscaped character of the area.

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 wellbeing.

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.

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:

Generally, the development provides well designed and secure access to vehicular and pedestrian access points to both the retail and residential components of the development. All apartments provide balconies and windows which provides passive surveillance to both North Steyne and Denison Street.

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 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 North Steyne.

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
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The proposal is orientated, sited and setback appropriately in accordance with the controls and site constraints. The proposal being a Residential flat building development is appropriate for the R3 Zone and would be an expected form of development in this zoning.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent Designed to optimise the aspect looking over the water views of North Steyne and solar access is appropriate given the orientation and use balconies to the east balconies which have been designed to respond to the character and enhance amenity of the development. With regard to neighbouring properties, solar access is maintained in accordance with Council's controls for the adjoining property.
Public Domain Interface	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?	Consistent Clearly defines public/private street edge through landscaping and fencing.

Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>No</p> <p>No communal open space is proposed under this application. Given the proximity of the proposed development to the public reserve and North Steyne Beach, there is no demand for the need for communal open space for occupants of the development.</p>												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="437 768 1061 1312"> <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 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² 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 ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>No</p> <p>The proposed development does not provide for compliant deep soil zones. However, the proposal does not worsen the existing scenario. Similar developments in the locality have been approved with nil deep soil zones. The proposed development is acceptable in relation to this clause, noting that the former road reserve to the front of the site will be maintained as deep soil and upon future consolidation provide deep soil landscaping.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="437 1496 1061 1854"> <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>Note: 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</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>No</p> <p>See comments below</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												

	<i>properties.</i>	
Pedestrian Access and entries	<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>Consistent</p> <p>The pedestrian entryway is located through the rear of the building on Denison Street (North) adjacent to the driveway and retail premises making it easily identifiable and addressing the public domain.</p>
Vehicle Access	<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>Consistent</p> <p>Council's Traffic Engineer has reviewed the proposed traffic and vehicle access and raises no objections to the proposal, subject to conditions.</p> <p>The vehicle access point is considered to be the most suitable upon the site to minimise conflicts between pedestrians and vehicles.</p>
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <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>Consistent</p> <p>The proposal provides adequate provisions for bicycle and car parking in accordance with requirements of MDCP 2013.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and</p>	<p>Consistent</p> <p>100% (5 of 5 apartments)</p>

	<p>private open space:</p> <ul style="list-style-type: none">- 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.- A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	<p>of the proposed apartments living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.</p> <p>Consistent</p>												
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">- 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.	<p>Consistent</p> <p>All dwellings achieve cross ventilation.</p>												
	<ul style="list-style-type: none">- Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	<p>Consistent</p>												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><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></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>Consistent</p> <p>All floor levels has a minimum 2.7m floor to ceiling heights.</p>
	Minimum ceiling height													
Habitable rooms	2.7m													
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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													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr></table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	<p>Consistent</p> <p>All apartments achieve minimum depths</p>						
	Apartment type	Minimum internal area												
Studio	35m ²													
1 bedroom	50m ²													

	<table><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>	2 bedroom	70m ²	3 bedroom	90m ²												
2 bedroom	70m ²																
3 bedroom	90m ²																
	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>																
	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.	Consistent															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Consistent															
	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.	Consistent															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Consistent															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent 3.3m for the 3 bedroom apartments
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	For apartments at ground level or on a podium or	Consistent															

	similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.											
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent One apartment proposed at each level.										
	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: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent Each apartment has at least 10sqm of storage, split between the individual apartments and basement.
	Dwelling Type	Storage size volume										
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
	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 provides a suitable mix and variety of 2 and 3 bedroom apartments.										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent Ground floor opens out to residential street.										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The facade is well articulated and appropriate in setback/scale for the locality.										
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	Consistent The flat roof design is consistent with the recently developed RFB's along										

	space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	North Steyne.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent Council's landscape team have reviewed the landscape scheme and are satisfied that the planting will complement the street. The setbacks to the street are compatible.																																			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Consistent Soil depths can be achieved and conditions recommended to ensure this occurs.																																			
	<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>150m³</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>35m³</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>9m³</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><tr><td>Turf</td><td></td><td></td><td>200mm</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 ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm	
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	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	Consistent There is at least one unit (Unit 2) (20%) is adaptable.																																			
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A																																			
Mixed Use	Can the development be accessed through public	Consistent																																			

	<p>transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>The subject site is located in the Manly town centre, which is suitably serviced by public transport.</p> <p>N/A</p>
Awnings and Signage	<p>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.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p>Consistent</p> <p>No awnings over the street proposed.</p> <p>No signage proposed.</p>
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent Proposal capable of compliance.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent BASIX certificate covers water management. The application was reviewed by water NSW having regard to dewatering. The proposal was supported, subject to conditions.
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?	Consistent Waste management plan has been submitted and Council's waste team are satisfied with the waste storage and collection arrangements.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent Suitable materials have been proposed.

- **Overshadowing of adjoining properties (3B-2)**

The controls within the ADG state the following for adjoining properties:

- *Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access.*
- *Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%*

The application is supported by shadow diagrams as well as 'view of the sun' diagrams and a shadowing report. The properties vulnerable from shadowing from the proposed development are the apartments of No. 59 North Steyne to the south of the subject site and No. 1 Denison Street to the west.

No. 59- 60 North Steyne, Manly

The north side apartment of No. 59-60 North Steyne, Manly (1, 2, 5, 8 and 11) would be most compromised by shadowing from the proposed development between 11am and 1pm noting that they are located directly to the south of the proposed development. However, the overshadowing is minimal and will not have any unreasonable impact on these apartments. The existing northern wall at the end of each of the balconies at ground, level 1 and level 2 already compromises the solar access to these apartments. Apartment 11 benefits from two levels of outdoor living both to the eastern and western side of the apartments, a suitable level of solar access will be maintained at all hours during the day. The totality of impact to these apartments is at worst minor, with a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter being maintained to all apartments within the building.

No. 1 Denison Street, Manly

All four apartments of No. 1 Denison Street, Manly benefit from a common outdoor living space to the rear of the building (south). The existing area is significantly compromised by development. The shadowing to this area while severe is not further compromised by the proposed development. In noting the existing impact to the communal open space, a greater expectation for solar access to living windows of each apartment is required. Both living rooms of apartments 1 and 3 do not currently receive 2 hours of sunlight between 9 am and 3 pm at mid-winter. As noted above the ADG states *"Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%"*.

With regard to unit 1 (ground floor), the proposed development does not increase shadowing to the living room windows of this apartment and as such complies with the requirement of the ADG. However, the living room window of unit 3 will lose an additional hour of sunlight to the living room window (from 1.75 to 0.75 hours in mid-winter). While non-compliant with the numeric control, it is noted that even a compliant proposal in the case of height would still result in a similar loss of solar access to the window. The proposed development will allow for equitable and adequate levels of light and sunshine to penetrate the adjoining property.

St Mary's Catholic Primary School Manly

The proposed development will increase overshadowing to the outdoor play area located to the east of St Mary's Catholic Primary School between 9am and 12pm during the winter solstice. However, it is noted that the school has installed existing shade structures to this play area. As such, any increase to shadowing to this area of the school will not be perceived on site. The totality shadowing impact upon the school is not deemed to be unreasonable.

Therefore, the applicant has demonstrated to the satisfaction of Council that the solar access outcomes of the ADG have been met and reasonable amounts of solar access will be maintained for the adjoining properties in accordance with the ADG controls.

- Building Separation and Visual privacy (2F-1, 3F-1 and 3F-2)

The control requires a 6m setback for habitable rooms and a 9m setback for non-habitable rooms for developments up to four storeys, to mitigate overlooking between properties. The proposed development fails to provide a separation between the subject site and adjoining southern property, proposing a nil setback to this boundary. The nil setback is deemed to be satisfactory however, noting that development to the south is generally boundary to boundary. Requiring a level of separation between the two buildings would create a dark unusable area which would not improve the design of the building or increase amenity for site residents or adjoining apartments.

Visual privacy concerns have been raised by neighbouring properties in relation to windows and

balconies proposed under this application, however the development is considered to be satisfactory in this regard.

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: Regard has been given to the design principles and these are addressed above the compliance table. Objectives of the design criteria have been considered where numerical compliance is not strictly achieved.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1348583M_04 dated 13 April 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	40

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

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

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

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse

impact on the following:

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

Comment:

The proposal is setback from the foreshore and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments. The foreshore area is heavily modified and no aboriginal heritage sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

Division 5 General

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

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

Comment:

Due to the location of the property and the proposed works, the proposal is unlikely to cause increased risk of coastal hazards on that land or other land.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses a limited risk of contamination and subject to the conditions specified by Council's Environmental Health Officer, the proposal, under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the 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:	13m	16.3m	25%	No
Floor Space Ratio	FSR: 1.5:1 (611.85sqm)	FSR: 1.79:1 (728.9sqm)	19%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	13m
Proposed:	16.3m
Percentage variation to requirement:	25%



Figure 1 - Building height calculation

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"c) to promote the orderly and economic use and development of land

The land is zoned for medium density residential uses, the objectives for which are met in the proposed residential flat building. The land is currently occupied by an aging flat building comprising 4 apartments that do not meet the current standards for resident amenity. The development does not exhibit design excellence or best practice sustainability.

Strict compliance with the mapped maximum building height would result in a development that does not meet the LEP Height of Buildings Objective (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. A compliant height on the site would be out of character (a 'broken tooth' in the streetscape) given the immediate context north and south of the site addressing North Steyne.

Development that complies with the 13 metre building height (and limited to 3 storeys as prescribed in the Manly DCP 4.1.2.2) would be inconsistent with the prevailing building height and counter to the objectives of the standard. Below is an illustration of the North Steyne street elevation.

Proposed height that meets the LEP
Height of Building Objective (a)

LEP height that is inconsistent with
the prevailing street height.



Further to the above and additional justification provided to each of the Height of Building objectives in Section 4.1, the heritage specialist provides the following additional statement in their impact assessment:

"Whilst above the height limit and FSR set out by the LEP 2013, the proposed building is of a similar massing, scale and height as the buildings to the immediate south on this side of North Steyne. As a corner site, it anchors and completes the block. A building lower in height would be an anomaly within the block, particularly given its corner location and the 15 storey building that anchors the north western corner of North Steyne and Denison Street. The proposed building will

not have undue prominence within the setting of these items arising out of its height."

The proposal with a variation to the mapped maximum building height is a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land. To enforce the control strictly would be unreasonable when considered against the objects of the Act in terms of orderly and economic use of land.

(g) to promote good design and amenity of the built environment,

The proposal has been designed by local Manly-based firm Platform Architects and will be subject to a review from Council's Design Excellence Advisory Panel. The proposal is consciously good design in this regard. The development has been designed to capitalise on the direct frontage to Manly Beach, and appropriately address its corner position. The architect notes:

'The building presents with curved balcony forms to the North Steyne frontage. These curves flow around the corner and are then dressed with a feature screen, which wraps the façade along its northern edge, providing privacy and solar control as well as a stunning architectural feature.'

The proposed variation to the mapped maximum building height standard facilitates an architecturally resolved design that does not compromise amenity of the built environment, achieved by retention of views, solar access or privacy to neighbouring properties.

The proposed development consists of 5 storeys to a parapet height of RL21.5 and a lift overrun of RL21.6. The number of storeys is consistent with the southern neighbour (and 0.6 metres higher than its top of building RL), and less than the average height of development from Raglan to Steinton Streets fronting North Steyne. A compliant height would therefore be uncharacteristic and compliance unreasonable in the context of the site.

The upper floor has been designed to minimise its visual perception when viewed from the public domain at ground level. Further, the upper floor is designed to transition to the lower scale development to the west. This is achieved through provision of unenclosed roof area to the built form that projects out to Denison Street. This arrangement is an adoption of the Northern Beaches Design and Sustainability Advisory Panel (DSAP) recommendation. Further, the curved slab edge to the upper floor, fronting North Steyne, has been recessed to reduce the visual weight of the upper level. This revision is also made in response to a DSAP recommendation.

A comprehensive overshadowing, privacy and view loss analysis has been included as part of this assessment. This assessment also includes comparison with a compliant envelope. There is no amenity loss to either 1 Denison or 59 North Steyne that results in contravention of a DCP or ADG provision relating to visual privacy, solar access or views.

- *Visual privacy is retained through screening, planting and wall protrusions to the proposed south and west facades. Specifically, the proposed apartments do not face 59 North Steyne, and side viewing is obscured by wall protrusions. Windows facing 1 Denison are provided with screening and planting, and are setback from the common boundary to meet DCP provisions.*
- *Solar access is retained to the 1 Denison sunrooms (off the bedrooms, the rooms that currently receive direct solar) which continue to enjoy ocean views. ADG compliant solar access is retained to all 13 apartments at 59 North Steyne. One apartment experiences a reduction to solar access as a result of the additional height to its front rooms (living and bedroom) and adjoining terraces, however this reduction does not fall below the ADG minimum period, and does not affect direct solar from the apartment's primary outlook (the east – ocean view).*
- *Specialist view photomontages have been commissioned to analyse viewing from neighbouring apartments in the direction of the proposed. These demonstrate that:*
 - i *The proposal does not reduce the current extent of viewing from the 1 Denison Street apartments.*

- i *The proposal includes a boundary wall that has been skilfully pulled into the site from the front boundary to preserve the peripheral north-easterly viewing from the adjacent apartments at 59 North Steyne from ground level to the third floor.*
- i *The proposal does not affect easterly viewing from the two-storey upper apartment at 59 North Steyne (view east to ocean). View loss to the north is mitigated by additional setback to the proposed top floor, resulting in loss of viewing of distant built form. Distant beach viewing (downward viewing) is compromised by both the compliant and proposed envelopes. Importantly the key view directly east to the ocean is unimpeded."*

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 proposal is a redevelopment of an ageing building which contributes to the overall streetscape and is not an overdevelopment of the site.
- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

While the upper floor of the building the exceeding the building height development standard, the proposed development demonstrates a sympathetic transition between the old and new streetscape, having regard to neighbouring properties to the north, south and west.

b) to control the bulk and scale of buildings,

Comment:

The fifth storey non-compliant element of the proposal has been articulated from the lower four storeys of the building, particularly from both the primary and secondary frontages (North Steyne and Denison Street).to ensure a limited form when viewed from the public realm. The built form is responsive to development to the south being of a similar scale, west being of a lesser scaler and north which is a much larger scale.

c) to minimise disruption to the following:

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

Comment:

The proposal has been assessed against the view loss provisions under Section 3.4.3- Maintenance of Views of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open 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 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.

Zone objectives

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

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

Comment:

The proposed development will provide five new residential apartments that will provide for the housing needs of the community within the established medium density residential environment.

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

Comment:

The development provides for a variety of apartment sizes (four x 3 bedroom and one x two bedroom) within the existing medium density residential environment. This variety of apartment sizes is considered to be satisfactory and satisfies this objective.

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

Comment:

The development does not prohibit the establishment or enablement of other land uses that provides facilities or services that meet the day to day needs of residents to be provided elsewhere within the zone.

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

Comment:

The development revitalises the existing residential area by way of a contemporary and modern redevelopment of the subject site.

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

Comment:

The development does not prohibit the establishment or enablement of tourist accommodation elsewhere within the zone.

Conclusion:

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

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

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

Planning Circular 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 Regional Planning Panel.

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	1.5:1 (611.85sqm)
Proposed:	1.79:1 (728.9sqm)
Percentage variation to requirement:	19%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio 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 4.4 - Floor space ratio 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 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:

"c) to promote the orderly and economic use and development of land

The land is zoned for medium density residential, the objectives for which are met in the proposed and permissible residential flat building. The land is currently occupied by an aging flat building comprising 4 apartments that do not meet the current standards for resident amenity. The development does not exhibit design excellence or best practice sustainability.

Strict compliance with the mapped maximum floor space would present a lost opportunity to enable a proposal that provides additional housing on the site and is highly responsive to its surrounding context. A compliant FSR on the site would be out of character (a 'broken tooth' in the streetscape). Given the immediate context north and south of the site addressing North Steyne, development that complies with the maximum floor space development standard (and limited to 3 storeys as prescribed in the Manly DCP 4.1.2.2) would in fact be inconsistent with the prevailing building mass and counter to the objectives of the standard. Below is an illustration of the North Steyne street elevation. Below is an illustration of the North Steyne street elevation.

Proposed height that meets the LEP
Height of Building Objective (a)

LEP height that is inconsistent with
the prevailing street height.



Of importance to note is that the calculation of floor space does not include the road reserve land as part of the site area. While this land was historically part of the lot, it has since been dedicated to Council. The proposal includes landscaping and access works in the road reserve, providing additional buffer to the development mass.

Further to the above and additional justification provided to each of the Floor Space Ratio objectives in

Section 4.1, the heritage specialist provides the following additional statement in their impact assessment:

'Whilst above the height limit and FSR set out by the LEP 2013, the proposed building is of a similar massing, scale and height as the buildings to the immediate south on this side of North Steyne. As a corner site, it anchors and completes the block. A building lower in height would be an anomaly within the block, particularly given its corner location and the 15 storey building that anchors the north western corner of North Steyne and Denison Street. The proposed building will not have undue prominence within the setting of these items arising out of its height.'

The proposal with a variation to the mapped maximum floor space ratio is a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land. It would be unreasonable and unnecessary to enforce the FSR control strictly when the built form if a compliant building would be clearly incongruous with its surrounding context and not equate to the orderly and economic use of land."

(g) to promote good design and amenity of the built environment,

The proposal has been designed by local Manly-based firm Platform Architects and will be subject to a review from Council's Design Excellence Advisory Panel. The proposal is consciously good design in this regard. The development has been designed to capitalise on the direct frontage to Manly Beach, and appropriately address its corner position. The architect notes:

'The building presents with curved balcony forms to the North Steyne frontage. These curves flow around the corner and are then dressed with a feature screen, which wraps the façade along its northern edge, providing privacy and solar control as well as a stunning architectural feature'

The proposed variation to the mapped maximum floor space ratio standard facilitates an architecturally resolved design that does not compromise amenity of the built environment, achieved by retention of views, solar access or privacy to neighbouring properties.

The proposed development consists of 5 storeys to a parapet height of RL21.5 and a lift overrun of RL21.6. The number of storeys is consistent with the southern neighbour (and 0.6 metres higher than its top of building RL), and less than the average height of development from Raglan to Steinton Streets fronting North Steyne. A compliant floor space density would therefore be uncharacteristic and compliance unreasonable in the context of the site.

The upper floor has been designed to minimise its visual perception when viewed from the public domain at ground level. Further, the upper floor is designed to transition to the lower scale development to the west. This is achieved through provision of unenclosed roof area to the built form that projects out to Denison Street. This arrangement is an adoption of the Northern Beaches Design and Sustainability Advisory Panel (DSAP) recommendation. Further, the curved slab edge to the upper floor, fronting North Steyne, has been recessed to reduce the visual weight of the upper level. This revision is also made in response to a DSAP recommendation.

A comprehensive overshadowing, privacy and view loss analysis has been included as part of this assessment. This assessment also includes comparison with a compliant envelope. There is no amenity loss to either 1 Denison or 59 North Steyne that results in contravention of a DCP or ADG provision relating to visual privacy, solar access or views.

- Visual privacy is retained through screening, planting and wall protrusions to the proposed south and west facades. Specifically, the proposed apartments do not face 59 North Steyne, and side viewing is obscured by wall protrusions. Windows facing 1 Denison are provided with screening and planting and are setback from the common boundary to meet DCP provisions.

- Solar access is retained to the 1 Denison sunrooms (off the bedrooms, the rooms that currently receive direct solar) which continue to enjoy ocean views. ADG compliant solar access is retained to all 13 apartments at 59 North Steyne. One apartment experiences a reduction to solar access as a result of the additional height to its front rooms (living and bedroom) and adjoining terraces, however this reduction does not fall below the ADG minimum period, and does not affect direct solar from the apartment's primary outlook (the east – ocean view).
- Specialist view photomontages have been commissioned to analyse analyse viewing from neighbouring apartments in the direction of the proposed. These demonstrate that:
 - i The proposal does not reduce the current extent of viewing from the 1 Denison Street apartments.
 - i The proposal includes a boundary wall that has been skilfully pulled into the site from the front boundary to preserve the peripheral north-easterly viewing from the adjacent apartments at 59 North Steyne from ground level to the third floor.
 - i The proposal does not affect easterly viewing from the two-storey upper apartment at 59 North Steyne (view east to ocean). View loss to the north is mitigated by additional setback to the proposed top floor, resulting in loss of viewing of distant built form. Distant beach viewing (downward viewing) is compromised by both the compliant and proposed envelopes. Importantly the key view directly east to the ocean is unimpeded.

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 proposal is a redevelopment of an ageing building which contributes to the overall streetscape and is not an overdevelopment of the site.
- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.

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 Floor Space Ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013 are:

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

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

Comment:

The existing pattern of building form to each of the street frontages is retained, consistent with their existing composition, such that the streetscape character is maintained, with increased proportions of recessive elements that ensure that any bulk attributable to street walls is not apparent, despite there being a breach of the FSR standard

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

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed dwelling remains largely consistent with the existing building. In regard to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The proposal is consistent with the numeric control under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

e) to provide for the viability of business zones and encourage the development, expansion and

diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The development is for residential use.

Zone objectives

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

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

Comment:

The proposed development will provide five new residential apartments that will provide for the housing needs of the community within the established medium density residential environment.

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

Comment:

The development provides for a variety of apartment sizes (four x 3 bedroom and one x two bedroom) within the existing medium density residential environment. This variety of apartment sizes is considered to be satisfactory and satisfies this objective.

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

Comment:

The development does not prohibit the establishment or enablement of other land uses that provides facilities or services that meet the day to day needs of residents to be provided elsewhere within the zone.

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

Comment:

The development revitalises the existing residential area by way of a contemporary and modern redevelopment of the subject site.

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

Comment:

The development does not prohibit the establishment or enablement of tourist accommodation elsewhere within the zone.

Conclusion:

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

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

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

Planning Circular 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 Floor Space Ratio Development Standard is assumed by the Sydney North Planning Panel.

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 6m and 7m below the natural ground level. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by Douglas Partners dated August 2022. In the assessment, Douglas Partners found that the site has a low probability of having ASS. However, given the proposed depth of excavation, the probability of encountering ASS would be greater. The Preliminary Assessment was referred to Council's Environmental Health Officer who concurred with the findings and imposed a condition which required a Detail site investigation (DSI) be submitted, prior to the issue of a construction certificate.

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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 407.3sqm (457.3sqm including former RR)	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and	Density: 8 dwellings	5	-	Yes

Dwelling Size	Dwelling Size: 3 bedroom dwellings: 90sqm 2 bedroom dwellings: 70sqm	3 bedroom dwellings: 162.66 2 bedroom dwelling: 101.9sqm	- -	Yes
4.1.2.1 Wall Height	North:12m	15.5m	27.5%	No
	South:12m	15.3m	34.1%	No
4.1.2.2 Number of Storeys	3	5	40%	No
4.1.2.3 Roof Height	Height: 2.5m	0.5m	-	Yes
	Parapet Height: 0.6m	0.5m	-	Yes
4.1.4.1 Street Front Setbacks	6m	Basement - 4.3m Ground - 6.56m first - third floor - 4.9m - 6.2m Fourth - 6.1m - 7m	28.4% - 8.1% -	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	5.1m (based on wall height)	South Basement - 0m (nil) Ground to third floor - 0m Fourth - 1.3m	25.4% - 100%	No
	Windows: 3m	5m	-	Yes
	Secondary street frontage: 5.16m	North Basement - 0m (nil) Ground to third floor: 1.45m - 2.19m Fourth: 2.195m - 6.48m	42.5% - 100%	No
4.1.4.4 Rear Setbacks	8m	0m - 4.9m	38% - 100%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1	Open space 45% of site area	44% (183.14sqm)	2.2%	No
	Open space above ground 40% of total open space	50.4% (92.35sqm)	26%	No
4.1.5.2 Landscaped Area	Landscaped area 25% of open space	42% (77.2sqm)	-	Yes
	1 native trees	1 trees	-	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	>12sqm	-	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	4.5m	-	Yes
Schedule 3 Parking and Access	10 spaces	10 spaces	-	Yes

Note: The proposed requirement has been calculated incorporating the existing road reserve area into the site area (501.sqm)

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
3.3.3 Footpath Tree Planting	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	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
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.5 Road Widening and Realignment	N/A	N/A
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

Clause 4.1.10 of the Manly DCP requires front fences be a maximum height of 1m or 1.5m with 30 percent transparency.

The proposed front fence has a maximum height of 1.9m, non-compliant with the numerical 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 minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposed height of the fence will have an unreasonable impact upon the streetscape. The proposed height of the front fence is inconsistent with other development along North Steyne and Denison Street. A condition of consent has been included in the recommendation to mitigate the visual impact of the fencing. The condition is as follows:

"The maximum fence height is not to exceed 1.7m from ground level on the street side of the fence.

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

Reason: To maintain consistency within the streetscape"

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

Subject to the above proposed condition of consent, the proposal will complement other development along North Steyne.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposed landscaping within the front setback is suitable in this circumstance.

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.

3.4.1 Sunlight Access and Overshadowing

See discussion within the assessment of SEPP 65 and the Apartment Design Guidelines.

3.4.2 Privacy and Security

See discussion within the assessment of SEPP 65 and the Apartment Design Guidelines.

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 February 2023 a request was made for the Applicant to erect height poles to reflect the envelope of the proposal. In response, the applicant noted the constraints in erecting height poles to reflect the proposed height of the proposal. The applicant subsequently provided a photomontage of the view loss from neighbouring properties to the south and west. The photomontage lodged by the applicant was in accordance with the Land and Environment Court (LEC) practice and procedure, with survey confirmation provided to ensure accuracy.

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. 59 North Steyne, Manly

The nature of the views affected from these apartments are beach, ocean and iconic views of the Norfolk Island Pine Trees to the north as pictured below.

No. 1 Denison Street, Manly

Views affected from this property are beach, ocean and iconic views of the Norfolk Island Pine Trees filtered through existing development to the east as pictured below.

No. 62 North Steyne, Manly

Views affected from this property are beach, ocean and iconic views of the Norfolk Island Pine

Trees to the south-east as pictured below.

No. 503/26 Whistler Street, Manly

Views affected from this property are ocean views and iconic views of the Norfolk Island Pine Trees to the north-east 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. 59 North Steyne, Manly

Existing views are obtained from both the front and side boundaries of each apartment, from living rooms and balconies off living rooms from both a standing and sitting position. Views from apartment 11 also existing from the top floor bedroom and terrace off the bedroom. The views that will be impacted by the proposed development are over the northern side boundary. Existing views over the front boundary and southern side boundary will be remained unaffected from the proposed development.

No. 1 Denison Street, Manly

The views from apartments 1/1 and 3/1 Denison Street are obtained over the eastern side boundary. The views are filtered through existing development on the subject site. Views are obtained from a standing and sitting positions.

No. 62- 65 North Steyne, Manly

The views from the apartments from this building are taken over the secondary street frontage (Denison Street) to the south-east. Views are obtained from a standing and sitting position.

No. 503/26 Whistler Street, Manly

Existing views are taken from the northern side boundary of the building.

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. 11/59 North Steyne, Manly



Photo 1 - Apartment 11 living room



Photo 2 -Living room terrace



Photo 3 - Upper floor bedroom terrace



Photo 4 - Living room terrace rear

Apartment 11 is located on the third and fourth floor of the building at 59 North Steyne and is located on the northern end of the building. The primary views of North Steyne are gained in a easterly direction over the front boundary from the windows and terraces on both levels, views to the north are gained from the same terraces and windows. Views from the terraces and windows at both levels to the east (front boundary) will be retained. Photos 1,2,3 and 4 demonstrate the current northern view that is obtained from this dwelling. Photo 4, illustrates that the proposed development will lead to a significant loss of view from this part of the upper floor terrace. It is noted that a fully compliant proposal would still result in similar extent of view loss from this location on site.

The proposal which will be three storeys higher than the existing building will have a moderate impact upon the existing northern view, noting the loss of view from the wrap around terrace at entry level for this apartment.

Nos. 1,5 and 8 /59 North Steyne, Manly

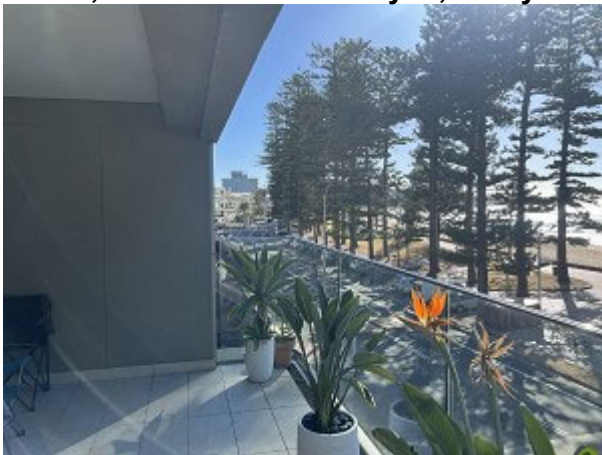


Photo 5 - Living room terrace - Apartment 8



Photo 6- Living room terrace - Apartment 5

Apartments 1, 5 and 8 are located at ground, first and second floor along the northern side of No. 59 North Steyne. All three apartments are single level. The primary views of North Steyne are gained in a easterly direction over the front property boundary from the living room and balcony off the living room to the front of the apartments. Views to the North Steyne are enjoyed over the northern side property boundary from the living room balconies. Views to the east will be retained in full. The proposed development is line with the balcony walls of these apartments and as such will have a negligible impact upon the northern views currently enjoyed by residents of these apartments.

No. 1/1 Denison Street, Manly



Photo 6- Bedroom window

Apartment 1 is located on the ground floor of 1 Denison Street. Occupants of apartment 1 currently enjoy views towards the North Steyne in a eastern direction from the bedroom window to the side of the building. The view is obtained over a side boundary and over the front yard of the existing building on the subject site. The proposed development is likely to result in negligible loss of ocean and Norfolk Pine views.

No. 3/1 Denison Street, Manly



Photo 7 - Bedroom window

Apartment 3 is located on the first floor of 1 Denison Street. Similarly, to apartment 1, occupants of apartment 3 currently enjoy views towards the North Steyne in a eastern direction from the bedroom window to the side of the building. The view is obtained over a side boundary and over the front yard of the existing building on the subject site. The proposed development is likely to result in negligible loss of ocean and Norfolk Pine views.

No. 6/62 - 65 North Steyne, Manly



Photo 8 - Living room



Photo 9 - Bedroom

Apartment 6, has substantial views to the North and South Steyne. The views to Steyne, will to a minor extent, be lost as result of the increased building height of the proposal. Qualitatively and considering the existing provision of existing views from Apartment 6, the extent of view loss is at worst minor to moderate. The occupants of Apartment 6, will continue to enjoy views of North and South Steyne and the Norfolk pines from their living rooms and bedrooms.

No. 12/62- 65 North Steyne, Manly



Photo 10 - Living room

Apartment 12, enjoys a substantial view corridor to the south and south-east. Although over a front boundary, as a result of the extensive water views retained from the living area of this property, the impact is minor-moderate.

No. 10/62-65 North Steyne, Manly



Photo 11 - Balcony

Apartment 10, will continue to enjoy views directly to the south and south-east of the dwelling. The affected views are obtained from the living rooms which are highly valued. A negligible loss of views to the beach views will result from the proposed development.

No. 503/26 Whistler Street, Manly



Photo 12 - Living room



Photo 13 - Living room balcony

The impact of the development upon this view is demonstrated in the images above (Photo 12 and 13). The upper floor of the proposed development will obstruct a portion of ocean view to the north-east of the subject site as seen in between the trees canopy of photo 13, this is attributed to the upper storey of the proposed development. While this portion of the view will be impacted, the ocean view directly to the east of the unit as shown in Photo 12 will be retained. The collective impact upon views obtained throughout 503/26 Whistler Street is considered to be minor/moderate.

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 residential flat building is non-complaint with both Clause 4.3 - Height of buildings and Clause 4.4 - Floor Space Ratio development standards under MLEP 2013. However, the non-compliant element of this proposal being the

upper floor addition would not significantly improve views if this element was deleted from the proposal. The increased front setback to the upper level and re-configuration of the North Steyne facades ensure highly valued views of North Steyne will be largely retained from all objecting properties when considering the totality of views available from all areas of each dwelling. While it is acknowledged that aspects of beach and ocean views from each property will be impacted, it is considered that all 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 beach 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.

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 regard 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.

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

Clause 4.1.2 of Manly DCP 2013 limits the external wall height for development on this site to 12m above natural ground level.

The maximum wall height of the proposed residential flat building is 16.1m, which represents a 34.1% variation from the numeric requirement.

Clause 4.1.2 of the MDCP 2013 also limits building to 3 storeys in height. The proposal is 5 storeys in height, which does not satisfy this requirement.

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 1.79:1 (728.9sqm), which represents a variation of 19% to the prescribed 1.5:1 (611.85sqm) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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 line.

Clause 4.1.4.2 of the Manly DCP requires 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 proposed wall along the southern boundary be setback at least 5.1m from the southern boundary.

Clause 4.1.4.4 of the MDCP requires any part of a building and the rear boundary must not be less than 8m.

Front (North Steyne) setback -

Secondary street (Denison Street) setback -

South side setback- 1.7m- 2.3m (32% variation)

Rear Setback: Rear wall - minimum of 7.85m, Pergolas - minimum of 4.8m (8m required)

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 setbacks are consistent with the existing development within the immediate vicinity and introduces an improved landscape treatment to the 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 and solar impacts on adjoining properties. No significant view impacts arise from the proposal. 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 proposed setbacks allow a reasonable building footprint, compliant with the floor space ratio to provide for five 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:

The application proposes a compliant level of landscape open space. Landscaping is able to be provided down along both the front and rear of the dwelling to soften the built form and assist in privacy. There are adequate deep soil zones in the front and rear setbacks to provide canopy trees as shown in the landscape plan.

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

Comment:

The subject site is not located in a bushfire zone.

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 45% of the site being total open space. The application proposes 44% (183.14sqm) of the site as total open space, non-compliant with the numeric control. This represents a 2.2% variation to the numeric control.

Clause 4.1.5.1 of the MDCP also requires total open space above ground (Balconies, terraces) be no more than 40% of total open space. The application proposes 50.4% (92.35sqm) total open space above ground, non-complaint with the numeric control. This represents a 26% 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 development does not result in the removal of significant canopy trees, which would result in the character of the site being compromised or impact populations of flora and fauna.

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 provides suitable landscape open space on site, compliant with the numeric control.

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

Comment:

Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to be impacted by the proposed works.

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

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

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 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.

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to conditions.

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The Manly DCP 2013 requires development maintain natural ground level within 0.9m of the side boundary. The proposal includes excavation within 0.9m of the side boundary.

Merit Consideration

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

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 a direct requirement of the development and the provision of suitable parking on the site. The development will generally maintain the appearance of the topography. The proposal was accompanied by a geotechnical report that provided recommendations to ensure the development would not have any unreasonable impacts within the locality. A condition has been included to ensure the development complies with the recommendations of this report.

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.

5.5 Road Widening and Realignment

The subject site is identified within Schedule 1 - Map E as land to be acquired for road widening and realignment.

However, as a consequence of a judgement of Biscoe J in the matter of *Triton Services Group Pty Ltd v Manly Council* [2011] NSWLEC 69, in which Council was found to have not served notice under s262(3) of the Local Government Act 1919 (now repealed) for its proposed widening of North Steyne, no road widening order within the meaning of s25 of the Roads Act 1993 applies to the Subject Site. Road widening is no longer being pursued by Council and the road reserve closed.

Therefore the provisions the provisions of this Clause are not applicable to the assessment of this

application.

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 inconsistent 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 \$91,740 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,174,000.

Other Matters – Site Isolation - *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251

The subject site and the adjoining property to the west (No. 1 Denison Street, Manly) are undeveloped with regard to neighbouring development along North Steyne and general surrounding development. The two allotments could, and ideally should, be amalgamated to facilitate the desirable use of the land.

In assessing this application reference is made to the planning principal within *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 when considering amalgamation of sites and isolation of sites through redevelopment. This is provided below:

"The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- *Firstly, is amalgamation of the sites feasible?*
- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

18 The principles to be applied in determining the answer to the first question are set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40. The Commissioner said:

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the

property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979."

Comment:

The principles set out by Brown. c in the Land and Environment Court Case *Melissa Grech v Auburn Council* [2004] NSWLEC 40 require that the developer of a property must make reasonable and genuine attempts to purchase adjoining land that could become isolated by this development. In this case, the circumstance sees the owner of the subject site had made a offer prior via a third party prior to the lodgement of the development. The applicant has made it clear in their application that a genuine attempt to purchase the property at market rate was made on 22 September 2021.

"19 In the decision Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189, I extended the principles of Brown C to deal with the second question and stated that:

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments".

Comment:

Given that an agreement in regard to the amalgamation of the two sites has failed, the NSWLEC decision of *Cornerstone Property Group v Warringah Council* [2004] NSWLEC 189 requires that it be demonstrated can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible. The applicant has submitted concept plans of No.1 Denison Street which propose a envelope in response to Council requesting further information with regard to this matter.

The concept drawings provide a building envelope for similar size multi-dwelling development on No. 1 Denison Street to what is being proposed under this application. It is worth noting that No. 1 Denison is smaller size and shape when compared to the subject site being a rectangular site with a site area of 305sqm (subject site area 407.3sqm). Given the subject proposal will allow for suitable development without any unreasonable amenity impacts or streetscape impacts, it can be concluded that a development of a similar scale can be achieved on site consistent with the aims and objectives of the R3 Medium Density Zone. As shown below, a scheme has been put

forth by the applicant showing a potential redevelopment of the adjoining property as a residential flat building. It is noted that *R3 Medium Density Residential* zone under the Manly LEP 2013 also other land uses including multi-dwelling housing, seniors housing, take away food and drink premises and boarding houses.



Image 1- Schematic scheme for a Residential Flat Building on No. 59 North Steyne, Manly

As such, it can be determined that amalgamation is not feasible in this instance and a suitable development yield can be achieved for No. 1 Denison Street as an isolated site.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 supported, in this particular circumstance.

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 and Clause 4.4 Floor Space Ratio 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 is for the demolition of an existing flat building and construction of a new residential flat building.

The concerns raised in the objections have been addressed and resolved by the amended plans and conditions of consent.

The proposal includes a non-compliance in relating to Building Height and Floor Space Ratio. The proposed variations have been considered in relation to the provisions of Clause 4.6 of the Manly LEP 2013. While it is acknowledged that the proposed height contravention represents a significant breach, the resulting impacts of the development on the amenity of the adjoining properties and overall streetscape have been assessed as reasonable.

Issues raised by DSAP were satisfactorily addressed by amended plans and subject to conditions will result in DSAP issues being resolved.

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 permits a contravention of clause 4.3 Height of Building and 4.4 Floor Space Ratio 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 DA2022/1910 for Demolition work and construction of a Residential Flat Building including basement car parking. on land at Lot CP SP 2492, 61 North Steyne, 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

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A0.01/ Revision B	4 April 2023	Platform Architects
A0.02/ Revision A	28 October 2022	Platform Architects
A0.03/ Revision A	28 October 2022	Platform Architects
A1.01/ Revision B	14 April 2023	Platform Architects
A1.02/ Revision B	14 April 2023	Platform Architects
A1.03/ Revision B – The land nominated on this plan which is public road is included in this consent	14 April 2023	Platform Architects
A1.04/ Revision B	5 April 2023	Platform Architects
A1.05/ Revision B	5 April 2023	Platform Architects
A1.06/ Revision B	5 April 2023	Platform Architects
A1.06/ Revision B	11 April 2023	Platform Architects
A2.01/ Revision B	14 April 2023	Platform Architects
A2.02/ Revision B	5 April 2023	Platform Architects

A2.03/ Revision B	5 April 2023	Platform Architects
A2.04/ Revision B	5 April 2023	Platform Architects
A3.01/ Revision B	5 April 2023	Platform Architects
A3.02/ Revision B	5 April 2023	Platform Architects
A4.01/ Revision B	11 April 2023	Platform Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
C-02-0001	14 April 2023	SCP Engineers and development consultants
C-03-1001/ Revision D	19 April 2023	SCP Engineers and development consultants
C-03-1001/ Revision C	17 October 2022	SCP Engineers and development consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Acid Sulfate Assessment/ R.001.Rev0	21 July 2023	Douglas Partners
Groundwater and Infiltration Testing	13 April 2023	Douglas Partners
Energy Efficiency & ESD Report	April 2023	SLR Consulting
BASIX Certificate No. 1348583M_04	13 April 2023	SLR Consulting
Transport Impact Assessment	1 November 2022	JMT Consulting
Noise Impact Assessment	October 2022	SLR Consulting
Heritage Impact Statement	October 2022	Weir Philips
Preliminary Geotechnical Assessment	September 2022	Douglas Partners
Preliminary Site Investigation	August 2022	Douglas Partners
BCA and Certification Assessment	October 2022	Steve Watson and Partners
BCA Access	31 October 2022	Accessible Building Solutions

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Dwg No. 4/ Revision C	19 April 2023	place design group
Dwg No. 5/ Revision C	19 April 2023	place design group
Dwg No. 6/ Revision C	19 April 2023	place design group
Dwg No. 7/ Revision C	19 April 2023	place design group
Dwg No. 8/ Revision C	19 April 2023	place design group

Dwg No. 9/ Revision C	19 April 2023	place design group
Dwg No. 10/ Revision C	19 April 2023	place design group
Dwg No. 11/ Revision C	19 April 2023	place design group

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	N/A	N/A

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated
WaterNSW	General Terms of Approval (ref:IDAS1149020)	20 June 2023

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

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

3. 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 a **residential flat building**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

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. 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

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$91,740.00 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 \$9,174,000.00.

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.

7. **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).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

a) Generally, the amended landscape plans shall provide detailed landscape information including:

i) proposed surface treatments and materials, including but not limited to structures, features, walling, fences, pavements, gardens, lawns, ground stabilisation, drainage; location, height and

materiality of proposed retaining walls and fences; soil depth of planter boxes on-slab; proposed planting scheme including species selection, location, quantities, mature heights and pot sizes; outline of proposed buildings, driveways and structures, pavements, walls and fences, all consistent and co-ordinated with building and services plans; location of any underground services or basements; and any irrigation systems.

b) Specifically, the amended landscape plans shall provide detailed landscape information including:

- i) 300mm minimum soil depth plus additional depth for drainage cell and other materials, for the green roof over the car lift structure, all level 1 to 4 and roof level terrace planters, and the soft landscape area (Unit 01) at ground level nominated as lawn,
- ii) 1m minimum soil depth plus additional depth for drainage cell and other materials, for the courtyard planter at ground level for the proposed feature tree planting,
- iii) 600mm minimum soil depth plus additional depth for drainage cell and other materials, for the courtyard planters at ground level and all other ground level floor planters,
- iv) all planters shall be to the width as shown on the Landscape Plans including a minimum horizontal dimension of 500mm measured from the inner side of the planter for planters documented less than 500mm width,
- v) specific location and selection of any tree planting based on preserving existing prominent views from adjoining properties,
- c) the proposed fire hydrant location within deep soil fronting Denison Street is to be relocated elsewhere closer to fire egress path and not within deep soil zones,
- d) the deep soil zone fronting North Steyne, forward of the building line, shall be non-accessible to residents of the development and shall remain as a mass planted landscape zone above the stone retaining wall with no fencing above the wall,
- e) the following nominated species, not suited to the coastal location or are invasive self-seeding species, shall be deleted from the design and schedule: *Corymbia* hybrid, *Zelkova serrata*, *Tristaniaopsis laurina* 'luscious', all *Syzygium* species, all *Grevillea* species, and all *Pennisetum* species,
- f) the following coastal species are suggested to be considered as replacement planting for item e) above: *Metrosideros excelsa* and dwarf varieties, *Agonis flexuosa* dwarf varieties, *Banksia* dwarf varieties, *Leptospermum* dwarf varieties, *Westringia* dwarf varieties, *Correa alba*, *Phormium* species, *Strelitzia reginae* / *parvifolia*, *Buxus* species, and *Aloe* species.

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

Reason: Landscape and streetscape amenity.

9. 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: 300mm for groundcovers, perennials, grasses and lawn; 600mm for shrubs; and 1m for small trees.

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.

10. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 5.10m AHD.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 5.60m 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 5.60m 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 5.60m 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.

Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level of 5.60m AHD.

Car parking – D6

All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning Level of 5.60m AHD.

Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 5.60m 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.

11. Photographic Archival Record

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

This record must be submitted and approved by the Council's Heritage Advisor prior to the issue of the Construction Certificate and commencement of any demolition or works on-site.

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

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

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

12. Vehicular Swept Paths

Vehicular manoeuvring paths must be provided to demonstrate that the B85 vehicles can enter or depart from each parking space by no more than a 3 point turn without encroaching on adjacent car parking spaces as required by AS/NZS 2890.1 Table 1.1 for user class 1A. 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 Certifying Authority prior to the issue of the construction Certificate.

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

13. 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:

- i The proposed phases of construction works on the site, and the expected duration of each construction phase
- i 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
- i Make provision for all construction materials to be stored on site, at all times
- i The proposed areas within the site to be used for the storage of excavated materials,

- construction materials and waste containers during the construction period
- i 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
- i 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
- i Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- i Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- i Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- i 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
- i 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
- i 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
- i 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
- i 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
- i 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
- i Proposed protection for Council and adjoining properties
- i 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.

14. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay 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 to the parking allocation:

- i 9 residential spaces
- i 1 residential visitor spaces

These amendment(s) must be clearly marked on the plans submitted to the Certifier prior to the issue of a Construction Certificate.

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

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.

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.

16. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA and Certification Assessment Report prepared by Steve Watson and Partners, dated 2/11/2022, Ref 2o22/1815 including any proposed Performance Solutions, is 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. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the Statement of Compliance Report prepared by Accessible Building Solutions, job. No. 222203, dated 31/10/2022 is to be included as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons

18. On-site Stormwater Disposal Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by SCP Engineers and Development Consultants, job number S220130, drawing number C-02-0001, C-03-1001, dated 19/4/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. 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.

19. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of public domain works which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- i A vehicular crossing 3.8 meters wide to be constructed in accordance with Council's standard drawing Normal.
- i Widen road reserve adjacent to the crossing along North Steyne together with a 45 degree splayed corner at the intersection of Denison Street & North Steyne.
- i The retaining wall along the frontage of North Steyne to be less than 1m in height.
- i reconstruction and realignment of the kerb ramp crossing of Denison Street
- i Any paving works on the footway to accommodate the above works.
- i Repaving of the frontage along Denison Street.
- i Landscaping of the road reserve along North Steyne frontage to be in accordance with the approved landscape plans.
- i A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

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

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

20. Tanking of Basement Level

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for

and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Water NSW are to be complied with and a copy of the approval must be submitted to the Certifier.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

21. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

22. **Road Reserve Consent**

Prior to issue of the Construction Certificate, the applicant must enter into an approval for the enclosed landscaped area that is located on Council's road reserve. The relevant form "Use of a Portion of a Road Reserve Application" can be found on Council's website.

Reason: To ensure compliance with the Roads Act 1993.

23. **Further site contamination review required**

Prior to a CC (Construction Certificate) being issued or any excavation work, the following reports are required from suitably qualified persons:

1. Assessment of any groundwater and contamination both in terms of site risk and dewatering management.
2. Submission of the above reports/assessments and any recommendations and Management Plans to Council for appropriate acceptance with or with conditions before work continues on site.

Reason: To ensure the site is adequately assessed for contamination risks to the environment

24. **Compliance with Standards**

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **

- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifier to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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.

25. **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.

26. **Sydney Water "Tap In"**

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

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

- 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.

27. **Fencing**

The maximum fence height is not to exceed 1.7m from ground level on the street side of the fence.

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

Reason: To maintain consistency within the streetscape

28. 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

29. 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 standing of vehicles on North Steyne.

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

30. Road Occupancy Licence

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows on North Steyne.

Reason: Requirement of TMC for any works that impact on traffic flow.

31. 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 a 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:-

- i Make provision for all construction materials to be stored on site, at all times.
- i The DTMP is to be adhered to at all times during the project.
- i Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- i 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.

- i 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).
- i Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- i 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.
- i 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.
- i 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.
- i Specify spoil management process and facilities to be used on site.
- i 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.

32. **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.

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

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

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

DURING BUILDING WORK

34. 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.

35. Dewatering Management

A permit from Council is required for any dewatering of groundwater.
A Construction dewatering application to WaterNSW (refer DPE Water referral response) is required.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

36. 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 prepared 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Certifier and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

43. Construction Staff and Contractor Parking

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

44. 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.

45. 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

46. Landscape Completion

Landscape works are to be implemented in accordance with the approved Amended Landscape Plans.

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

Reason: Environmental amenity.

47. Restriction as to User and Positive Covenant over the self-actuating flood gate

(a) The basement car park must be protected from inundation up to the Flood Planning Level of 5.60m AHD. This includes all potential water entry points such as for access and ventilation. The proposed flood gate is to install up to a level of 5.60m AHD and is to be self-actuating.

(b) A restriction as to user shall be created on the title over the self-actuating flood gate in order

to prohibit the removal or modification of the self-actuating flood gate; and to ensure that the flood protection offered by the self-actuating flood gate is continuous and at a minimum level of 5.60m AHD. Such levels are to be detailed to Australian Height Datum on the Section 88B instrument and submitted to Council for approval. The terms of such a restriction are to be prepared to Council's standard requirements 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 sole authority empowered to release, vary or modify such restriction.

(c) A restriction shall be imposed on the title of the land, pursuant to S88B of the Conveyancing Act 1919 confirming that the undercroft area does not impede flows and is not to be enclosed, with any fencing having a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. The terms of such a restriction are to be prepared to Council's standard requirements 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 sole authority empowered to release, vary or modify such restriction.

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

Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such restriction.

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.

48. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements shall be submitted to Council and Council's acceptance shall be submitted to the Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

49. **Allocation of parking spaces (strata title)**

9 carparking spaces are to be assigned for residential parking and 1 space for visitor parking. All residential units must be assigned a minimum of one parking space. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability for residents and visitors in accordance with the Manly Development Control Plan.

50. **Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

51. Shared Zone Bollard

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

52. 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:

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

53. 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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to 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 by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater disposal system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

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 system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement 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 for the on-site stormwater disposal system is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

55. Street Level Bin Collection area

The floor of the street level bin collection area must be constructed of a flat, smooth non-slip hardstand material (e.g. concrete).

Gravel, pebbles, stepping stones and the like are not acceptable.

The floor of the street level bin collection area must be level with the adjacent driveway.

Reason: To ensure safe access to the bins for collection staff.

56. 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:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Acid Sulfate Assessment/ R.001.Rev0	21 July 2023	Douglas Partners
Groundwater and Infiltration Testing	13 April 2023	Douglas Partners
Energy Efficiency & ESD Report	April 2023	SLR Consulting
BASIX Certificate No. 1348583M_04	13 April 2023	SLR Consulting
Transport Impact Assessment	1 November 2022	JMT Consulting
Noise Impact Assessment	October 2022	SLR Consulting

Heritage Impact Statement	October 2022	Weir Philips
Preliminary Geotechnical Assessment	September 2022	Douglas Partners
Preliminary Site Investigation	August 2022	Douglas Partners
BCA and Certification Assessment	October 2022	Steve Watson and Partners
BCA Access	31 October 2022	Accessible Building Solutions

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.

57. 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.

58. House / Building Number

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

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

Reason: Proper identification of buildings.

59. 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.

60. 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.

61. 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.

62. 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

63. 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 Amended Landscape Plans 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.

The approved landscape area with planting (trees, shrub, groundcovers, perennials, lawn) shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

64. Maintenance of Stormwater Treatment Measures - Minor

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

65. 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 1,1m

Reason: To maintain unobstructed sight distance for motorists.

66. **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.

67. **Parking Enclosure**

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

68. **Resident Parking Permit Scheme**

Resident Parking Permit Scheme. Any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the property Title

Reason: To ensure the tenants are aware that they are not entitled to a permit regardless if they are within a Resident Parking Scheme (RPS).