

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1421
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 1 DP 126389, 5 Eustace Street MANLY NSW 2095
Proposed Development:	Alterations and Additions to the existing building to create an additional unit and strata subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Benjamin Christopher Nielsen Kerry-Anne Marie Nielsen
Applicant:	Kerry-Anne Marie Nielsen
Application lodged:	28/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/10/2018 to 03/11/2018
Advertised:	20/10/2018
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 639,000.00

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 Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 126389 , 5 Eustace Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Eustace Street, Manly.</p> <p>The site is irregular in shape with a frontage of 8.08m along Eustace Street and an average depth of 51.8m. The site has a surveyed area of 369.6m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey four dwelling residential flat building with detached outbuilding to the rear.</p> <p>The site slopes gently to the west and does not contain any significant landscape features..</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two and three storey residential flat buildings. The property to the north is a two storey residential flat building. Directly opposite the road to the east is currently under construction for a six storey mixed use development. The attached development to the south is a relatively recent three storey residential flat building of a modern design. The street is generally characterised by three storey residential flat buildings of brick construction.</p>

Map:



SITE HISTORY

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

PLM70/2017 - A pre-lodgement meeting was held on the 7 December 2017. The plans submitted for the pre-lodgement meeting including two additional units and a greater gross floor area. Council advised that the application could be supported subject to the following:

- Reduction from two additional units to one
- Greater design for privacy
- Materials complementary to the existing development and streetscape

The revised design submitted with DA2018/1421 is consistent with the advice provided within the pre-lodgement meeting.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to the existing residential flat building and includes the following:

Level one

- Planter box to street frontage
- walkway to northern side of building
- Courtyard to unit 2
- Conversion of unit 2 to adaptable housing

- Outbuilding including garbage room and laundries to rear
- Landscaping

Level two

- Balcony to rear unit 4

Level three

- Level three addition for the provision of one unit including Master bedroom with walk in robe ensuite, study and attached eastern facing balcony, bathroom, bedroom, open plan living, kitchen and dining and attached western facing balcony.

The architectural plans were amended to include an increased setback of the outbuilding to the northern boundary. The landscape plan was not amended. A condition is recommended to require the landscape plan to be amended to be consistent with the architectural plans. A condition is also recommended to require the outbuilding to be located entirely within the boundary of the subject site.

Additional information was submitted that included the conversion of the ground floor unit 2 into adaptable housing. A condition is recommended to require the floor plans be amended to reflect these changes.

The amendments to the application will result in an application that differs only in minor respects from the original application, and does not result in a greater environmental impact. As such they were not re-notified.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
<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>	<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</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Ms Kate Robertson	5 Eustace Street MANLY NSW 2095
Mr James Wentworth Bray	8 / 9 Eustace Street MANLY NSW 2095

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

- Parking

The matters raised within the submissions are addressed as follows:

- Parking
Comment:
The provision of parking has been considered under clause 4.1.6 Parking Vehicular Access and Loading (Including Bicycle Facilities) of the Manly DCP 2013. In summary the non-compliance was found to be satisfactory.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable.</p> <p>Council's Landscape section have assessed the application against the controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>
NECC (Development Engineering)	<p>The application proposed an additional floor on the existing RFB. The impervious areas of the development is 59% of the total areas. No OSD is required.</p> <p>Development Engineer has no objection to the application subject to the following conditions of consent.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit, The site of proposed development is not a listed heritage item in its own right, however, it is a historic building, prominent in the streetscape and located in the vicinity of heritage items.</p> <p>The proposal is for demolition of the original roof, and creation of an altered (new) roof form, however, with retention of the major part of the building.</p> <p>In my opinion, the proposed roof form would not be well harmonised with the original building and its style, and thus it would adversely impact on the streetscape and views.</p> <p>HOWEVER, given the lack of heritage status of the building, and given highly intrusive development in vicinity, I can also advise that these reasons would prevail and thus have no further objections to the proposal.</p>
Traffic Engineer	<p>The application is for the construction of an additional storey to accommodate 1 x 2 bedroom unit.</p> <p>Parking: The applicant has failed to address the concerns related to the parking requirements. Reliance on on-street parking is deemed unacceptable.</p> <p><u>Previous Comments</u> Traffic: The increase in units will generate negligible traffic volumes. This is deemed acceptable and within tolerable limits on the local network.</p> <p>Parking: The application is not proposing any additional off-street car parking amenity within the site. The proposal will result in a need for 2 additional car parking spaces in accordance with the Manly DCP. The shortfall of spaces being accommodated on-street will not be</p>

Internal Referral Body	Comments
	<p>accepted. All parking provisions must be accommodated onsite.</p> <p>The Traffic team object to this proposal based on the parking deficit.</p> <p><u>Planning Comments</u></p> <p>The proposal is for alterations and additions to the existing building. The existing built form of the development does not allow for the provision of carparking on this site. The subject site has good access to public transport being located within close proximity to the Manly Wharf and the main bus terminals of Manly. The location of the proposed development will also ensure that residents have good access to required services and community facilities. Furthermore the Traffic and Parking Impact Report, prepared by ML Traffic Engineers and dated April 2018 demonstrates that the increased demand generated by this proposal will not result in any unreasonable impacts on the traffic or parking within the locality. The proposed parking arrangements are acceptable in this circumstance given the type of development and the locality.</p>
Waste Officer	No objection subject to conditions

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for a third storey addition to a residential flat 'housing' development for the provisions of one additional self-contained dwellings to the existing four 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 Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

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 surrounding and nearby development is generally characterised by two and three storey residential flat buildings providing minimal front setbacks to the street. Directly opposite Eustace street from the site is a six storey mixed use development.

The facades of nearby development is greatly varied and ranges from red-brick traditional style residential flat buildings to more modern modulated construction such as the development directly adjacent to the south.

The proposed addition is further setback from the existing development on the site to ensure it retains the two storey street frontage and character of the building. The materials used will create a distinct break between old and new while ensuring it does not dominate/or unreasonably impact the existing building character.

The proposed development is suitably designed to ensure it relates well to the context.

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:

As discussed above, the proposal is of a built form that will not result in any unreasonable impacts on the streetscape of the locality.

The proposed addition is setback from the street front boundary. This setback will ensure the proposal does not impose on the streetscape or the character of the existing building. The development will not interrupt any views or vistas and will achieve adequate internal amenity and outlook.

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 development is consistent with surrounding and nearby development. The subject site is located within close proximity to the Manly Town Centre and will result in a density that is reasonably expected for the location.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The proposed development will achieve a high level of livability for the residents and includes the provision of private open space to the existing western facing units. The development will also allow for adequate deep soil zones for groundwater recharge.

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 provides good landscape design and adequate landscaped areas. The proposed landscaping will enhance the natural features and optimise the usability of the site. The development will maintain large deep soil zones for planting and water infiltration.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The proposal is suitably designed to achieve good natural ventilation and access to light to all rooms within the apartment. The room dimensions, shapes, storage and private open space will allow for a good level of amenity for the occupants. The development is only accessible through stairs however, it will include the provision of one adaptable apartment on the ground floor.

The proposal incorporates screening and highlight windows to ensure no unreasonable overlooking of the neighbouring properties.

The proposal is adjacent to the common wall of the property to the south 2A Gilbert Street. As a result the proposal will not result in any unreasonable overshadowing of this property. The properties at 4 and 2 Gilbert street to the south will receive some additional overshadowing however these properties will maintain adequate solar access to the northern and western elevations during late morning to the

afternoon of the winter solstice.

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:

The proposal will maintain the existing entrance to the site. The entrance provides a clear transition from the public to private domain. The first floor balcony will enhance the passive surveillance of the streetscape and the planter box on the street front boundary will enhance the character of the existing building.

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 proposal will enhance the mix of apartment sizes on the site. The proposal includes the provision of communal facilities and enhance landscaping of the communal open space at the rear. These works will enhance the opportunities for social interaction among the residents. The proposed development also includes the alteration to a ground floor unit to provide adaptable housing. The proposal will ensure the site is able to provide for a broad range of people within the community.

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 design of the development will provide a clear transition between the proposed additions and the existing building. The setback of the third floor will ensure the additional storey maintains the existing appearance of the existing building from the street frontage. The proposed design will maintain the character of the existing building while allowing for a modern style addition.

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?	<p>The surrounding and nearby development is generally characterised by two and three storey residential flat buildings providing minimal front setbacks to the street. Directly opposite Eustace street from the site is a six storey mixed use development.</p> <p>The facades of nearby development is greatly varied and ranges from red-brick traditional style residential flat buildings and more modern modulated construction such as the development to the south.</p> <p>The proposed addition is further setback from the existing development on the site to ensure it retains the two storey street frontage and character of the building. The materials used will create a distinct break between new and old while ensuring it does not dominate the existing building character.</p> <p>The proposed development is suitably designed to ensure it relates well to the context.</p>
	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>As discussed above, the proposal is of a suitable design to respond to the streetscape. The development will receive eastern and western sunlight, and access to sunlight through the</p>

		northern facing highlight/screened windows. The development will receive adequate access to light. The shadow diagrams submitted with the application demonstrate that the development will not result in any unreasonable overshadowing to the neighbouring properties.												
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	The proposal will maintain the existing site access that provides a good transition from the public to the private domain. The development also includes the replacement of the existing ground floor concrete terrace on the frontage with a planter box. This will enhance the amenity of the public domain.												
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	The proposal complies. The development will maintain 29.7% of the site area as communal open space. The communal open space will achieve a minimum of 50% direct sunlight from the north and west during the afternoons of the winter solstice.												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 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</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	6m	The proposal is consistent with the proposed 29.7% of the site area provided as deep soil zones.
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	6m													

	<table><tr><td>significant existing tree cover</td><td></td><td></td></tr></table>	significant existing tree cover												
significant existing tree cover														
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><td>Building height</td><td>Habitable rooms and balconies</td><td>Non-habitable rooms</td></tr><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></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 properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The separation distances provided are not consistent with the guideline. The third storey addition provides a 1m-2m setback to the northern boundary and a nil setback to the southern boundary.</p> <p>The northern elevation includes privacy screening and highlight windows and will not result in any unreasonable privacy impacts. The northern wall is articulated with the existing building line and will provide adequate visual relief to the neighbouring property.</p> <p>The development is suitably designed to maintain privacy of the neighbouring properties.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
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>The development will maintain the existing access points that are readily visible and accessible from 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>N/A</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; orOn land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre	<p>The MDCP 2013 requires 7 residential parking spaces and 2 visitor spaces. The existing site does not provide any parking nor does it have the ability to allow for the provision of parking. As discussed below, the proposal is located within</p>												

	<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>	close proximity to public transport and community facilities. The proposal is satisfactory in this circumstance.				
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 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	The proposed apartment will receive a minimum of 2 hours of sunlight to the living room through the western facing balcony during the afternoon of the winter solstice. The master bedroom will also receive good solar access through the eastern facing elevation during the morning of the winter solstice.				
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.Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	The development will achieve natural cross-ventilation.				
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></table>	Minimum ceiling height		Habitable rooms	2.7m	The proposal complies with a ceiling height of 2.8m.
Minimum ceiling height						
Habitable rooms	2.7m					



	<table><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>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>If located in mixed used areas</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></table>	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	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area			
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	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
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><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <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> <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. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The proposal is a two bedroom apartment with two bathrooms. The minimum required internal area is 75sqm. The proposed internal area is 102sqm.</p> <p>Every habitable rooms has a total glass area of not less than 10% of the floor area of the room.</p> <p>The proposal complies with the minimum habitable room depths</p> <p>The bedrooms comply with the minimum internal areas and dimensions.</p> <p>The living rooms has a minimum width of 4.8m.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											

	<ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>																
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>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</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	The proposal complies.
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															
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	The proposal complies.															
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <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> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	The proposal complies. All storage located within apartment.					
Dwelling Type	Storage size volume																
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
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.	The proposal complies.															
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The proposal is further setback from the street and will not suffer from unreasonable impacts from external noise and															

		pollution.			
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.	The proposal will increase the diversity of apartment sizes on the site.			
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The facade will create a clear contrast between the existing development and the addition. The increased front setback and design of the addition will not result in any unreasonable impacts on the existing character of the building.			
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accomodation and open space.	The roof is of an appropriate design within the locality.			
Landscape Design	Was a landscape plan submitted and does it respond well to the exisitng site conditions and context.	The landscape plan will maximise the landscaping on the site.			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				
	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			300-	
		N/A			

	<table><tr><td>Cover</td><td></td><td></td><td>450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Cover			450mm		Turf			200mm		
Cover			450mm									
Turf			200mm									
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	The existing development does not allow for lift access to the apartments. The proposal includes the conversion of one ground floor unit to adaptable housing. This will ensure the proposal meet the required benchmark.										
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	The new addition is contemporary and is appropriately designed to complement the existing built form on the site.										
Mixed Use	<p>Can the development be accessed through public 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>	The subject site is readily accessible through public transport.										
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>	N/A										
Performance												
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	A BASIX Certificate and BASIX Stamped plans have been submitted with the proposal.										
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	The development is suitably designed to maximise water infiltration on the site. Councils development engineer has provided conditions of consent to ensure stormwater is appropriately disposed.										
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The proposal complies.										
Building	Incorporates a design and material selection that	The proposal complies.										

Maintenance	ensures the longevity and sustainability of the building.	
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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:

(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:

The development has been designed with adequate regard to the design quality principles and the objectives specified in the Apartment Design Guide. The proposal is an appropriate response to the context of the area and will maintain an appropriate degree of amenity within the locality.

SEPP (Affordable Rental Housing) 2009

The State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) includes

provisions to ensure that the loss of affordable rental housing is suitably accommodated within the locality. Part 3 is applicable to the following development:

49 Buildings to which Part applies

(1) This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.

(2) This Part does not apply to a building:

(a) that has been approved for subdivision under the Strata Schemes (Freehold Development) Act 1973, or

(b) to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies, or

(c) owned by, or under the care, control and management of, a social housing provider.

The SEPP ARH defines a low rental residential building as the following:

low-rental residential building means a building used as a residential flat building containing a low-rental dwelling or as a boarding house and includes a building:

(a) that, at the time of lodgment of a development application to which this Part applies, is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or

(b) that was used as a residential flat building containing a low-rental dwelling or as a boarding house but that use has been changed unlawfully to another use, or

(c) that is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.

A low-rental dwelling is defined as the following:

low-rental dwelling means a dwelling that (at any time in the 24 month period prior to the lodgment of a development application to which this Part applies) was let at a rental not exceeding the median rental level for that time (as specified in the Rent and Sales Report) in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area.

The median weekly rent for two bedroom flat/unit ranged from \$632.50 to \$650 from September 2017 to June 2018. Prior to this period there was no data available for the Northern Beaches Local Government Area. As such this range of median rental prices is considered to be the best, most accurate data available for the determination of this application. The information supplied with the application identifies that all units were leased at \$750 prior to the submission of this application. As such the units are not low-rental dwellings and are not subject to Part 3 of SEPP ARH.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 954863S dated 28 August 2018).

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

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:	11m	10.78m	N/A	Yes
Floor Space Ratio	FSR: 0.75:1 (277.2sqm)	FSR: 0.965:1 (356.5sqm)	28.6%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	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:

Requirement:	0.75:1 (277.2sqm)
Proposed:	0.965:1 (356.5sqm)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	28.6%

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 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

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 sub-clause (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.

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

cl 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 applicants written request has demonstrated that the development is consistent with the objectives of the development. Thus demonstrating that enforcing compliance with the control is unreasonable and unnecessary in the circumstance.

(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 Applicant’s written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant’s written request submits that the proposal maintains a reasonable relationship to the existing development within the streetscape and retains the character of the existing building from the primary Eustace Street frontage, is consistent in form and scale with nearby residential development, and will result in no unreasonable amenity impacts to surrounding properties.

In doing so, 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 building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the 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).

cl 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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of cl 4.4 Floor space ratio development standard are:

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

Comment:

As demonstrated in the applicants written request, the streetscape of the locality is predominantly three storey residential flat buildings. The proposed development involves the addition of a third storey on the site and will result in the developments consistency with the predominant built form of the area. The proposal will be consistent existing and desired streetscape character of the locality.

The development satisfies this objective.

(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:

The proposed third storey is over the existing building footprint. The proposal also includes landscaping to the rear yard and an outbuilding to replace the existing outbuilding. The development will not obscure any important landscape or townscape features.

The development satisfies this objective.

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

Comment:

As discussed above, the proposal is of a built form that is consistent with the predominant built form of the locality. The proposal is stepped back from the street and materials used provide a transition from the existing building to the proposed additions. The proposal will maintain an appropriate visual relationship between the proposed additions and the existing building.

The development satisfies this objective.

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

Comment:

The proposal has been assessed below with regard to the amenity impacts. The assessment found that the proposal will not result in any unreasonable impacts. Furthermore the proposal is suitably designed within the streetscape of the locality.

The development satisfies this objective.

(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:

Not applicable.

Conclusion:

The proposed development satisfies the objectives of the Floor space ratio development standard.

Zone objectives

The underlying objectives of the R1 General Residential zone

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

- Comment:

The proposal will provide additional housing for the needs of the community.

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

Comment:

The development will add to the variety of housing types within the locality.

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

Comment:

Not applicable.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development

standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 369.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 unit per 150sqm (2.5 units)	Existing 4 Units Proposed 5 Units	100%	No
4.1.2.1 Wall Height	North: 9m	10.2m-8.96m	0% - 13%	No
	South: 9m	10.6m - 9.4m	4.4% - 17.7%	No
4.1.2.2 Number of Storeys	3	3	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.63m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line - 3.2m (2A Upper Gilber 2.2m - 7 Eustace 4.2m)	Existing - 1m-1.3m Proposed level 3 - 3.6m - 4.4m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	RFB North 3.4m - 3m South 3.5m - 3.1m Outbuilding North 0.8m South 0.8m	RFB North: 2m - 1m South: Nil Outbuilding North: 1.65m - 1.7m South: Nil	RFB North: 41% - 66% South: 100% Outbuilding Nil - 100%	No
	Windows: 3m	2m - 1m	33% - 66%	No
4.1.4.4 Rear Setbacks	8m	10.8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (185.8sqm)	44.5% (164.8sqm)	11.4%	No
	Open space above ground 40% of total open space (65.9sqm)	21% (35sqm)		Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (49.4sqm)	74.8% (123.3sqm)	N/A	Yes
	1 native trees	1 trees	N/A	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	Unit 1 Nil (existing) Unit 2 20sqm Unit 3 Nil (existing) Unit 4 10.5sqm Unit 5 10.7sqm	0%-100%	No
Schedule 3 Parking and Access	Dwelling 7.25 spaces (rounded up to 8)	Nil	100%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.3 Landscaping	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 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
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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)	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide equitable access to light and sunshine.

Comment:

The development to the south is the common wall of 2A Gilbert Street. This wall does not include any

windows and will retain the existing solar access. The properties at 2 and 4 Gilbert Street will maintain solar access from late morning to the afternoon of the winter solstice to the windows and private open spaces. This is adequate to maintain a reasonable level of amenity to these properties.

The proposed development will maintain an equitable access to light and sunshine within the locality.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

As discussed above, the development will maintain adequate solar access to the private open spaces and windows to living/habitable rooms within the development site and the adjoining properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposal is constructed to the common wall to the south and will not result in any unreasonable overshadowing of this building. The proposal will result in minor additional overshadowing of the properties to the south west of the site. These properties will retain solar access to the private open spaces and windows to habitable rooms during the late morning to the afternoon of the winter solstice. The development will gain good solar access to the eastern and western elevations as well as to the northern facing highlight and screened windows. The proposal maximise mid-winter sunlight to the development site and the neighbouring properties.

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.

3.4.2 Privacy and Security

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

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

- *appropriate design for privacy (both acoustical and visual) including screening between closely*

- *spaced buildings; and*
 - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed development orientates the outlook to the east and west away from the side boundaries. The northern facing windows are highlight or screened. The rear western facing balcony is also screened by a privacy screen on the north and the common wall of the building to the south. The proposal will minimise the loss of privacy to nearby and adjacent development.

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

Comment:

The proposal will achieve an appropriate degree of privacy without compromising access to light and air. The proposal will provide an outlook to the east and west from the master bedroom and living rooms. This is considered to be a balanced outlook.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will enhance the passive surveillance of the streetscape of the locality.

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

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Description of Non-compliance

The Manly DCP 2013 permits 1 unit per 150sqm of site area in this locality. The proposal will result in one apartment per 73.9sqm of site area.

Merit Consideration

With regard to the consideration for the variation, the development is considered under the objectives of the control as follows:

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

Comment:

The proposed development includes the provision of a two bedroom 103sqm dwelling. The proposal is a larger style dwelling which will increase in the variety of dwelling sizes within the locality.

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

Comment:

The proposed additional dwelling is within the existing footprint of the existing building on the site and

will not result in any unreasonable impacts on the existing vegetation, waterways, riparian land and the topography.

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

Comment:

The proposed development will increase housing diversity with an increased variety of dwelling sizes on the subject site. The additional dwelling will achieve a good level of internal amenity. The proposal also includes a ground floor courtyard to unit two and a balcony to unit four. The proposal will enhance the amenity of the existing dwellings on the site.

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

Comment:

The proposed addition is setback from the streetscape and will maintain the existing street frontage of the existing building. The proposed addition is of a modern style and will provide a clear transition from old to new. The proposal is an appropriate response to development on site and will not result in any unreasonable impacts on the character of the locality or the streetscape.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposed increase in density will maximise the use of the existing infrastructure within the area.

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)

Description of Non-compliance

The Manly DCP 2013 requires a maximum wall height of 9.1m within this area, for this slope. The proposal includes a wall height of 9m to 10.2m.

Merit Consideration

The Manly DCP 2013 does not contain objectives relating to wall height. Instead it refers to the objectives of CLasue 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. An assessment of the relevant objectives has been conducted below:

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

Comment:

The streetscape of the area is dominated by two and three storey residential flat buildings. The proposal is consistent with this building form and is consistent with the predominant building height of the locality. The Manly LEP 2013 sets a building height of 11m within the area. The proposal complies with this building height. The streetscape of the locality includes a mix of modern and traditional tiled pitched roof forms. The proposed roof form will not result in any unreasonable impacts on the streetscape of the locality.

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

Comment:

The proposal is consistent with the existing development within the streetscape and will not result in an unreasonable bulk and scale within the locality.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*
- (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 proposal will not result in any unreasonable disruption of views.

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

Comment:

Not applicable.

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

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

Description of non-compliance

The Manly DCP 2013 requires buildings to be setback from the side boundaries the distance equal to 1/3 of the wall height. The proposed third storey addition does not comply with this requirement by 41%-66%. The outbuilding is built to the southern boundary and is also not compliant with this control. The Manly DCP 2013 also requires windows to be setback 3m from the side boundaries. The proposal includes windows within 1m of the side boundary.

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 addition is setback consistent with the prevailing front building line of the neighbouring

properties. The proposal is designed to enhance the existing streetscape and the spatial proportion of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is considered to ensure and enhance local amenity for the following reasons:

- The proposal has been assessed under clause 3.4.2 Privacy and Security of the Manly DCP 2013. The assessment found the proposal to maintain a reasonable level of privacy within the locality. The outlook of the addition is focused to the east and west with the northern facing windows being either screened or highlight. The outbuilding does not include any windows facing the side boundaries and will not result in unreasonable privacy impacts within the locality.
- The proposal has been assessed under clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. The assessment found the proposal to maintain equitable access to light, sunshine and air movement within the locality. The outbuilding is a maximum of 2.5m in height and 2.8m in depth. This building will not result in any unreasonable overshadowing within the locality.
- The proposal will maintain the existing building setbacks and will maintain the pattern of spaces within the locality.
- The proposal will not impact the traffic conditions of the locality.

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

Comment:

The proposal appropriately responds to the streetscape of the locality and will maintain the amenity of the neighbouring properties. The proposed flexibility is satisfactory in this circumstance.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed landscaping will enhance the natural features of the site. The addition is located over the

existing building and the outbuilding will replace the existing outbuilding. The proposal will not result in a reduction of landscaping on the site.

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

Comment:

Not applicable

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The Manly DCP 2013 requires 50% of the site area to be provided as Total Open Space. The proposal does not comply with this control and requires an 11.4% variation.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal includes the removal of hard concrete surfaces and landscaping of the site with lawns and trees. The proposal will enhance the landscape features on the site. In particular the proposal includes the planting of an endemic tree to meet the requirements of the Manly DCP 2013. The proposal does not include the removal of any significant vegetation or landscape features.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal provides 74.8% of the total open space as landscaped areas. The proposal maximises landscaped areas on the site. The development includes the provision of one endemic tree in accordance with the Manly DCP 2013 and does not include the removal of any significant vegetation or bushland.

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

Comment:

The proposal will enhance the amenity of the site, streetscape and surrounding area.

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

Comment:

The proposed landscaped areas will maximise water infiltration on the site and minimise stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal will not result in the spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal will enhance the wildlife habitat on the site through the provision of native vegetation.

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.

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

Description of non-compliance

The Manly DCP 2013 requires 8 parking spaces to be provided on the site for this development. The proposal does not include any on-site parking. The proposed development will generate an additional requirement of 1.45 parking spaces to be provided. The existing development on the site requires 6 parking spaces to be provided.

Merit consideration:

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

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

Comment:

The proposal is for alterations and additions to the existing building. The existing built form of the development does not allow for the provision of carparking on this site. The subject site has good access to public transport being located within close proximity to the Manly Wharf and the main bus terminals of Manly. The location of the proposed development will also ensure that residents have access to required services and community facilities. Furthermore the Traffic and Parking Impact Report, prepared by ML Traffic Engineers and dated April 2018 demonstrates that the increased demand generated by this proposal will not result in any unreasonable impacts on the traffic or parking within the locality.

The proposed parking arrangements are acceptable in this circumstance given the type of development and the locality.

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

Comment:

As discussed above, the subject site has good access to public transport, services and community facilities. The proposal was also accompanied by a traffic report that analysed the development impacts on the traffic and availability of parking within the locality. The report found the proposal would not result in any unreasonable impacts within the locality. An exception to the parking requirements is satisfactory in this circumstance.

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

Comment:

Not applicable. The development does not include any driveways or parking.

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

Comment:

Not applicable.

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

Comment:

The proposal does not include the provision of any footpath crossings as no parking facilities are proposed to be provided.

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

Comment:

The pedestrian access to the site has been provided with landscaping to provide screening and limit the amount of impervious surfaces.

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

Comment:

The proposal is considered to be within an area that is well serviced by public transport. The proposal will encourage the use of public transport and walking/cycling.

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution,*
- or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposed development is likely to increase the demand for public amenities and public services within the area. Accordingly, suitable conditions have been included within the recommendation requiring payment of a section 94 contribution of \$20,000 for the addition of one dwelling in line with Manly Section 94 Contributions Plan.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1421 for Alterations and Additions to the existing building to create an additional unit and strata subdivision on land at Lot 1 DP 126389, 5 Eustace Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 - Demolition - Rev A	29 November 2018	Design Associates
DA03 - Proposed Plans - RevC	November 2018	Design Associates
DA04 - Proposed Elevations - Rev B	29 November 2018	Design Associates
DA06 Out-Buildings - Rev A	November 2018	Design Associates
DA07 Adaptable Housing - Rev A	November 2018	Design Associates
150603 - DSP - Strata Plan Form 2 - sheets 1 to 4	7 November 2018	Ivan Victor Sterligov

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
5 Eustace Street Manly - Finishes	N.D.	Design Associates

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DAL01 Landscape Plan - Rev A	20 July 2018	Fiona Yeates Consulting Pty Ltd

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

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

2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

3. **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) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1

per 20 persons.

- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) 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.
- (k) 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 2008
 - (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. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

5. Development Contribution - Residential

A contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of alterations and additions to the existing residential flat building and strata subdivision is \$20,000, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

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

6. Stormwater Disposal

Engineering Plans certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved

areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Eustace Street.

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

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

7. Compliance with standards (Demolition):

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

8. Amendments to Approved Plans

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

- The landscape plan DAL01 Landscape Plan - Rev A, dated 20 July 2018 prepared by Fiona Yeates Consulting Pty Ltd is to be amended to reflect the outbuilding shown in DA06 - Out-Buildings - Rev A, November 2018 and prepared by Design Associates
- The outbuilding is to be constructed entirely within the property boundaries of the subject site.
- The plan DA03 - Proposed Plans - Rev C, dated November 2018 and prepared by Design Associates is to be amended to be consistent with DA07 - Adaptable Housing - Rev A, dated November 2018 and prepared by Design Associates.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. Public Liability Insurance - Works on Public Land

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Road Reserve**

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

Reason: Public Safety.

11. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

12. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

13. **Landscape works**

a) Landscaping is to be implemented in accordance with the Landscape Plan DA L01, prepared by Fiona Yeates Consulting, revision A,

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the landscape plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

14. **Landscape maintenance**

All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme and be generally in accordance with the Landscape Plan.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

15. **Stormwater Disposal**

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

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

16. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

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

17. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: preservation of environmental amenity.

18. **Ongoing waste management**

The applicant must contact customer to advise of the additional dwelling following occupation to ensure the development have sufficient bins for the ongoing waste management of the property.

Reason: To ensure each unit has a waste service provided by Council