

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2232
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 1 DP 329155, 154 Sydney Road FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a mixed use building.
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre OLDManly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Nigel John Rose Philip Alan Rose
Applicant:	Costello Graham Design

Application Lodged:	05/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	12/01/2023 to 27/01/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 45.9% 4.4 Floor space ratio: 45.2%
Recommendation:	Approval

Estimated Cost of Works:	\$ 640,660.83
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a mixed use building. The works comprise internal alterations to the residential units, new internal staircase, upgrade roof terraces, new roofing and guttering, stormwater works, subfloor works and fire safety and building upgrades.

The building has four (4) retail premises located on level 1 and 2 (street level) and four residential (4) units. An internal courtyard is located on the northeastern portion of the subject site with a right of way located adjacent to the northern portion of the building and the northern side boundary which allows

right of way to the back of adjoining building at 150 Sydney Road. The subject building is known as the 'Rose Building' and is identified as item of local heritage significance under the Manly Local Environmental Plan 2013 (MLEP 2013).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) a variation of greater than 10% to Clause 4.3 Height of Buildings and Clause 4.4 Floor space ratio of the MLEP 2013. The existing shop top housing building currently breaches the height limit and floor space ratio significantly, with the existing breach 44.7% (3.85 metres) and the proposed breach is only slightly increased to a height of 12.4 metres (45.9%). Additionally the existing floor space also exceeds the relevant control and is 523.5m² (1.46:1) and the proposed FSR is 522.6m² (1.46:1), which is a 0.9m² decrease in Gross Floor Area. The proposal also includes demolition works associated with a local heritage item.

Concerns raised in the objections predominantly relate to the right of way, location of the bin room, pest control and the building not been connected to the sewer.

Critical assessment issues included the location of the bin room, heritage and fire and building upgrades.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed alterations and additions (including internal and external modifications) to the existing mixed use building as follows:-

- Include works specifically located within Units 2 and 4 and also within common property areas.
- Internal works to Unit 3 involve the replacement of dilapidated floor wall and ceiling finishes along with the replacement of dilapidated kitchen wet area and joinery items.
- Subfloor storage areas including the common laundry finishes and fixtures will also be replaced and made good as required.
- Additional fire safety and building code compliance upgrades
- New internal staircase
- Upgrade of roof terraces including new waterproofing, finishes and glazed balustrades located inside the existing terrace parapet walls.
- A new retractable awning will be provided to terrace 2 to replace the existing awning.
- The existing roof sheeting and guttering will be replaced with new roofing and guttering.
- New retail bin store will be provide an on-sited (as currently these bins are currently located offsite at 156 Sydney Road - property also owned by subject)
- A combined OSD and RWT tanks is to be located under the new unit 4 deck.
- New widened path and no parking road line marking
- New roof to common stair 4

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act

1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone E1 Local Centre

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - Schedule 5 Environmental heritage

Manly Development Control Plan - 3.2 Heritage Considerations

Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Manly Development Control Plan - 4.2.8.1 Height

Manly Development Control Plan - 4.2.8.3 Landscaping

Manly Development Control Plan - 4.2.8.5 Carparking, Vehicular Access and Loading Controls

Manly Development Control Plan - 4.2.8.6 Hours of Operation

SITE DESCRIPTION

Property Description:	Lot 1 DP 329155 , 154 Sydney Road FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northeastern corner of Sydney Road and William Street.</p> <p>The site is irregular in shape with a frontage of 12.13 metres along Sydney Road and a frontage of 30.38 metres along William Street and a depth of 12.09 meters northern side boundary. The site has a surveyed area of 360m².</p> <p>The building is named the "Rose Building" being the surname of the original Butcher shop owners. The building is listed as item I-65 being a local item of heritage significance.</p> <p>The site is located within the E1 Local Centre zone and accommodates an existing four (4) storey mixed use building with four (4) residential dwellings, four (4) retail tenancies and ancillary facilities. The rear courtyard is generally grassed with scattered plantings. It is bounded by masonry walls from the neighbouring properties at 150 Sydney Road and 2 and 2B William Streets. To access the</p>

courtyard, there is an approximately 3m wide right of way providing access to the subject site and the residential components of 150 Sydney Road.

The site falls approximately 4 metres from Sydney Road down to the northern side boundary.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by shop top housing along the northern side of Sydney Road with a mixture of residential flat buildings, town houses and dwellings houses within the vicinity.

Map:



SITE HISTORY

DA414/93 - Video Cassette Library approved 10 December 1993

DA127/95 - Advertising Structure approved 10 July 1995

DA437/07 - Internal alterations and change of use from video store to a delicatessen with internal access to adjoining butcher shop approved 20 December 2007

DA437/07/1 - Section 96(1) Modification to Internal alterations and change of use from video store to a delicatessen with internal access to adjoining butcher shop approved 12 March 2008

DA397/09 - Change of use to a deli/cafe approved 29 April 2010

DA397/09 - Change of use to a deli/cafe - Section 96 (1) approved 3 June 2010

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Building Code of Australia (BCA) Assessment/Fire Audit Report, Heritage and Clause 4.6 Exceptions to development standards.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>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>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/01/2023 to 27/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Jasmine Fergus	Address Unknown
Mr Richard John Lacey	1 / 2 William Street FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- Changes to the right of way
- Bins room location
- Pest control
- Building is not connected to the sewer

The above issues are addressed as follows:

- Changes to the right of way

Concerned is raised agree to the changes suggested to the Right of Way to my building

Comment:

As depicted within the original submitted plans and the statement of environmental effects which were both later amended clearly indicate that the existing access and right of way are to be maintained during construction and ongoing.

A condition is recommended to ensure this outcome.

- Bins room location

Concern is about commercial bins being located under windows to my property. Especially as these will be bins full of meat that in the hot sun will smell.

The environmental impact is the reason these bins were put off premises previously as there was a lot of issues with the smell and a lot of surrounding resident complaints.

Comment:

The current bins are stored off site at 156 Sydney Road across the road (William Street) which is also owned by the current owners of this subject site (154 Sydney Road). The proposed location of the bin room is located the existing courtyard outside the right of way. The bin room will to full enclosed with roller door or similar with a floor waste and green roof.

Council's Waste Officer has reviewed and supported the proposal subject to recommended condition(s). It is considered reasonable that the bins for the subject site are located on the subject property and not off site. The current location of the bins across the road is not an acceptable outcome and raises concerns if the property at 156 Sydney Road were to be on sold and also adds a further risk to owners, tenants and employees who currently cross a road to dispose of waste and recycling.

- Pest control

The storage of food and waste created an environment where the Laneway became overrun by rats and flies that effected 5 blocks of our strata.

Comment:

The bins are to be positioned within an enclosed structure to act as physical barrier to pests and rodents, and have been endorsed by Council's Waste Officer.

- Building is not connected to the sewer

The block in question also is not connected to town sewerage.

Comment:

The objection above claims that the building is not connected to Sydney Wastewater System. Conditions have been recommended by Council for the wastewater from the proposed bin room

to be directly connected to Sydney Wastewater System and a Sydney Water "Tap In" which will ensure compliance with Sydney Water requirements.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to Conditions</i></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Development Engineering)	<p><i>Supported, subject to Conditions</i></p> <p>The submitted stormwater plan including OSD is acceptable.</p> <p>The plans show proposed line marking and sign posting which is not supported. Planning to provide a suitable condition to ensure these works are deleted from the plans.</p> <p>Provided the above condition is provided by Planning, Development Engineering support the proposal, subject to conditions as recommended.</p>
Strategic and Place Planning (Heritage Officer)	<p><i>Supported, subject to Conditions</i></p> <p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as the subject site is a heritage item:</p> <p>Item I65 - 2 commercial buildings, including the "Rose Building" - 152-154 Sydney Road, Fairlight</p> <p>Details of heritage items affected</p> <p>Details of the item as contained within the Northern Beaches Inventory is as follows:</p> <p>Item I65 - 2 commercial buildings, including the "Rose Building"</p> <p><u>Statement of Significance</u></p> <p>An unusually intact representative example of Inter War Spanish Mission style commercial development.</p> <p><u>Physical Description</u></p>

Internal Referral Body	Comments		
	<p>Inter War Spanish Mission style part 3, part 4 storey stuccoed brick building with shops to ground floor. Significant elements include use of tiles on the cornice, 2 storey terracotta shingled oriel window to William Street elevation; curvilinear parapet; scrolled crest and other plaster decoration to first floor; shop fronts (generally intact including leadlight); Spanish Mission style joinery to side entrance. There is a mosaic tiled floor and completely intact shopfront to No. 152 Sydney Road.</p> <p>Some alterations to shopfronts and aluminium framed windows added to rear.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to the existing heritage listed, Spanish Mission style, building from the Inter-War era, including changes to the existing units 2 and 4; fire safety & building code compliance; modifications to the rear courtyard and a new common stair to the terrace. The proposed works do not include any works to the existing units 1 & 3.</p> <p>Although, some alterations have been made to the shopfronts at the Sydney Road frontage and aluminium framed windows have been added to rear, the existing building is still considered to be an intact example of its era. Therefore, the restoration of the original windows to the side elevation, and retention or sympathetic restoration of the shopfronts is encouraged in the inventory.</p> <p>The proposed alterations & additions to the existing mixed use building include works to common areas and to Units 2 & 4 and it is noted, that no works are proposed for the existing retail shops, or units 1 & 3 Units 1 & 3, requiring development approval. The proposed works to Unit 2 involve changes to the internal layout - including the removal of existing walls and the construction a new staircase & laundry, removal of the existing fire place and the replacement of external windows with new upgraded windows within the same openings. The internal changes to Unit 2 include</p>		

Internal Referral Body	Comments
	<p>removal of existing walls and construction of new walls for a new internal staircase & laundry, therefore, a photographic archival recording is required. The proposed works to unit 4 are only visible from within the rear courtyard and therefore are considered to not have any significant impact upon the heritage item.</p> <p>The proposal retains the main facade to Sydney Road, with minor improvements to the secondary facade at William Street. The Inventory recommendation is the restoration of original windows to side - William Street elevation, and retention/sympathetic restoration of shopfronts. Given the proposed works do not involve any works to Unit 1 at Level 2, the proposed changes to level 3 window - WX04 is considered acceptable.</p> <p>The height of the new stepped roof over the existing Stair 4 must be reduced to the minimum required dimension to minimise the visibility from the public domain.</p> <p>The proposed 1.4m high new frameless glass balustrades - mounted inside of the existing parapet to increase the barrier height, should be reduced to the minimum required height in accordance with the BCA and AS regulations, in order to minimise the visibility.</p> <p>Heritage also require a schedule of the proposed materials, colours and finishes of the proposed works and details of the replacement of the existing awnings on the William Street facade.</p> <p>Revised comments - 15 May 2023</p> <p>Further information and amended drawings have been received on 20 April 2023. The applicant has only provided further comments responding the heritage concerns. The amended drawings do not respond to the heritage concerns raised in the previous comments, but involve an extension to the work area, to include the existing Units 1 and 3 in the application. The building is in a highly prominent location - on the corner of William Street and Sydney Road, Fairlight - as an intact example of Inter-War Spanish Mission style. The proposal must retain the existing integrity and the streetscape qualities of the building and comply with the objectives and requirements of Manly DCP 2013 - 3.2 Heritage Considerations. "External colour schemes are to be in keeping with the original character of the heritage building based where possible on physical or documentary evidence in keeping with the architectural style and period of the building."</p> <p>Heritage require amendments as follows:</p> <ul style="list-style-type: none"> • The height of the proposed 1.4m high new frameless glass balustrades - mounted inside of the existing parapet should be reduced to be 1.2m maximum in order to minimise the

Internal Referral Body	Comments
	<p>visibility.</p> <ul style="list-style-type: none"> The proposed replacement of the existing awning to the main entry at the William Street facade is preferably to match existing as the existing form is known as part of the building in the last 60-70 years and also differentiates the residential entry. The proposed materials, colours and finishes must be revised as the proposed grey tones are not appropriate for the style of the heritage listed building. The new additions could be in grey tones but in complementary tones of grey. The height of the proposed curved and stepped roof to stair 4 is required to be changed to a pitched roof form or alternatively be reduced by minimum 200mm including the landing. <p>Therefore, no objections are raised on heritage grounds, subject to five conditions.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <p>Further Comments</p>
Waste Officer	<i>Supported, subject to Conditions</i>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 65 - Design Quality of Residential Apartment Development

In accordance with the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*, the application of the policy is outlined under Clause 4 Application of Policy:

- (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), and*
 - (c) the building concerned contains at least 4 or more dwellings.*
- (2) *If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.*
- (3) *To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.*
- (4) *Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house, co-living housing or a serviced apartment to which that plan applies.*

Comment

The proposal relates to the alterations and additions to an existing shop top housing development that is 4 storeys and contains 4 units, however it is considered that the development is not a substantial redevelopment or the substantial refurbishment of an existing building. Therefore, in this instance the application of the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* is not applicable.

DESIGN REVIEW PANEL

Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Given the minor extent of the works, no referral to DSAP was necessary.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A479481 and A479477 dated 9 December 2022).

A condition has been included in the recommendation of this report requiring compliance with the

commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.4m*	45.9% (3.9m)	No
Floor Space Ratio	FSR: 1.0:1 (360m ²)	FSR: 1.46:1** (522.6m ²)	45.2% (162.6m ²)	No

* Existing height of building is 12.3m (44.7% (3.8m))

** Existing FSR is 523.5m² (1.46:1) and proposed FSR is 522.6m² (1.46:1) a 0.9m² decrease in GFA.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
Part 5 Miscellaneous provisions	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
Part 6 Additional local provisions	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone E1 Local Centre

The underlying objectives of the E1 Local Centre zone:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The proposal maintains the four (4) retail premises which provides retail and business services to the community. Additionally the proposal will maintain the four (4) residential units which will provide accommodation for local residents.

- To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The proposal will retain the village-like atmosphere for the Fairlight community and ensure safety and comfort for pedestrians.

- To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The existing land uses are to be retained by the proposal, and this will ensure that the amenity of nearby residential land uses will be maintained.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

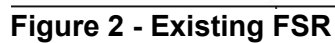
4.6 Exceptions to development standards

Description of non-compliances:

Development standard:	Floor space ratio
Requirement:	1:1 (360m ²)
Proposed:	1.46:1 (522.6m ²)
Percentage variation to requirement:	45.2%

Manly Local Environment Plan – Clause 4.4 – Floor Space Ratio				
Development Control	LEP Requirements	Existing	Proposed	Comments
Floor Space Ratio MAP FSR_003	Zone N – 1.0:1 site area = 360.0 m ² x 1.0 = 360.0m ²	523.5m ² = 1.46:1	522.6m ² = 1.46:1	* Areas are Approximate
GFA – Gross Floor Area m ² Retail + Commercial	GFA – Level 1	44.2m ²	50.7m ²	*
	GFA – Level 2	224.5m ²	224.8m ²	*
	GFA – Level 3	206.3m ²	206.3m ²	*
	GFA – Level 4	48.5m ²	40.8m ²	*
	Total GFA	523.5m ²	522.6m ²	*
	% Variation from LEP Standard	146%	146%	*

Figure 1 - Calculations supplied by the applicant



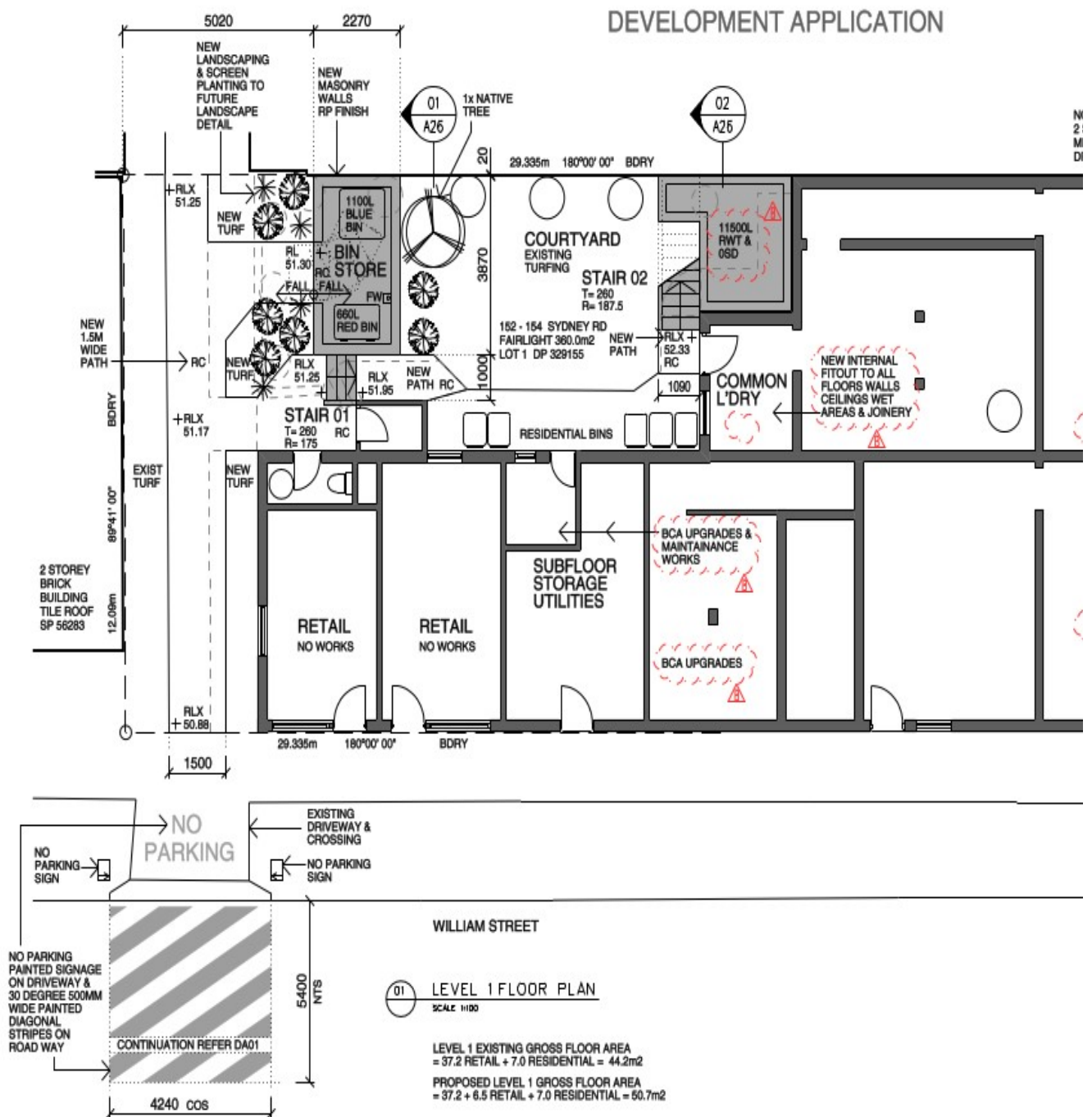


Figure 3 - Proposed Level 1 Floor Plan Figure 3 - (Increase by 6.5m² for bin storage)

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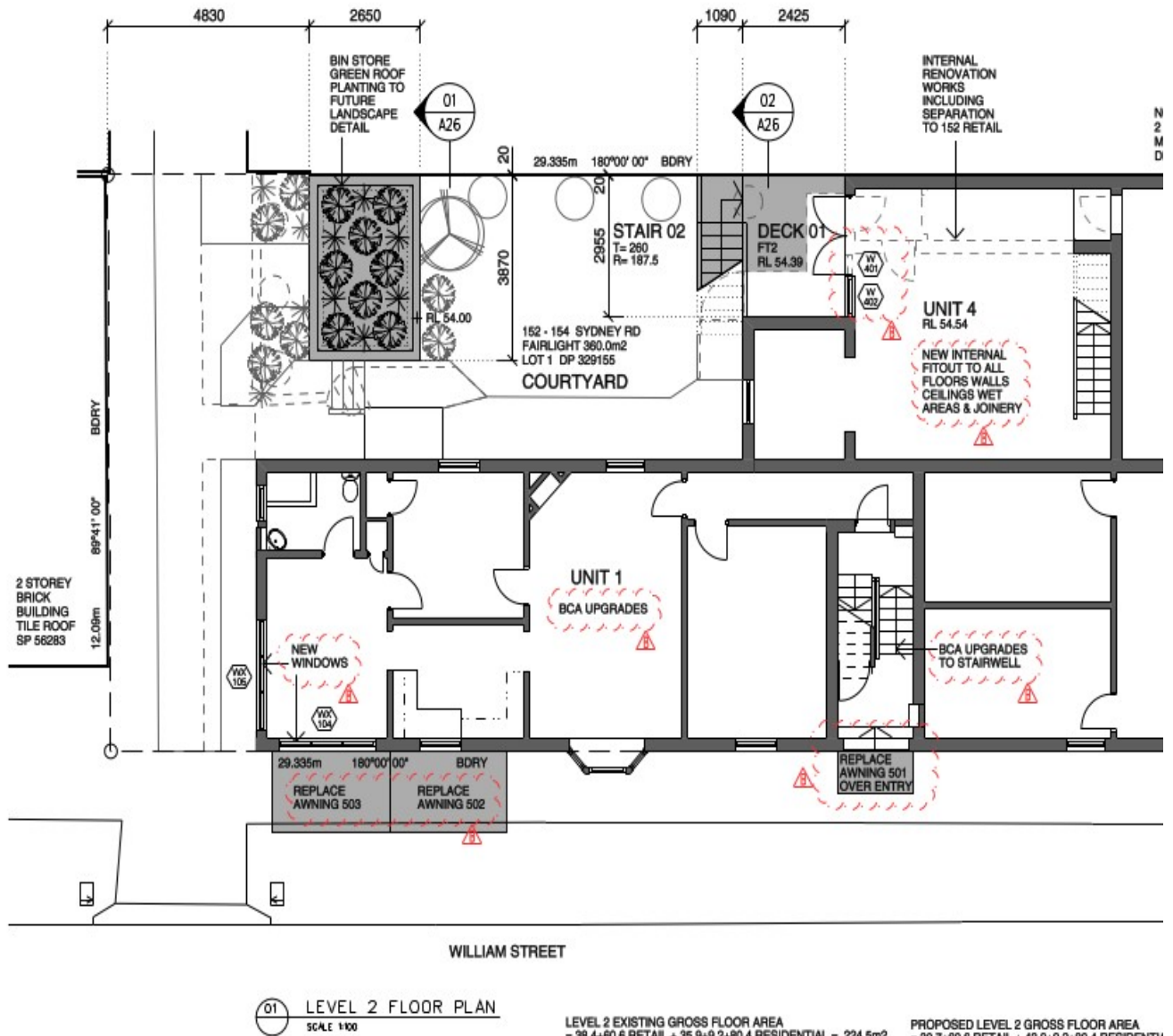


Figure 4 - Proposed Level 2 Floor Plan Figure Figure 4 - (Increase by 0.3m² with minor alterations)

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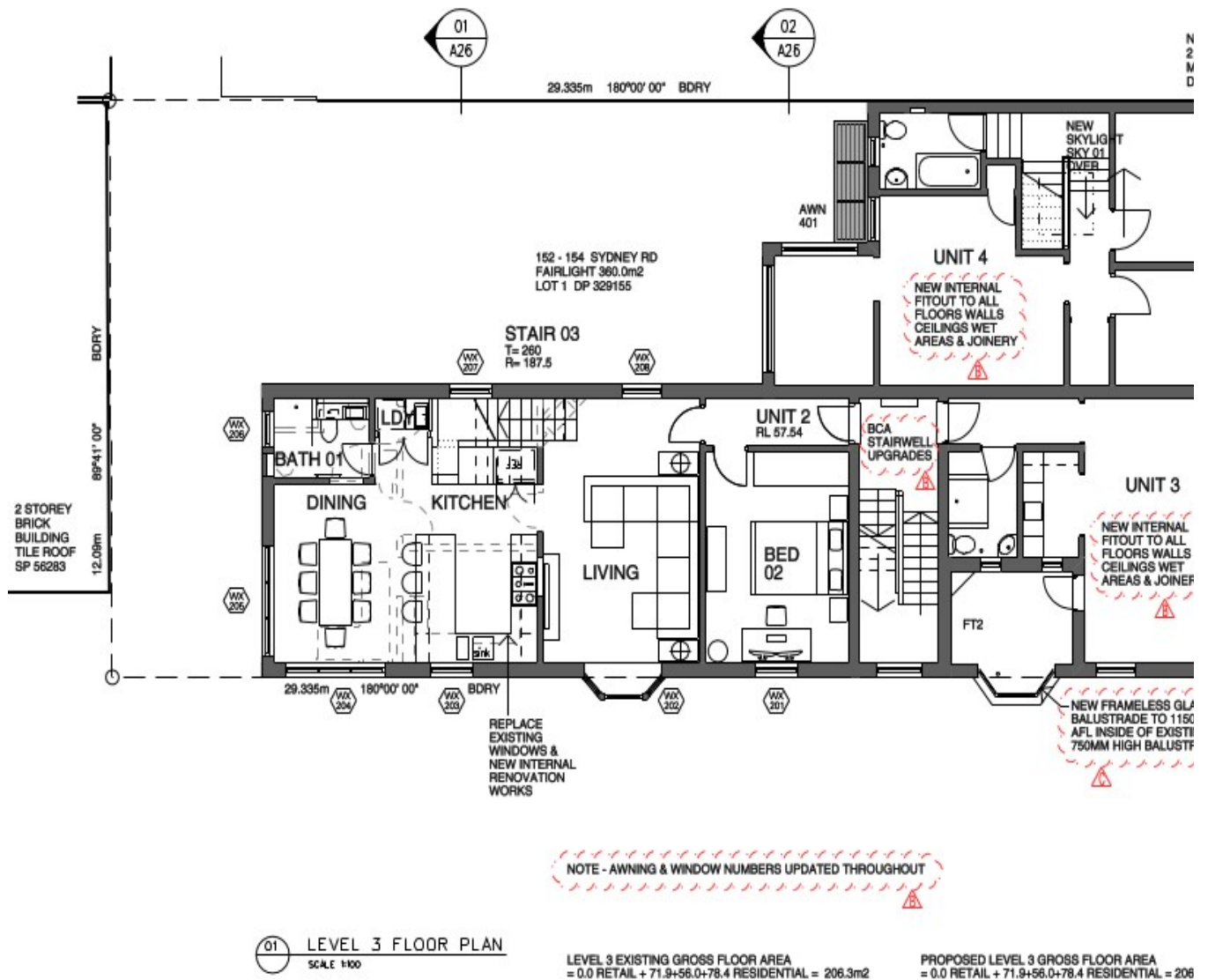


Figure 5 - Proposed Level 3 Floor Plan (Unchanged)

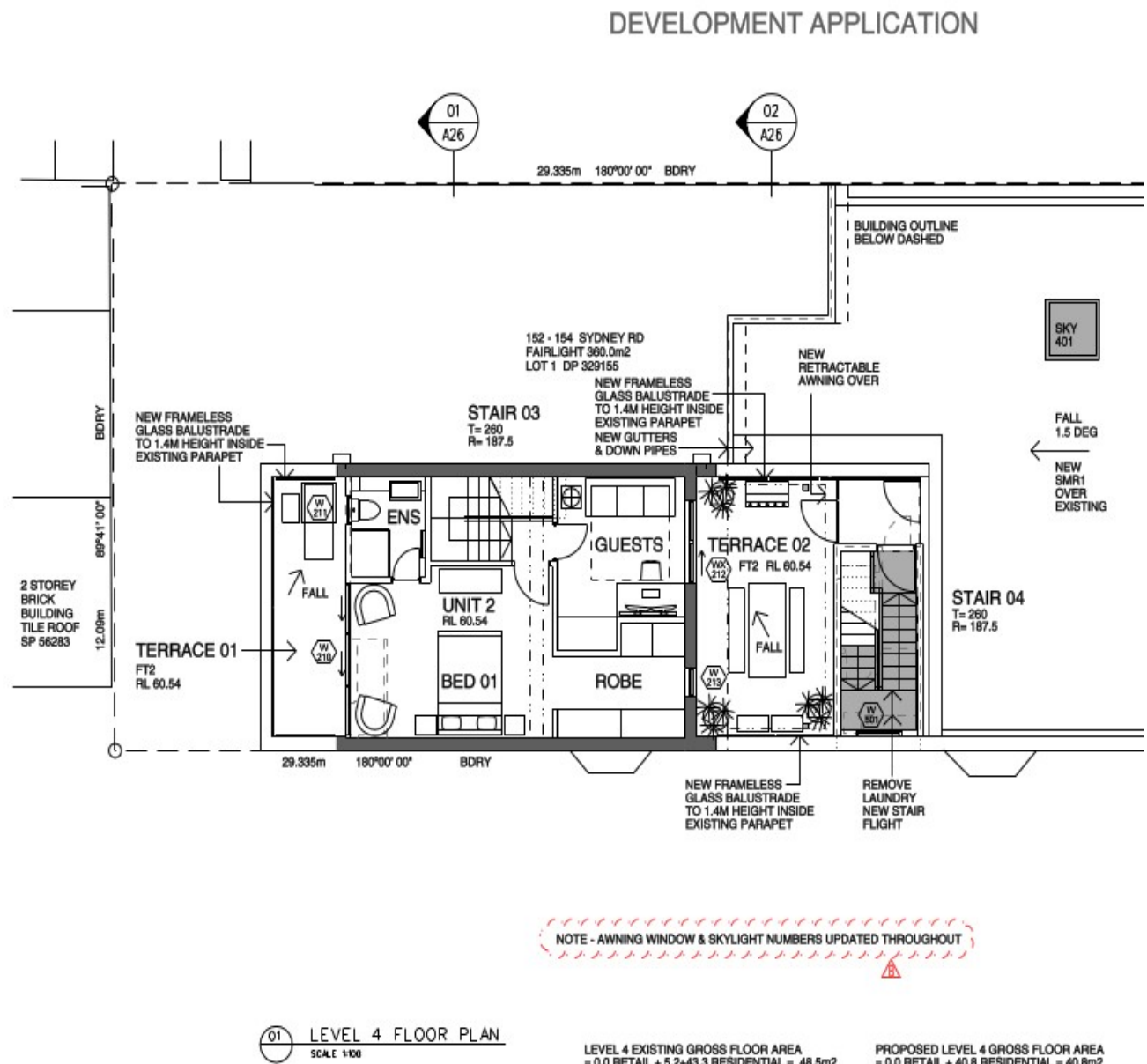


Figure 6 - Proposed Level 4 Floor Plan (Reduction by 7.7m²)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

circumstances.

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"The existing retail form is built to the site boundaries to reinforce the urban pattern of the local centre and the proposed development shall continue the existing pattern. The existing 4 storey building is able to provide both retail and residential uses for the local centre and provides a positive scale to the neighbouring land uses. The proposed development will retain the existing established built form.

As strict numerical compliance with FSR floor space ratio LEP clause 4.4 cannot be achieved for the existing heritage listed building or the proposed development without unreasonable impact to the existing Local Centre, strict compliance with Floor Space Ratio clause 4.4 is considered unreasonable & unnecessary in this particular case. Northern Beaches Council however, as the consent authority can exercise it's degree of flexibility under clause 4.6 to achieve a better outcome & grant consent to the development as it has been demonstrated that the development proposals comply with both the objectives for the Land use zone E1 Local Centres and the objectives of clause 4.4 for Floor space ratio.

The proposed works will result in a development that is "substantially the same" and the environmental impacts of the proposed development are minimal. The proposed development will be in the public interest because it has been demonstrated that the proposed development is consistent with both the

objectives of standard and the objectives of land use zone and there are sufficient environmental & heritage grounds to justify contravening the development standard to achieve a better outcome."

It is agreed that the proposed variation to Clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013 remains generally consistent with the existing breach. The Clause 4.6 written request has addressed the zone objectives and objectives of the development standard. It is agreed that compliance with Clause 4.4 Floor Space Ratio of Manly Local Environmental Plan 2013 is unreasonable and unnecessary in this circumstance and the applicant has demonstrated sufficient environmental planning grounds to justify the contravention of the standard.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the E1 Local Centre. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed development results in a development that is substantially the same and it is considered that the bulk and scale of the development is consistent with the existing and desired streetscape character.

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 maximum height of building is considered generally consistent with the existing height of the building and as a result the proposal will not obscure any important landscape and/or townscape features.

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

Comment:

The proposal will enhance the existing character of the area, and provide an appropriate visual relationship between the new development and the existing character and landscape of the area.

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

Comment:

The proposal will not result in unreasonable environmental impacts to the use or enjoyment of adjoining land the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The proposal maintains the four (4) retail premises to provide for the development, expansion, and diversity of business activities within the Fairlight locality.

Zone objectives

The underlying objectives of the E1 Local Centre zone:

- ***To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.***

Comment:

The proposal maintains the four (4) retail premises to serve the needs of the community, and maintains the four (4) residential units to accommodate local residents.

- ***To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.***

Comment:

The proposal will ensure the Fairlight Centre retains a village-like atmosphere that promotes safety and comfort for pedestrians.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.***

Comment:

The land uses are retained as a result of the proposal, and as such the amenity of nearby residential land uses will be maintained.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.4m
Percentage variation to requirement:	45.9%

The proposed variation to Clause 4.3 Height of Buildings development standard is detailed in Figure 1. The Section Plan details the maximum height to be 12.4m.

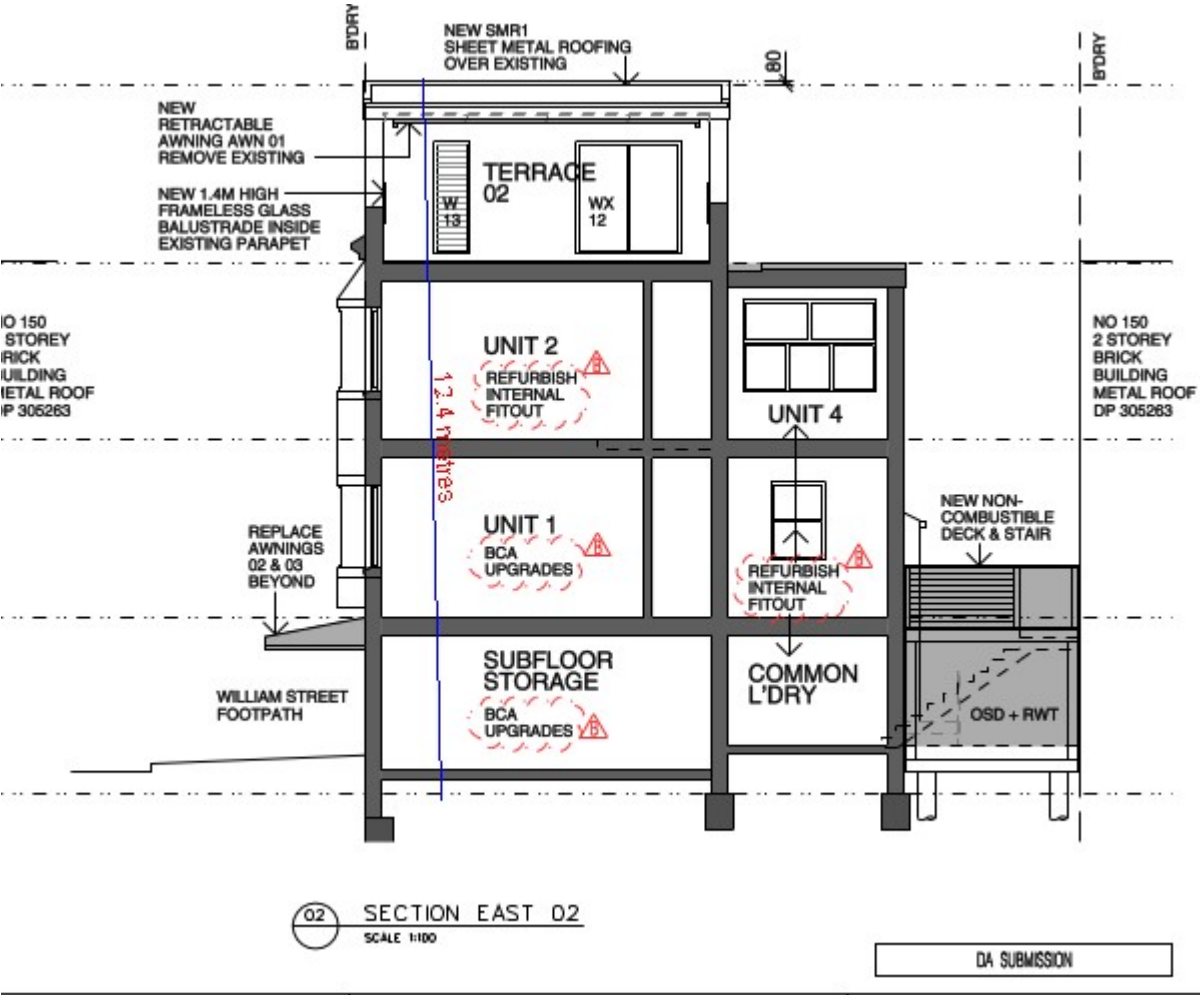


Figure 7. Height of buildings variation

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

justify the contravention of the development standard by demonstrating:

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

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated,*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the environmental planning instrument,*
- (b) the concurrence of the Secretary has been obtained.*

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request,

seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental

and social considerations in decision-making about environmental planning and assessment,

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

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

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"The existing retail form is built to the site boundaries to reinforce the urban pattern of the local centre and the proposed development shall continue the existing pattern. The existing 4 storey building is able to provide both retail and residential uses for the local centre and provides a positive scale to the neighbouring land uses. The proposed development will retain the existing established built form.

As strict numerical compliance with HOB Height of Buildings LEP clause 4.3 cannot be achieved for the existing heritage listed building or the proposed development without unreasonable impact to the existing Local Centre, strict compliance with Height of Buildings LEP clause 4.3 is considered unreasonable & unnecessary in this particular case. Northern Beaches Council however, as the consent authority can exercise its degree of flexibility under clause 4.6 to achieve a better outcome & grant consent to the development as it has been demonstrated that the development proposals comply with both the objectives for the Land use zone E1 Local Centres and the objectives of clause 4.3 for Height of Buildings.

The proposed works will result in a development that is "substantially the same" and the environmental impacts of the proposed development are minimal. The proposed development will be in the public interest because it has been demonstrated that the proposed development is consistent with both the objectives of standard and the objectives of land use zone and there are sufficient environmental & heritage grounds to justify contravening the development standard to achieve a better outcome."

It is agreed that the applicant's written request has demonstrated that compliance with the height of buildings is unreasonable and unnecessary in the circumstances of this case. The existing maximum height of buildings remains unchanged, and the breach to the development standard is a technicality, as the overall height of the building does not increase.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E1 Local Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed built form of the mixed use building remains generally consistent with existing building, with the internal alterations and external. As such, the building height and roof form remains generally the same and will continue to be consistent with desired future streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the building remains generally consistent with the existing built form and is considered consistent with adjoining and surrounding development.

c) to minimise disruption to the following:

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

Comment:

The proposal will not result in any disruption to views to and from residential development, public spaces, or between public spaces.

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

Comment:

The proposal will maintain adequate sunlight access to private open spaces, and to habitable rooms of adjacent dwellings/buildings.

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:

The proposed maximum height of the residential flat building remains generally consistent with the existing building height, and as such will not impact upon surrounding vegetation, or surrounding land uses.

Zone objectives

The underlying objectives of the E1 Local Centre zone:

To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

Comment:

The proposal maintains the four (4) retail premises to serve the needs of the community, and maintains the four (4) residential units to accommodate local residents.

To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.

Comment:

The proposal will ensure the Fairlight Centre retains a village-like atmosphere that promotes safety and comfort for pedestrians.

To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.

Comment:

The land uses are retained as a result of the proposal, and as such the amenity of nearby residential land uses will be maintained.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variations to the Height of Buildings and Floor Space Ratio Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

The building is identified as an item of local heritage significance (I65 - 'Rose Building') and a detailed assessment has been completed by Council's Heritage Officer who has supported the proposed development subject to recommended conditions. Please refer to the section within this assessment report 'Internal Referrals - Strategic and Place Planning (Heritage Officer).

Schedule 5 Environmental heritage

The site (building) at Nos. 152 & 154 Sydney Road is known as the "Rose Building" is identified as local heritage significance (Item No. I65).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 360m²	Requirement	Proposed	% Variation*	Complies
4.2.8.1 Height	8.5m	unaltered	-	N/A
4.2.8.2 Setbacks	Primary Frontage (South):Established Building	Primary Frontage: Nil	- -	Yes Yes

	Line Secondary Frontage (West): Established Building Line Side Setback (East): Nil Side Setback (North): 1/3 wall height	Secondary Frontage: Nil Side Setback (East): unaltered Side Setback (North): unaltered	- -	N/A N/A
4.2.8.3 Landscaping	Private Open Space: 20sqm per dwelling (80m ²)	Unit 1: 0m ² Unit 2: 28m ² Unit 3: 4.8m ² Unit 4: 6.9m ² Total: 39.7m ²	50.4% (40.3m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	Yes	Yes
4.2.8.3 Landscaping	No	Yes
4.2.8.4 Residential Density	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4 Awnings	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Part 5	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

The building is identified within the MLEP 2013 as Item I65 - 2 commercial buildings, including the “Rose Building” - 152–154 Sydney Road, Fairlight and is of local heritage significance.

The proposal seeks consent for alterations and additions including changes to the existing units; fire safety & building code compliance; modifications to the rear courtyard including a bin room and a new common stair to the terrace.

A review of this proposal has been completed by Council's Heritage Officer and is supported subject to recommended conditions.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

Setback requirements specific to the E1 Local Centre zone are considered under 4.2.8.2 of the Manly DCP and considered to compliant with the applicable controls.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Description of non-compliance

The proposal provides Nil parking spaces (existing situation).

Under Schedule 3 of Manly Development Control Plan 2013, the requirements for Shop Top Housing and Retail Premises are as follows:

Shop Top Housing

In other LEP Business Zoned land (i.e. other than Manly Town Centre)

- *1 resident parking space for each dwelling (irrespective of number of bedrooms),*
- *0.16 visitor parking space for each dwelling.*

Retail Premises

- *1 parking space for every 40sqm of gross floor area*

The proposal includes 4 residential units in the Shop Top Housing Development. The retail premises amount to a total gross floor area of 296m². Therefore the requirements for car parking are as follows:

- 4 resident parking spaces, and
- $4 \times 0.16 = 0.64$ (rounded to 1) visitor parking spaces
- $135\text{sqm}/40\text{sqm} = 3.4$ (rounded to 4) retail parking spaces

Therefore a total of 9 parking spaces are required. The proposal therefore presents a shortfall of 9 parking spaces, however it is noted there is 9 parking spaces adjoining the site on the eastern side of William Street (1 hour sign posted 9am - 5pm everyday) and 30 minutes parking adjoining the site on Sydney Road (northern side).

Notwithstanding, an assessment against the objectives of the control has been undertaken, and it is considered the proposal meets the objectives in this regard.

Merit consideration

With regard to the consideration of a variation, the proposal is considered against the underlying objectives of the control as follows:

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Comment

Despite the shortfall in parking, it is considered that the proposal will not adversely impact upon surrounding retail premises within the local town centre. The site is located in close proximity to a number of on street spaces and is well serviced by local public transport services. In addition, there is no additional space within the site to provide off-street parking to serve the building. It is noted that the previous land uses did not have any off-street parking.

Conclusion

Based on the above assessment, it is considered that the proposal satisfies the applicable objectives of this control and is worthy of support, noting that the density of the development is not altered.

4.2.8.1 Height

Please refer to Clause 4.6 of the MLEP 2013.

4.2.8.3 Landscaping

Description of non-compliance

The Manly DCP 2013 requires, a minimum area of Private Open Space is 20sqm for each dwelling within a shop top housing development with a minimum dimension of 3m and designed to receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.

The proposal provides no communal open space and provides the following open spaces to each existing unit as follows:-

- Unit 1 has 0m²;
- Unit 2 has 28m²;
- Unit 3 has 4.8m²; and
- Unit 4 has 6.9m².

Therefore, in this instance a variation to the requirements is proposed.

Merit consideration

Objective 1) To accommodate a range of small scale development permitted by the LEP within established residential neighbourhoods where such development is compatible with the amenity of the surrounding area.

Comment:

The proposal is the alterations and additions of a shop top housing development, and as such is considered to be compatible with the amenity of the surrounding area.

Objective 2) To provide side and rear setbacks which ensure the building height and distance of the building from its boundaries at various storeys, maintain the amenity of neighbouring residential sites and contributes to the amenity of the building and surrounds through landscape design.

Comment:

The proposal does not alter the existing side setbacks, and as the site is a corner allotment there is no rear setback in this specific site. Notwithstanding, the portion of the site that adjoins the neighbouring residential site (to the north and east) retains the existing setbacks, and as such the amenity to the site to the east and west is considered to be unaltered.

4.2.8.5 Carparking, Vehicular Access and Loading Controls

Please see discuss under Clause 4.2.4 Carparking, Vehicular Access and Loading Controls for all LEP Business Zones.

4.2.8.6 Hours of Operation

This proposal does not seek to alter the approved hours of operations of the retail premises within the

building.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$6,407 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$640,661.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a mixed use building has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to variations to the Principal Development Standards of the MLEP 2013 namely Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio.

The concerns raised in the objections have been addressed and resolved by justification in regards to compliance with the objectives of the control, and recommendation of appropriate conditions satisfying requirements of the controls.

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

Furthermore, issues include Heritage (Schedule 5 Environmental Heritage of MLEP2013), Car Parking (Clause 4.2.4 and Clause 4.2.8.5 of Manly Development Control Plan 2013) and Landscaping (Clause 4.2.8.3 of MDCP 2013).

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 4.4 Floor Space Ratio development standards pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/2232 for Alterations and additions to a mixed use building. on land at Lot 1 DP 329155, 154 Sydney Road, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA00 (Rev A)	8 December 2022	Costello & Graham Design
DA05 (Rev A)	8 December 2022	Costello & Graham Design
DA10 (Rev B)	8 February 2023	Costello & Graham Design
DA11 (Rev B)	8 February 2023	Costello & Graham Design
DA12 (Rev C)	27 April 2023	Costello & Graham Design
DA13 (Rev B)	8 February 2023	Costello & Graham Design
DA14 (Rev A)	8 December 2022	Costello & Graham Design
DA20 (Rev D)	27 April 2023	Costello & Graham Design
DA21 (Rev C)	19 April 2023	Costello & Graham Design
DA22 (Rev C)	19 April 2023	Costello & Graham Design
DA23 (Rev B)	27 April 2023	Costello & Graham Design
DA25 (Rev B)	8 February 2023	Costello & Graham

		Design
DA25 (Rev B)	8 February 2023	Costello & Graham Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Building Code of Australia Inspection and Reporting Services	24 October 2022	All State Building Surveying
BASIX Certificate (A479481)	9 December 2022	Costello Graham Design
BASIX Certificate (A479477)	9 December 2022	Costello Graham Design

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan	
Drawing No/Title.	Submitted
Waste Management Plan	3 January 2023

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Received
Ausgrid	Ausgrid Referral Response	17 January 2023

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

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

3. **Prescribed Conditions**

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected

- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,406.61 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$640,660.83.

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

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

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

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

6. Security Bond

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

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

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

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

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

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

7. Traffic Management and Control

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and

the operation of the site during all phases of the construction process.

8. **Photographic Archival Record**

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

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

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

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

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

9. **Entry Awning**

The proposed replacement of the existing awning of the main entry at the William Street facade is required to match the existing awning.

Details demonstrating compliance are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To retain the historical integrity of the existing building.

10. **Amendments to the approved plans**

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

- The bin room is to be fitted with a vermin proof door(s).

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

Reason: To ensure development minimizes unreasonable impacts upon surrounding land.

11. **Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Building Code of Australia Audit Report prepared by All State Building Surveying, dated 24/10/2022, Report Ref No. 2023/000602 are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for

building occupant health and safety.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm-1/A and Storm-2/A, dated December 2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

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

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

13. **Glass balustrade**

The height of the proposed 1.4m high new frameless glass balustrades - mounted inside of the existing parapet on "Level 4" should be reduced to be maximum 1.2m higher than RL 60.54 in order to minimise the visibility.

Details demonstrating compliance are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To ensure that the visibility from the streets is minimised.

14. **External colours**

The proposed materials, colours and finishes must be revised as the proposed grey tones are not appropriate for the style and period of the heritage listed building. The new additions could be in grey tones but in complementary tones of grey. Details demonstrating compliance are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To ensure the integrity of the heritage building is retained.

15. **Stepped roof to Stair 4**

The height of the proposed curved and stepped roof to stair 4 is required to be changed to a pitched roof form or alternatively be reduced by minimum 200mm including the landing.

Details demonstrating compliance with this condition are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To ensure that the visibility from the streets is minimised.

16. **Compliance with Standards**

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

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

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

17. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

18. **Sydney Water "Tap In"**

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

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

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

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

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

19. **Remove of line marking on public road**

The proposed line marking on William Street is to be removed from the plans prior to the issue of any Construction Certificate.

Reason: Any line marking is to be approved by Council's Traffic Committee

20. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Road Reserve**

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

Reason: Public safety.

22. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in

accordance with the following requirements:

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

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

23. **Demolition Works - Asbestos**

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

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

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

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

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

24. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

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

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

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

26. **Traffic Control During Road Works**

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

Reason: Public Safety.

27. **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.

28. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

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

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

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

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

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

30. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

31. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement of the Environmental Planning and Assessment Regulation 2021.

32. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

33. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

34. Commercial Waste Collection Procedure

Commercial waste and recycling bins are not to be placed at the kerbside on William Street awaiting collection.

Waste collection arrangements must include a procedure whereby the collection contractor enters the property to retrieve the bins from the dedicated bin storage area and then returns to the bins to the dedicated bin storage area immediately after emptying.

Reason: To maintain public amenity in William Street.

35. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

36. **Right of Way**

The right of way is to be free of any obstructions and allow for clear footway entry to the subject site (154 Sydney Road) and 150 Sydney Road, Fairlight.

Reason: Access rights (DP329155 and DP305263)