

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1358
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<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot CP SP 7114, 22 Central Avenue MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to a mixed use building
<b>Zoning:</b>	Manly LEP2013 - Land zoned E1 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	The Owners Sp7114

<b>Application Lodged:</b>	19/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	27/10/2023 to 10/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 17.1%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 187,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing mixed-use building, focused on the loading zone. The proposal redesigns the existing loading bay area to create a more functional loading bay with the incorporation of storage units and a building managers office.

Specifically, the proposal involves the following elements:

#### Basement Level

- Nine (9) Individual storage units
- Building Managers Office - kitchenette
- Loading bay from Short Street

#### Ground Level

- Ramp up to ground level storage units and office
- Seventeen (17) Individual storage units
- New building managers office

#### External

- New roller shutter door to Short Street

### **AMENDED PLANS**

During assessment, Council raised concerns regarding flood planning with new structures proposed to be built below the flood planning level (FPL) of 5.70m AHD. To address this issue, the applicant proposes to install a new wall within the former loading bay driveway from Central Avenue with a height of 5.70m AHD. This removes the ability of the Central Avenue driveway to be used as a loading bay as a vehicle will not be able to park in that area.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will not alter the environmental impact on nearby properties and the public domain.

### **APPLICATION DELEGATION**

The development application involves a variation to the floor space ratio development standard by more than 10%. Normally, development applications involving a Class 2-9 building with a development standard variation of 10% or more is required to be determined by the Northern Beaches Local Planning Panel (NBLPP). However, the NBLPP delegates to the Chief Executive Officer (General Manager) of Northern Beaches Council the functions of the panel in relation to development applications and modification applications in the following circumstances:

1. where there is a pre-existing non-compliance of more than 10% for a class 2-9 building under clause 4.3 Height of buildings of the Manly Local Environmental Plan 2013, Pittwater Local Environmental Plan 2014 or Warringah Local Environmental Plan 2011, and the development does not result in any increase in the overall/maximum non-compliance,
2. where there is a pre-existing non-compliance of more than 10% for a class 2-9 building under clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013, Pittwater Local Environmental Plan 2014 or Warringah Local Environmental Plan 2011 and the development does:
  - a. not result in changes to the extent of the building envelope; and
  - b. results in only minor increase to the gross floor area (for example balcony enclosure or similar).

In the case of this development application, it has been determined by the NBLPP chair and Executive Manager, Development Assessment that the above criteria are satisfied and the application can be determined under the delegation of Council staff.

### **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental

Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

### SITE DESCRIPTION

<b>Property Description:</b>	Lot CP SP 7114 , 22 Central Avenue MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Central Avenue.</p> <p>The site is regular in shape with a frontage of 90.73m along Central Avenue and a depth of 31.2 metres. The site has a surveyed area of approximately 2782.0m<sup>2</sup>.</p> <p>The site is located within the E1 Local Centre zone within the <i>Manly Local Environmental Plan 2013</i> (MLEP 2013) and accommodates a multi-storey mixed-use shop top housing development, with businesses located on the ground floor level and Council-owned carparking on the next four levels. The remaining levels are used for residential purposes.</p> <p>The site is located on a flat block with an easterly orientation. There are various pedestrian entry points along the ground floor level along both the eastern and western elevations.</p> <p>The site is not known to have any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by</p>

mixed-use developments, residential flat buildings, commercial businesses along The Corso. Manly Oval is located a short distance away to the west of the subject site.

Map:



## SITE HISTORY

The land has been used for mixed-use shop-top housing purposes for an extended period of time. A search of Council’s records has revealed that multiple development applications have been lodged, primarily relating to the use of business premises.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans and technical reports including flooding and traffic.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration	Comments
accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 27/10/2023 to 10/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Development Engineering)	<p>Clarification is required regarding the following proposed works:</p> <ol style="list-style-type: none"> <li>1. Ground Level. Are there any structural/ re-construction works proposed for the Ramp and Loading Bay?</li> <li>2. Are any works proposed on Council's footpath/ road?</li> </ol> <p>Ideally proposed works/ alterations should be superimposed over existing conditions.</p> <p><b>Engineering Comments 15.05.24</b> Development engineering concerns have been addressed. Development engineering raises no further objections, subject to conditions.</p>

Internal Referral Body	Comments					
NECC (Flooding)	<p>The proposed development is for alterations and additions to an existing loading bay area located adjacent to the Northern Boundary of 22 Central Avenue, Manly. The works involve the construction of a new basement level with 9 individual storage units and a kitchenette/office as well as a new ground floor level with 17 individual storage units and a building managers office.</p> <p>The site is affected by the identified Medium Flood Risk precinct and has the following flood characteristics:</p> <ul style="list-style-type: none"> <li>• Flood Planning Level (FPL) of 5.70m AHD</li> <li>• Maximum 1% AEP Flood Level of 5.37m AHD</li> <li>• Maximum 1% AEP Depth of 0.48m</li> <li>• Maximum Probable Maximum Flood (PMF) Level of 5.80m AHD.</li> </ul> <p>Subject to the following conditions, the proposal is compliant with Section 5.4.3 Flood Prone Land from the Manly DCP 2013 and Clause 5.21(2)(a-e) of the Manly LEP 2013, with consideration of Clause 5.21(2)(a-d) of the Manly LEP 2013.</p>					
Strategic and Place Planning (Heritage Officer)	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="526 1048 1437 1084" style="background-color: #cccccc;">HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="526 1084 1437 1120" style="background-color: #cccccc;">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="526 1120 1437 1339"> <p>The proposal has been referred to Heritage as the subject site is located opposite a heritage item and adjoins a conservation area</p> <p><b>SHR00938 - Substation - 34-36 Whistler Street Manly Town Centre Conservation Area</b></p> </td> </tr> <tr> <td data-bbox="526 1339 1437 1375" style="background-color: #cccccc;">Details of heritage items affected</td> </tr> <tr> <td data-bbox="526 1375 1437 2112"> <p><b>Substation</b> <u>Statement of Significance</u> The Manly Zone substation is a fine and robust, well detailed face brick purpose designed and built structure. It is an excellent and externally intact representative example of the Interwar Art Deco style. It is considered to be a rare example of this style and of State Significance.</p> <p><u>Physical Description</u> The Manly Zone substation is a fine and robust, well detailed face brick two storey building built on the street alignment. Stylistic elements of Interwar Art Deco include the extensive use of face brick and brick detailing in the stepped parapet and base of the projecting first floor oriel windows and the use of bold linear motifs. Decorative elements include the use of curved bricks to form unusual framing around windows and doorways</p> <p><b>Manly Town Centre Conservation Area</b> <u>Statement of Significance</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of</p> </td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the subject site is located opposite a heritage item and adjoins a conservation area</p> <p><b>SHR00938 - Substation - 34-36 Whistler Street Manly Town Centre Conservation Area</b></p>	Details of heritage items affected	<p><b>Substation</b> <u>Statement of Significance</u> The Manly Zone substation is a fine and robust, well detailed face brick purpose designed and built structure. It is an excellent and externally intact representative example of the Interwar Art Deco style. It is considered to be a rare example of this style and of State Significance.</p> <p><u>Physical Description</u> The Manly Zone substation is a fine and robust, well detailed face brick two storey building built on the street alignment. Stylistic elements of Interwar Art Deco include the extensive use of face brick and brick detailing in the stepped parapet and base of the projecting first floor oriel windows and the use of bold linear motifs. Decorative elements include the use of curved bricks to form unusual framing around windows and doorways</p> <p><b>Manly Town Centre Conservation Area</b> <u>Statement of Significance</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of</p>
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Internal Referral Body	Comments		
	Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	The substation is on the register
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent to convert an existing parking and driveway/delivery area to a new building management office with storage and a delivery bay. The existing open undercroft area will be infilled with a metal screen door to Whistler Avenue. The substation is located opposite the site, while the broader 22 Central Avenue site adjoins the town centre conservation area to the south. The site of the works at the northern end of the site means the works are without impact to the conservation area. The physical separation afforded by Whistler Street in conjunction with the smaller nature of the proposed works on this side mean the proposal is also without impact to this heritage item.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No          Has a CMP been provided? No          Is a Heritage Impact Statement required? No          Has a Heritage Impact Statement been provided? No</p>		
Strategic and Place Planning (Urban Design)	<p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The Development Application DA2023/1358 seeks consent for alterations and additions at 22 Central Avenue MANLY NSW 2095.</p>		



Internal Referral Body	Comments
	<p>The applicant seeks development consent for alteration and additions including:</p> <ul style="list-style-type: none"> <li>· <b>Basement Level</b> <ul style="list-style-type: none"> <li>o Nine (9) Individual storage units</li> <li>o Building Managers Office - kitchenette</li> <li>o Loading bay from Short Street</li> </ul> </li> <li>· <b>Ground Level</b> <ul style="list-style-type: none"> <li>o Ramp up to ground level storage units and office.</li> <li>o Seventeen (17) Individual storage units</li> <li>o New building managers office</li> <li>o Loading Bay from Central Avenue</li> </ul> </li> <li>· <b>External</b> <ul style="list-style-type: none"> <li>o New roller shutter door to Short Street</li> <li>o Minor alterations and additions.</li> </ul> </li> </ul> <p>Urban Design raise no objection to the proposed development.</p> <hr/> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.</p>

Internal Referral Body	Comments
Traffic Engineer	<p><b>Amended comments relating to amended report and plans – 30/04/2024</b></p> <p>The RFI Letter (Reference 24.037r01v03) prepared by TRAFFIX dated 15 March 2024 and the plans (Amended Master Set), designed by Urbaine Architecture, dated 10/05/2023 have been reviewed by the Traffic team.</p> <p>All the Council's comments dated 18/01/2024 on the first version of the traffic report have been addressed in the amended report.</p> <p>Subject to conditions, the application can be supported on traffic grounds.</p> <p>The proposal is therefore supported.</p> <p>----</p> <p><b>Comments 18/01/2024</b></p> <p><b><u>Proposal description:</u></b> Alterations and additions to a mixed-use building</p> <p>The proposal is for alterations and additions to the loading areas within the existing mixed-use development at 22 Central Avenue, Manly. The proposal redesigns the existing, inefficient loading bay area to create a more functional loading bay with the incorporation of storage units and a building managers office. Additionally, the proposal includes a new roller door.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>• The <i>Statement of Environment Effects</i> prepared by Four Towns Planning dated 19 September 2023,</li> <li>• Plans (Master Set) – designed by Urbanine Architecture, dated 10/05/2023, and</li> <li>• Waste Management Plan, dated 1 November 2016.</li> </ul> <p>It is noted from the SEE that:</p> <ul style="list-style-type: none"> <li>• The site retains existing parking on site.</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• No changes have been proposed to the existing vehicular access points.</li> <li>• The proposed alterations and additions is considered a substantial improvement on the existing space given that the proposal enhances the existing loading area on site creating a more functional space. Furthermore, the proposal includes security provisions such as a roller door to minimise conflicts between pedestrians and vehicular movement alongside additional security measures.</li> <li>• The proposal does not include any excavation works or any demolition works of existing structures.</li> <li>• Normal waste collection applies with access to waste facilities within the loading area.</li> </ul> <p><b><u>Loading bay requirement &amp; design:</u></b></p> <ul style="list-style-type: none"> <li>• The Ground level loading bay at the Short Street entrance is measured to be approximately 10.5 meters long, which can accommodate trucks up to and including 8.8 meters long Medium Rigid Vehicles (MRVs). The loading dock on the Basement Level is measured to be about 7.5 meters long and can fit vehicles up to and including a 6.4 meters long Small Rigid Vehicles (SRVs). The loading bay widths within the site however have not been dimensioned on the architectural plans. Dimensioned plans are to be submitted for the loading areas to confirm that loading bays are appropriately sized.</li> <li>• No swept path analysis has been provided to show the loading bays can support ingress and egress from Short Street. Swept path analysis should be undertaken to demonstrate that the entry and exit movement is possible from/to the loading bays.</li> <li>• Council requires some information on the intended loading/unloading arrangements that will apply. The following issue must be considered and discussed: <ul style="list-style-type: none"> <li>o Some information regarding future deliveries/loading arrangements, together with details of the delivery arrangements for the proposed development. This should include an analysis of future delivery frequency and the suitability of the proposed loading bay to cater for such deliveries, including overhead clearance requirements . It is required to demonstrate that the development can operate effectively without any reliance on an on-street loading bay.</li> </ul> </li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Measures to cater for pedestrian safety should be considered eg. warning signage and markings.</li> <li>• A pedestrian sightline triangle of 2.0 metres by 2.5 metres, in accordance with AS2890.1:2004 should be plotted on the Architectural Plans at the access for pedestrian visibility for exiting trucks.</li> </ul> <p><b>Conclusion:</b> The plans and the SEE in their current form are unacceptable due to the inadequacy of the provided information as outlined above.</p>

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

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP (Transport and Infrastructure) 2021

##### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

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

#### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

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

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

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

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

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

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

**Division 5 General**

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

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and 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 and 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?	
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	25m	4.8m	N/A	Yes
Floor Space Ratio:	3:1 (8,346m <sup>2</sup> )	3.51:1 (9,773m <sup>2</sup> )	17.1%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	3:1 (8,346m <sup>2</sup> )
Proposed:	3.51:1 (9,773m <sup>2</sup> )
Percentage variation to requirement:	17.1%

##### 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 proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area.*
- The proposal provides an infill to an existing derelict area which is within the existing building footprint. The enclosure of the area will ensure articulation and modulation of the east and west façade infills which assists in maintaining an appropriate visual relationship between the proposal and existing developments in the area.*
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, the privacy and amenity of adjoining properties.*
- The design proposed represents an increase in GFA which is minor and complies with the building height and relevant setbacks for the site. The GFA variation relates to minor areas in the basement/ground floor relating to the addition of storage space for the building and its occupants.*
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.*
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct in regards to the E1 Local Centre zone.*
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.*

The Applicant's written request to vary the numeric requirement of Clause 4.4 Floor space ratio is considered to be acceptable given the proposed resultant built form will remain unchanged to what is existing, and will be commensurate with the surrounding and nearby residential developments.

The proposed works do not increase or extend the built form further above the existing footprint and envelope. The contravention to the floor space ratio will not be discernible from adjoining and nearby public and private places, and will not adversely or unreasonably impact upon the character of Manly Town Centre, nor will it result in unreasonable amenity impacts to adjoining public and private places.

Notwithstanding the numerical non-compliance, the building mass does not change and will remain commensurate with surrounding developments within the Manly Town Centre and surrounds. In this instance, the proposed development will not adversely or unreasonably impact upon the existing

character of the streetscape of Central Avenue or the Corso, which is within close proximity to the subject site.

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 zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

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

Comment:

The proposed development is contained within the footprint and envelope of the existing building. No discernible change in bulk and scale will be caused by the proposed development.

*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 development does not alter the existing building density and bulk and will not lead to the obscuring of important landscape and townscape features.

*c) to maintain an appropriate visual relationship between new development and the existing*

*character and landscape of the area,*

Comment:

The proposed development is consistent with the existing character and landscape of the locality.

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

Comment:

The proposed development will not cause adverse environmental impacts on the use or enjoyment of adjoining land and 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 proposed development provides diversification of business activities on the site and assist in the viability of the business zone.

## **Zone objectives**

The underlying objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposed development is consistent with the existing mixed-use development and will serve the needs of people who live or work in the local area.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment:

The proposed development contributes to the revitalisation and rehabilitation of the existing site and refreshes dilapidated areas of the building.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment:

The proposal does not involve residential development.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment:

The proposed development does not impact upon the existing businesses at the ground floor of the building.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The proposed development will not cause unreasonable amenity impact to nearby residences.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment:

The proposed development is focused on the loading zone of the existing building and does not require the need to activate the street frontage at this part of the building.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The proposed development does not alter the existing building footprint or envelope. The proposed development is consistent with the existing urban form of the area.

Conclusion:

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

It is considered on balance, that having regard to the particular circumstance of a lack of alteration to the existing building footprint and envelope, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

**Exception to Development Standards conclusion**

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development and it is therefore considered appropriate that in this instance, flexibility in the application of the floor space ratio development standard be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

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

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

## Manly Development Control Plan

### Built Form Controls

The proposed development is contained completely within the footprint and envelope of the existing building. As such, the proposal is considered to achieve the objectives of the built form controls on merit.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

## 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 \$ 935 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 187,000.

## **CONCLUSION**

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

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

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

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

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

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 4.4 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.

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

## RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/1358 for Alterations and additions to a mixed use building on land at Lot CP SP 7114, 22 Central Avenue, MANLY, subject to the conditions printed below:

## Terms and Reasons for Conditions

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

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A000	-	Site Plan	Urbaine Architecture	10/05/2023
A001	-	Elevations	Urbaine Architecture	10/05/2023
A002	-	Basement Plan	Urbaine Architecture	10/05/2023
A003	-	Ground Plan	Urbaine Architecture	10/05/2023
A004	-	Sections	Urbaine Architecture	10/05/2023
A005	-	Internal Elevation	Urbaine Architecture	10/05/2023



<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Building Code of Australia Compliance Assessment Report (Ref: 7375.1_R02_FINAL)	-	AED Group	06/07/2023
Flood Risk Management Plan	-	Taylor Consulting	19/06/2024
Traffic Report (Ref: 24.037r01v03)	-	Traffix Traffic and Transport Planners	15/03/2024
Waste Management Plan	-	Unnamed	Undated

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

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

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

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

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

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	07/11/2023

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

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

## 3. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
  - (c) 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.
  - (d) At all times after the submission of 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.
  - (e) 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.
  - (f) 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.
  - (g) Prior to the release of the Construction Certificate, payment of the following is required:
    - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
    - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
    - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
  - (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
  - (i) 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.
  - (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
  - (k) 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.

- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) 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. **Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Principal Certifier.

Reason: To ensure pedestrian safety and continued efficient network operation.

## **FEES / CHARGES / CONTRIBUTIONS**

#### 6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$935.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$187,000.00.

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

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

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

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

#### 7. **Security Bond**

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

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

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

Certifier prior to the issue of the Construction Certificate.

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

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

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

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

**Security Bond**

As security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site a bond of \$10,000.00.

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

Reason: Protection of Council's infrastructure.

## BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Building components and structural soundness**

B1 - All new development below the Flood Planning Level of 5.70m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Probable Maximum Flood level 5.80m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 5.70m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Car parking**

D6 - All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning Level of 5.70m AHD, with the exception of the Central Avenue driveway. The central avenue driveway will be protected by the flood wall described in drawing A002 of the architectural plans.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Emergency response**

E1 - The shelter-in-place refuge must:

- a) Have a floor level at or above the Probable Maximum Flood level of 5.80m AHD; and
- b) Have a floor space that provides at least 1m<sup>2</sup> per person; and
- c) Be intrinsically accessible to all people on the site, plainly evident, and self-directing, with sufficient capacity of access routes for all occupants without reliance on electrical means.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Storage of Goods**

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 5.70m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

13. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- o The proposed phases of construction works on the site, and the expected duration of each construction phase.
- o The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- o Make provision for all construction materials to be stored on site, at all times.
- o The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- o The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- o Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:

- Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
- Demonstrate that direct access from a public space/road is not viable for each stage of works.
- An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
- Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
- No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
- How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
  - Compare the post-construction report with the pre-construction report,
  - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
  - Should any damage have occurred, identify remediation actions taken.
  - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to



adjoining property owners prior to the implementation of any temporary traffic control measure.

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

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

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

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

**14. 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 Compliance Assessment Report prepared by AED Group, 6/7/2023, Report Ref No.73751\_R02\_FINAL, 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.

**15. Pre-Commencement Dilapidation Report**

The applicant must prepare and submit a dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads,

gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

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.

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Work Zones and Permits**

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane.

Reason: To ensure Work zones and other permits for occupation of the road reserve are obtained and correctly applied.

## DURING BUILDING WORK

18. **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.

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

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

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

20. **Ongoing Management**

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

Reason: To ensure public safety.

21. **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.

22. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

23. **Fire Safety Matters**

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

24. **Certification of Works as Executed**

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. The top of the flood wall described in drawing A002 of the architectural plans has been set at or above 5.70m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-

prone property and reduce public and private losses in accordance with Council and NSW Government policy.

25. **Building Components and Structural Soundness**

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the Flood Planning Level of 5.70m AHD, are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

26. **Post-Construction Dilapidation Report**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

27. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

28. **Use of Storage Units**

The storage units may only be used in conjunction with residential and commercial tenancies within the Manly National building.

Third party use of the storage units is not permitted at any time.

Reason: To ensure traffic demand to the site is not increased and maintain appropriate amenity for surrounding land uses.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



The application is determined on 05/07/2024, under the delegated authority of:



**Daniel Milliken, Acting Executive Manager Development Assessment**