

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/2256
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 100 DP 1009880, 22 Raglan Street MANLY NSW 2095
<b>Proposed Development:</b>	Demolition works and construction of a mixed use development with basement car parking.
<b>Zoning:</b>	Manly LEP2013 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Para-Ere Holdings Pty Ltd
<b>Applicant:</b>	The Trustee For The Para Erep Trust
<b>Application Lodged:</b>	25/01/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	03/02/2023 to 03/03/2023
<b>Advertised:</b>	03/02/2023
<b>Submissions Received:</b>	8
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 31.8% 4.4 Floor space ratio: 135.6%
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 8,470,000.00

### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a four (4) storey mixed use development, comprising 10 apartments, 1 ground floor neighbourhood shop and basement carparking at 22 Raglan Street, Manly.

The proposal is Nominated Integrated Development, requiring a Water Supply Work approval under the *Water Management Act 2000*. In the absence of general terms of approval from WaterNSW, the application cannot be approved. The application was referred to WaterNSW on 29 August 2023, with payment for the referral received on 17 November 2023. To ensure the application had no further

delays the application has been referred to the Northern Beaches Local Planning Panel (NBLPP).

The application is referred to the NBLPP for determination as the building is up to four-storeys and is subject to the provisions of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65), and as the development involves a variation to the MLEP 2013 in regards to building height and floor space ratio (FSR) development standard greater than 10%,

The proposal is contrary to the design principles of SEPP 65 and the requirements and objectives of the Apartment Design Guide (**ADG**), Manly Local Environmental Plan (**MLEP**) 2013 and Manly Development Control Plan (**MDCP**) 2013, with specific concerns being heritage, spatial separation/ setbacks, privacy, bulk and scale and visual impact. Based on the detailed assessment contained in this report, it is recommended that the application be refused.

A variation of 31.8% is proposed in the case of the building height development standard and 135.6% in the case of the FSR development standard. A clause 4.6 request has been provided for both non-compliances, however the requests are not supported. The resultant bulk and scale is excessive and the proposed development is a existing and desired character of the area.

Seven (7) submissions have been received which raise issues including bulk and scale, privacy, solar access and construction impacts . The issues raised in the submissions have been addressed in the “Public Notification” section of this report.

On 3 July 2023, the applicant filed a Class 1 Appeal (Deemed Refusal) with the Land and Environment Court for the proposed development.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for demolition works and construction of a four (4) storey mixed use development with basement parking.

Specifically, the proposal consists of:

- Demolition of existing building and associated structures.
- Construction of a four storey mixed use development containing 10 apartments and 1 retail premise:
  - 1 x at ground floor level
  - 2 x two bedrooms NDIS special disability apartments
  - 2 x two bedroom apartments at level 1
  - 2 x three bedroom apartments at level 2
  - 2 x two bedrooms apartments at level 3
  - Communal open space level 3
- Basement parking containing parking for 14 vehicles, 2 motorbikes, 10 bicycles.
- Associated landscaping; and
- Site preparation works.

The application proposes two separate uses:

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

and

***neighbourhood shop*** means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, but does not include neighbourhood supermarkets or restricted premises.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Development Control Plan - 3.2 Heritage Considerations

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

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 100 DP 1009880 , 22 Raglan Street MANLY NSW 2095
------------------------------	--

<p><b>Detailed Site Description:</b></p>	<p>The subject site consists of one (1) allotment located on the northern side of Raglan Street.</p> <p>The site is regular in shape with a frontage of 23.32m along Raglan Street and a depth of 30.6m. The site has a surveyed area of 713m<sup>2</sup>.</p> <p>The site is located within the R3 Medium Density zone and accommodates a three storey backpackers accommodation.</p> <p>The site is generally flat and contains no significant landscape features.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by two and three storey commercial and residential developments.</p>
--	---

Map:



## SITE HISTORY

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

**DA2019/0400** - Alterations and Additions to the existing building and signage. **(Approved 6 August 2019)**

## Current Application

The application was referred to the Design Review Panel at the meeting on 23 February 2023. The

panel reviewed the application and concluded that the proposed development was not supported, and warranted a re-design with reduced gross floor area. Recommendations were provided regarding built form, access, landscaping, amenity, façade and sustainability.

On 3 July 2023, the applicant filed a Class 1 Appeal (Deemed Refusal) with the Land and Environment Court for the proposed development.

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

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

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

<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&amp;A Regulation 2021)</p>	<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 documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to bulk and scale, heritage and landscaping.</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 may be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). / This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the</p>

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
impacts on the natural and built environment and social and economic impacts in the locality	Manly Development Control Plan section in this report.  (ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.  (iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the MDCP and ADG and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

## **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 03/02/2023 to 03/03/2023 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 8 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mr Gary James Drummond	2/31 Whistler Street MANLY NSW 2095
St Marys Catholic Primary School Manly	6 Raglan Street MANLY NSW 2095
Martin Jones	7 / 23 - 31 Whistler Street MANLY NSW 2095
Ms Bronwyn Leigh Rosser	102 / 3 Sylvan Avenue BALGOWLAH NSW 2093

<b>Name:</b>	<b>Address:</b>
Mr David Scott Robinson	2 Lombard Street BALGOWLAH NSW 2093
Mr Kym Alexander Graham	133 Seaforth Crescent SEAFORTH NSW 2092
Mr Ian Lawrence Graham	133 Seaforth Crescent SEAFORTH NSW 2092
Ms Linda Halligan	5 / 18 Raglan Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Bulk and scale**
- **Height and FSR non-compliance.**
- **Privacy**
- **Solar access**
- **Construction impacts**
- **Community engagement**
- **Setbacks**

The above issues are addressed as follows:

- **Bulk and scale**

Concern is raised in regard to the overall bulk of the development.

Comment:

The proposed development is not supported and recommended for refusal due to the non-compliance with the built form controls and resulting scale of the building.

- **Building Height and FSR non-compliance**

Submissions have been received in objection to the non-compliant height and FSR of the development.

Comment:

As discussed with regard to clause 4.3 and 4.4 of MLEP 2013, the extent of non-compliance is not supported, and the proposal is recommended for refusal in this regard.

- **Privacy**

Concern was raised about privacy impacts (acoustic and visual) from the proposed building particularly to outdoor living areas and living room windows of adjoining properties.

Comment:

A detailed assessment has been undertaken against the privacy provisions of SEPP 65 within this report. The proposal results in satisfactory privacy outcomes.



- **Solar access**

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

Comment:

A detailed assessment has been undertaken against the solar access provisions of SEPP 65 within this report. In summary, the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the relevant provision of SEPP 65.

- **Construction impacts**

Concern was raised in regard to the extent of the proposed construction and the potential impacts from works including vibration, dust, soil stability and waste disposal.

Comment:

These matters have been considered against Clause 6.2 (Earthworks) of the MLEP. In summary, the proposal is consistent with the relevant underlying objectives.

- **Community engagement**

The submissions raised concerns about the lack of community engagement.

Comment:

The application was notified and advertised to neighbouring properties in accordance with the Northern Beaches Community Participation Plan

- **Setbacks**

The submissions raised concerns with the built-form non-compliance.

Comment:

This issue is discussed in detail later in the report. The non-compliance with setback is a listed a reason for refusal.

## REFERRALS

External Referral Body	Comments
Design and Sustainability Advisory Panel	<p><b>Not Supported</b></p> <p>General</p> <p>The proposal was originally referred to the Design and Sustainability Panel on 3 February 2022. At that meeting the Panel concluded:</p> <p>“The Panel is generally supportive of the proposal but notes that the current GFA should not be used as a benchmark. The final development potential</p>

should be determined by achieving very good amenity for the apartments and avoiding any adverse impacts on neighbouring properties and the public domain.

The Panel does not support the proposal in its current form. A complete redesign of the second floor and second floor mezzanine levels should be made, to increase the number of apartments gaining northern sun to their living areas and balconies and to provide a range of apartments within the apartment mix. The number of basement car spaces should reduce, in response to a reduction in the apartment numbers and the provision of more deep soil to support canopy tree growth.

Any breaching of the height controls would need to be supported by an analysis of the benefits compared to a complying scheme. Benefits may include best practice in sustainable design, including consideration of embodied energy in materials and the sustainability issues listed above. This proposal demonstrates an acceptable urban and architectural design character which could be complemented by excellent sustainability initiatives. The Panel refer the applicant to the Apartment Design Guide for aspects related to amenity and the internal planning of apartments.”

The Panel has been provided with a summary of the design responses to its recommendations. Most of the recommendations have been adopted. Accordingly, this report focusses on matters of concern that remain.

**Floor space ratio and amount of floor space.**

The floor space ratio that applies to the site is 0.75:1. At the previous Panel meeting the applicant proposed that it would be reasonable for the new building to have a similar FSR to the existing building which was stated in the architect’s pre-DA report as:

“The FSR of the existing backpackers building on the site is approximately 1.54:1”

This report also noted that the FSR of nearby building also exceeded the 0.75:1 FSR:

“The FSR control for the recently constructed neighbouring building at 18 Raglan St is also 0.75:1, but the approved and constructed FSR is about 1.5:1

The FSR control for the neighbouring building at 2-14 Pittwater Road is 1:1, but the constructed FSR is about 1.8:1, and the existing building could accommodate a further floor level within its height control which would increase its FSR higher still.

Given the above, it could be seen that the FSR control in this vicinity is inconsistent with the actual built environment and with the desired future character of the area.”

The Panel did not accept that the existing GFA should be used as a benchmark. To restate the Panel’s position:

The final development potential should be determined by achieving very good amenity for the apartments and avoiding any adverse impacts on neighbouring properties and the public domain.

The reason the panel does not believe that the existing GFA is a reasonable benchmark or ‘baseline’ is that the form of the building is significantly different. The ground floor and first level of the existing building cover most of the site with the second level confined to the southeast corner.

The proposal instead is for 4 levels concentrated on the southern boundary. Given the primary concern for improved amenity of the units, and less

concern for the height and impacts on the public domain, which are acceptable, it is difficult to understand the basis or rationale for a further **increase of GFA** rather than a reduction.

The proposal presented at the meeting of 3 February 2022 had an FSR of 1.63:1, the revised proposal has an FSR of 1.77:1 an increase of 8.5% and 15% over the existing FSR of 1.54:1.

The Panel is primarily concerned with design quality not numerical compliance except where non-compliance results in poor internal amenity, additional impacts on neighbours or the public domain.

This is the case in relation to the most recent proposal.

The Panel agrees with the proposition that it is desirable to provide as much housing as possible in this highly accessible and desirable location, however it strongly disagrees that 'the market' should determine extravagant room sizes and an excessive provision of bathrooms that result in an excessive floor area.

The 'market' accepts much more modest room sizes and inclusions in the Manly submarket.

The Panel agrees that there should be more housing in accessible locations, but this should be affordable; inclusions in DA make these less affordable. Additionally, it is the Panel's view that the internal planning is inefficient with excessive circulation.

Together these increases and indeed the original increase from 1.54:1 to 1.63:1 have the effect of reducing the rear setback and the potential for a more generous courtyard that could accommodate larger mature trees and improve privacy and overall amenity both for the residents of the subject site and neighbours.

The reconfiguration from a building that occupies almost the entire site area to one that is concentrated on the southern boundary is supported. However, it is the Panel's view that the opportunity to create a meaningful courtyard that can provide outlook and privacy at the same time as well as improved solar access for both the subject site and neighbouring sites has not been optimised.

Accordingly, the Panel makes the following recommendations:

Overall planning.

#### Recommendations

1. Increase the amount of retail on the ground floor
2. Rationalise the circulation within units
3. Reduce the number of bathrooms
4. Consider a single unit on the ground level that would allow the courtyard area and deep soil to be increased significantly
5. The entire building envelope should be setback an additional 3m from the northern boundary. As noted, this should be achievable if the internal areas of bathrooms, walk-in wardrobes, laundries internal studies and circulation spaces are rationalised and reduced.

#### **Amenity**

The amenity of the units is reduced by their proximity to adjoining buildings on the lower levels. The inclusion of NDIS apartments is commended but the panel notes that if the ground floor was reduced to a single NDIS unit, it should be possible to have one of the upper units designed to meet the same standards.

Some of the bedrooms are very small but given the location and the dimensions of the site and available frontage the Panel agrees that it is better to have as many bedrooms as possible even if they are less than the ADG guidelines, noting that the length (area) could still be increased by redesign.

The Panel commends the inclusion of outdoor showers and surfboard storage areas but considers them to have poor amenity, to compromise bedroom 2 in unit 1 and the location and layout inconvenient, Bedroom 2 in units 1 and 2 have very low amenity and outlook to the driveway in one and outdoor shower and AC units in the other. Both are set well under the floors above and will receive very little if any natural light.

The panel questions the amenity of having a WC opening off the pantries in units 3, 4, 6, 7.

The ensuite in Unit 9 is larger than the bedroom.

Units have linen cupboards in addition to storage in laundries.

Overall, the Panel considers the internal planning inefficient on the one hand and providing poor amenity on the other. A comprehensive redesign should improve both.

#### Recommendations

6. Retain 2 NDIS compliant units in any redesign
7. Redesign ground floor units to provide an acceptable level of amenity for all bedrooms
8. Redesign all interior layouts to improve efficiency and amenity

#### **Access, vehicular movement and car parking**

#### Recommendations

9. Rationalise and simplify circulation on the ground level
10. Review egress requirements with the aim of reducing the number of stairs from the basement, minimising the circulation space on the ground level and maximising active frontage. Amenity of the entry lobby could also be improved. It may be acceptable to have the storage along one wall of the lobby rather than duplicating circulation space.
11. Rearrange access to motorcycle parking, bicycle parking and storage- the current layout is impractical
12. Given the location and dimensions of the site the Panel supports the under-provision of car parking
13. Pull the basement 2-3 metres away from the northern boundary to increase the area of deep soil- this would appear possible if the carparking layout were re-arranged

#### **Landscape**

Deep soil is provided at 7% however it is only 2.459m wide. ADG requires 6m width.

The south facing communal open space area is supported.

ADG calls for 9cubic metres soil volume for a small tree.

#### Recommendations

14. Select species that will provide privacy bur consider species with more open foliage than Syzygium. An exotic deciduous species may be more appropriate in this courtyard situation.

15. Check volume and increase size of raised tree pots for trees
16. Increase deep soil by increasing the rear setback by reducing car parking further
17. Meet ADG 6m minimum dimension

#### Façade treatment/Aesthetics

The panel supports the design and materials proposed for the southern façade.

#### **Sustainability**

The building has a large roof area for the number of dwellings. Given the coastal location a very comfortable indoor environment should be achievable.

#### Recommendations

18. Decarbonisation of energy supply
  - All services should be electric – gas for cooking, hot water and heating should be avoided
  - Heat pump systems for apartments or other ways of providing electric hot water should be considered
  - The storage of hot water can be considered a de-facto battery if heated by PVs during the day
  - Until technologies for the use of hydrogen are developed and introduced, note the risk of gas reticulation becoming a ‘stranded asset’ and the possibility of additional costs to remove gas and rewire the building
  - The Department of Planning advises that dwellings with electric heat pump hot water systems, efficient reverse cycle air conditioners and induction cooktops can achieve the higher BASIX standard. Accordingly, the Panel recommends that to contribute to design excellence in sustainability, these appliances and fittings be utilised as a sustainability commitment to avoid the use of high emission energy sources such as gas.
  - Guidance is also provided by the Australian Green Building Council <https://gbca-web.s3.amazonaws.com/media/documents/a-practical-guide-to-electrification.pdf>
19. Onsite power generation and storage
  - Unshaded roof space is a valuable resource
  - Using PV to provide shade to roof top common areas will generally be supported by the Panel if there are no additional adverse impacts
  - PVs over green roofs perform better due to the local lower ambient air temperature
  - On site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid
20. EV charging
  - Provide EV charging points for each unit
  - Allow for bi-directional (2-way) charging of EV battery for powering the building

#### **PANEL CONCLUSION**

The Panel does not support the proposal in its current form.

No reasonable justification has been provided for exceeding the current FSR of 1.54:1. (This is separate to the test against clause 4.6 of the MLEP).

A redesign and substantial reduction in the floor area is required.

Maximisation of the size of the courtyard and rear setback and amenity of units should be a priority.

	<p>It should be possible to reduce the floor space further while retaining the number of units and improving their amenity.</p> <p><b>Planner comment:</b> No amendment were lodged to address the recommendations listed above. The Design and Sustainability Advisory Panel does not support the proposed development.</p>
<p>Building Assessment - Fire and Disability upgrades</p>	<p><b>Supported, subject to conditions</b></p> <p>The application has been investigated with respects to aspects relevant 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>
<p>Environmental Health (Industrial)</p>	<p><b>Not supported</b></p> <p><i>General Comments</i></p> <p><i>Environmental Health has reviewed the proposed application for the Demolition of the existing site structures,</i></p> <ul style="list-style-type: none"> <li>▪ <i>Construction of a 4 storey mixed-use development over 1 basement level</i></li> </ul> <p><i>The applicant has provided an Noise Impact Assessment, this assessment has been reviewed to ensure that it has taken into consideration surrounding noise impacts such as road noise, noise from adjacent commercial tenancies and ancillary plant and machinery, and the likely impact these noise sources are likely to have on the proposed residential premises.</i></p> <p><i>The Noise Impact Assessment provides recommendations to limit the impact of noise and vibration from external noise sources and from between adjoining premises.</i></p> <p><i>Additionally Environmental Health have considered as part of this proposal the need to ensure that service voids have been included to future proof against change-of-use of the ground floor tenancies. It does not appear that retail space has been provided with mechanical ventilation provisions which will limit its use.</i></p> <p><i>A review of the provided Noise Impact Assessment finds it is proposed to incorporate acoustic reports into the consent. Environmental Health would like to review the acoustic report at this stage to ensure compliance with the relevant guidelines can be achieved.</i></p> <p><i>In regards to Acid Sulphate Soils the SEE says</i></p> <p><i>The site is located within Class 4 as shown on the Acid Sulfate Soils Map of MLEP 2013. The Geotechnical report confirms that based on their detailed investigation, acid sulfate soils do not appear to be present at</i></p>

	<p><i>the site and an Acid Sulfate Soils Management Plan is not required. This is in contrast to what the Geotechnical Assessment by JK Geotechnics Ref: 35612SFrpt dated 25 November 2022 states:</i></p> <p><i>No subsurface investigations were carried out as part of this assessment. Also All comments and recommendations are based on an assumed subsurface profile from information beyond the site and therefore should be reviewed by JK Geotechnics once geotechnical investigations are completed at the site.</i></p> <p><i>As excavation to about 3.7m depth below existing surface levels is to be expected a further site specific Preliminary Assessment is to be provided in accordance with the AZSSMAC Assessment Guidelines. the report is to include but not limited to</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <i>the characteristics of the proposed works and the likelihood of them disturbing acid sulfate soils or lowering the groundwater</i></li> <li><input type="checkbox"/> <i>the physical characteristics as well as the pH for soil and groundwater tabulated by depth. The location of each borehole or sampling site should be clearly marked on a map with grid references and height (m AHD)</i></li> <li><input type="checkbox"/> <i>the reaction to peroxide and pH after peroxide oxidation</i></li> <li><input type="checkbox"/> <i>if water analysis is required as an indication of the presence or absence of acid sulfate soils, the pH and ratio Cl1-:SO42- concentrations for each borehole site</i></li> <li><input type="checkbox"/> <i>if groundwater hydrological studies are required as an indication of the likely impacts of lowering of the watertable on acid sulfate soils, the piezometer locations and depths and any flow analysis are required.</i></li> </ul> <p><b>Recommendation</b></p> <p>REFUSAL</p> <p><b>Planner Comment:</b> <i>Included as a reason for refusal</i></p>
Landscape Officer	<p><b>Not supported</b></p> <p>The proposal is not supported with regard to landscape issues.</p> <p>Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (a) (b) and (c), including Schedule 1, Principle 5: Landscape,</li> <li>• the associated Apartment Design Guide, including the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and</li> <li>• Manly Local Environment Plan (MLEP) and the following Manly Development Control Plan (MDCP) controls (but not limited to): 3.3.1 Landscaping; Design; and 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable</li> </ul> <p>Landscape Referral calculates the available deep soil at approximately 44 square metres (internal measurements). As per the ADG part 3E, the minimum dimension of the deep soil zone shall be 3 metres and a total of</p>

	<p>50 square metres for this property. The three trees proposed in this deep soil zone are supported; however, to increase the available soil volume, to help satisfy the ADG part 3E, and to improve the conditions for the proposed trees, this landscaped area shall be slightly increased incorporating on slab landscaping adjacent to the deep soil zone. To achieve this, a 3 x 3 metre area (internal width) shall be provided at both the eastern and western corners of the property, as shown below (to have 1000mm soil depth):</p> <p>Two trees shall be located in these areas, planted into the deep soil, and the third tree centrally located between the other two. Taller supplementary planting can then be included in-between the trees (<i>Elaeocarpus reticulatus</i> 'Prima Donna' or similar) to improve privacy between dwellings. The proposed stormwater infrastructure (pits and pipes) shall not be installed centrally in the deep soil zone, rather installed against the basement shoring or rear boundary.</p> <p>No further concerns are raised and Landscape Referral can continue the assessment upon receipt of amended plans.</p> <p><b>Planner Comment:</b> Included as a reason for refusal</p>
NECC (Development Engineering)	<p><b>Supported, subject to conditions</b></p> <p>The submitted stormwater design including OSD is satisfactory. As the site could be affected by groundwater a referral to Catchment must be undertaken and to Water NSW. The proposed driveway crossing is also acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Flooding)	<p><b>Supported, subject to conditions</b></p> <p>The development proposes to demolish the existing structure and construct a 4 storey mixed-use development with a basement carpark. The site is located within the Medium Flood Risk Precinct.</p> <p>Subject to conditions the development is compliant with Council's flood related development controls.</p>
Strategic and Place Planning (Heritage Officer)	<p><b>Not supported</b></p> <p>The proposal has been referred to Heritage as the subject site is located within a conservation area and in the vicinity of a number of heritage items:</p> <p><i>C1 - Pittwater Road Conservation Area</i></p> <p><i>Item 1254 - St Mary's Church, presbytery and school - Whistler Street (corner Raglan Street), Manly</i></p>



*Item I255 - Electricity substation No 15009 - 34A–36 Whistler Street, Manly*

*Item I196 - Baby health care centre building - 1 Pittwater Road, Manly*

### **Consideration of Application**

The proposal seeks consent for the demolition of all the structures on the site and the construction of a four storey mixed use development with basement level parking. The subject site contains an Interwar Mediterranean building located in the western side of the site and is currently in use as a hostel along with the later additions, constructed in 2000, to the eastern side of the site. The original face-brick facade has been rendered and painted in the late 1990s. The original building- on the western lot is a contributory item within the HCA, featuring rendered masonry external walls, high pitch tiled roof at the street frontage and arched openings with pilasters to the first floor verandah. The original ambulance garage door has been infilled with glass panels/doors and the entry to the building is through these glazed doors. The original windows on this facade have been replaced with aluminum framed windows. Although, some original elements have been removed from the front facade, the original built form, including the roof line, the openings and the central verandah above the original ambulance garage entry, are still discernible.

Heritage considers that the subject original western building is a contributory item to the conservation area and should be retained. In a conservation area contributory buildings should be retained including their original forms and features while later alterations and additions that detract from the building's contribution should be removed. Therefore, Heritage supports the demolition of the later addition at the eastern lot of the site subject to a respectful replacement building, but requires the retention of the original building at the western side.

The submitted HIS by Weir Phillips, classifies the subject building as "neutral" and states "Although it resembles its original form all of its key details which contribute to its heritage significance have been removed including the exposed face brick elevation to Raglan Street, fine brick detailing, timber framed windows and doors and terracotta tile roof". Heritage do not agree with this statement as the original building considered to contribute positively to the context as it retains the original built form and original fenestration/openings. The building is not considered to be classified as neutral but rather contributory.

The HIS also states that "The Manly Warringah District Ambulance Station had a simple and symmetrical elevation to Raglan Street and was representative of the Inter- War Stripped Classical Style." The original built form, roofline and openings of the former Ambulance Station building have not been altered and despite the damaged original fabric, the original built form and openings including the original central verandah with its metal balustrade and columns have

been retained. Therefore, Heritage require the retention of the building with its original form, roof line and openings. It is considered that conserving this building will allow its positive contribution to the significance of the HCA to continue.

Furthermore, the original building is considered to be classified as contributory rather than neutral as follows:

The building is important in the course, or pattern, of New South Wales' cultural history, for being constructed as Manly's first purpose-built Ambulance Station in 1936, and had been used until December 1986. The building has strong or special association with the life or works of a person, or group of persons, of importance in New South Wales' cultural or natural history (or the cultural or natural history of the local area); as it was was designed by Trenchard Smith and Maisey Architects, who also designed the Manly Town Hall.

The building has potential to yield information that will contribute to an understanding of New South Wales' cultural history, as the original built form is still discernible and along with an interpretation plan would continue to contribute the HCA.

The HIS also states that "The site has a low level of integrity as the building has been substantially modified

internally and externally from its original form and use as an Ambulance Station to accommodate adaptive reuse as a backpacker hostel".

However, adaptive reuse is a form of known conservation method and it is not used for loosing the heritage significance of a place but enabling the place to have ongoing, viable life that responds to the contemporary needs of the community and the subject building is able to demonstrate the key characteristics of its original form and fenestration/openings to the street frontage. Heritage conservation requires the retention of an appropriate visual setting that contributes to the significance of the HCA, and it is believed that, an appropriate restoration to its façade would enhance its ability to this contribution.

In the PLM/Heritage comments the recommendation was; to retain and restore the existing façade of the original building - western portion of the site; and to incorporate it into the new design. The applicant has not responded to these comments and the recommendations. It is also noted that, in the HIS submitted with this DA, the contribution of the original building to the HCA has been disregarded, and therefore the justification to the proposed demolition of the existing front facade is not considered to be sufficient.

The Burra Charter – the Australia ICOMOS charter for the conservation of places of cultural significance – is the key document guiding conservation practice in Australia. It states that: Conservation requires the retention of an appropriate visual setting and other relationships that contribute to the cultural significance of the place. New construction, demolition, intrusions or other changes which would adversely affect the setting or relationships are not appropriate. (Article 8)

NSW Heritage Office & Royal Australian Institute of Architects NSW -

	<p>Design in context: Guidelines for infill development in the historic environment - states that: "Designing in context does not mean imitation or following inflexible design rules. A wide range of solutions may emerge for any design problem after careful analysis of surrounding buildings and sympathetic interpretation of their design elements."</p> <p>Heritage is also not supportive of the breaches of the height limit and the floor space ratio as they contribute to the building's poor relationship to the conservation area and emphasis its bulk and scale.</p> <p>Therefore, Heritage cannot support the proposal in its current form and require amendments.</p> <p><b>Planner Comment:</b> Included as a reason for refusal</p>
Traffic Engineer	<p><b>Supported, subject to conditions</b></p> <p><b>Proposal description:</b> Demolition works and construction of a mixed-use development with basement car parking.</p> <p>The traffic team has reviewed the following documents:</p> <p>Plans (Master Set) – Revision A, designed by CARLISLE Architects, Project No. 21-02, dated 20/12/2022,  Traffic and Parking Assessment prepared by Varga Traffic Planning Pty Ltd, Ref No. 22561, dated 19 December 2022,  Statement of Environmental Effects prepared by BBF Town Planners dated December 2022,  Operational Waste Management Plan, Revision C, prepared by Elephants Foot Consulting Pty Ltd dated 12/12/2022, and  Pre-Lodgement Advice (PLM2021/0363) dated 03 March 2022.</p> <p><b>Parking Requirement and Design</b></p> <p>The land is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013 (LEP). However, as outlined in the PLM referral comments, immediately to the development's west lie with the Manly Town Centre B2 Local Centre zone and the manly Town Centre, hence the parking rates applicable for the B2 zone would be more appropriate for assessment purposes for the site.</p> <p>The parking requirements for the development comprising 10 apartments (made up of 1x one-bedroom, 7 x two-bedroom apartments and 2 x three-bedroom apartments) and 50m<sup>2</sup> Retail premises are 12 residential parking spaces, two (2) visitor parking spaces and two (2) retail users. In response, the development proposes a total of 14 car parking spaces including 12 residential parking spaces, one (1) visitor and one (1) retail parking space. There is therefore a shortfall of two (2) parking spaces. Accessible parking space (2 spaces) are proposed in excess of the requirements of the DCP (Section 3.6.3.2) and will provide access to the premises for persons with a disability.</p> <p>The parking shortfall of two (2) spaces is considered acceptable given that:</p> <ul style="list-style-type: none"> <li>• some relaxation of DCP requirements in this location could be considered to reduce traffic levels in the area and given the</li> </ul>

proximity of the site to good public transport, shops and recreational uses and the high level of walking and cycling activity in the vicinity.

- section 4.2.5.4 of Manly DCP gives some exceptions to parking rates/ requirements where the constraints of the site preclude the provision of some or all of the required parking spaces and where the movement of vehicles to/from the site would cause unacceptable conflict with pedestrian movements.
- To offset the shortfall in parking and facilitate alternate travel modes, parking for bicycles (10 spaces) and motorcycles (2 spaces) is provided.

Bicycle parking stands are required at a minimum rate of one (1) stand for every three car parking spaces, with a minimum provision of one (1) stand for each premise, i.e., five (5) bicycle stands for the proposed development. Bicycle parking for ten (10) bikes has been shown on the basement plan. This provision exceeds the requirements of the DCP, and therefore satisfying Council's DCP requirements and catering for alternate travel mode options.

As outlined above the parking needs of the development are considered to have been met. To facilitate lower levels of car ownership and encourage walking, cycling and public transport use the development will not be eligible for resident parking permits. This will be conditioned. Any businesses and/or retail tenants of the subject site are also not eligible for business parking permits. This will also be conditioned. It is noted that swept path plots demonstrating satisfactory access to and from the parking spaces to the street are included in the traffic report. The ramp is single-width and will be no capacity for vehicles to pass on it. To overcome this, a waiting bay inside the carpark and a signal system are included in the plans.

Loading bays must be provided in sufficient numbers to meet anticipated demand. This demand is related to the total amount of floor space, the intensity of use and the nature of the activity. As noted in the Operational Waste Management Plan report, the proposal is not expected to require deliveries in large quantities, rendering a loading bay unnecessary. As reported in the Traffic report, Garbage collection for the proposed development is expected to be undertaken by Council's waste contractor with bins to be stored on-site and brought out to the kerbside on collection days.

It is also reported in the Operational Waste Management Plan report that:

- To service the bins, a Council collection vehicle will pull up on Raglan Street and service the bins via a 'wheel-in wheel-out' arrangement from the bin holding room.
- On the nominated collection day, the building caretaker will be responsible for ensuring all bins are spaced out neatly and prepared for collection.
- On the day of bulky waste collection, a Council collection vehicle will pull up onto Raglan Street. The building caretaker will transport bulky items from the room to the front of the building for collection contractors to load into the vehicle.

	<ul style="list-style-type: none"> <li>• A private waste collection contractor will be engaged to service the retail waste and recycling bins per an agreed schedule. On the day of service, a private waste collection vehicle will pull up onto Raglan Street and park adjacent to the tenancy. The building caretaker or staff will provide the driver access to the bins, who will collect the bins via a 'collect &amp; return arrangement'. Once the bins have been emptied, the driver will return the bins to their designated location to resume their operational use.</li> </ul> <p><b>Vehicle Access</b></p> <p>Vehicular access to the car parking facilities is provided via a new entry/exit driveway located at the eastern end of the Raglan Street site frontage, in the same location as the existing driveway.</p> <p>The proposed driveway is 5.5m in width for the first 6m into the property which assists ease of access. Swept path plots have shown that it is appropriately sized to permit a B99 vehicle to pass a B85 vehicle entering or exiting the site as required by AS2890.1 clause 3.2.2. The driveway width reduces to 3.6m inside the property (on the ramp).</p> <p>A vertical clearance assessment on the driveway ramps should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to show any scraping and bottoming. This will be conditioned.</p> <p>A pedestrian sightline triangle of 2.0 metres by 2.5 metres should be plotted at the property boundary, in accordance with AS2890.1:2004, for pedestrian visibility.</p> <p><b>Traffic generation</b></p> <p>The proposal will generate minimal traffic during peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance.</p> <p><b>Conclusion</b></p> <p>Subject to conditions, the application can be supported on traffic grounds.</p>
Waste Officer	<b><i>Supported, subject to conditions</i></b>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, subject to conditions</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Nominated Integrated Development - Department of Planning and Environment - Water - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	<p><b>Not Supported</b></p> <p>The proposal is 'Nominated Integrated Development' and approval is required from WaterNSW under s.90(2) (Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location) of the Water Management Act 2000. WaterNSW has insufficient information relating to the development and cannot provide General Terms of Approval.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP 65 - Design Quality of Residential Apartment Development

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

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

(a) the development consists of any of the following:

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

As previously outlined the proposed development is for the erection of a 4 storey shop top housing development plus basement car parking for the provisions of 10 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

## **DESIGN REVIEW PANEL**

Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral comments section within this report.

## **DESIGN QUALITY PRINCIPLES**

### **Principle 1: Context and Neighbourhood Character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

#### Comment:

The architectural response of the building is contrary with regards to bulk and scale when compared

to neighbouring development along the northern side of Raglan Street.

### **Principle 2: Built Form and Scale**

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

#### Comment:

The form of the building is considered to be excessive in consideration of size and scale of surrounding development, and the siting of the building is not considered to be an appropriate response to the siting of adjoining development.

### **Principle 3: Density**

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

#### Comment:

Whilst a higher density may be appropriate in this general location, the proposed development does not appropriately respond to the constraints of the site and a high level of amenity for future occupants is not achieved.

### **Principle 4: Sustainability**

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

#### Comment:

The application was supported by a BASIX Certificate, which includes recommendations to ensure that the building performs in accordance with industry standards.

### **Principle 5: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive



natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The proposed landscape design is generally acceptable in the context of the site. As discussed in detail the paved areas within the rear setback are considered to be excessive

**Principle 6: Amenity**

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

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

Comment:

As detailed in the assessment against the ADG and MDCP 2013, the proposed development is not appropriately resolved and fails to provide a reasonable level of amenity for future occupants of the development. Furthermore, the proposal also attributes to impacts upon the amenity of adjoining properties. The internal dimensions are achieved through a significant floor space ratio variation and inadequate side setbacks that compromise the level of solar access to the apartments within the development as well as the privacy of adjoining properties.

**Principle 7: Safety**

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The proposal provides safe and secure access to the site via the centrally located vehicular and pedestrian access points.

**Principle 8: Housing Diversity and Social Interaction**

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The proposed mix of two and three-bedroom apartments is appropriate in the context of the site.

**Principle 9: Aesthetics**

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

Notwithstanding the concerns relating to the scale of the development, the architectural treatment of the facades of the development are considered to be of good design, utilising a variety of materials, colours and textures.

**APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

<b>Development Control</b>	<b>Criteria / Guideline</b>	<b>Comments</b>
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Inconsistent</b> The proposal is compatible with the site context. The proposal is appropriately sited but is of excessive proportions and does not respond appropriately to the desired character of the locality.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Inconsistent</b> The overall design of the development does not ensure satisfactory outcomes in relation to visual bulk, privacy or solar access either within the development or to adjoining properties.

<p><b>Public Domain Interface</b></p>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p><b>Consistent</b></p> <p>The proposed building incorporates safe and secure access from the street frontage and provides opportunities for casual surveillance of the public domain.</p>												
<p><b>Communal and Public Open Space</b></p>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>Inconsistent - Acceptable on merit</b></p> <p>Given the proximity of the proposed development to the public reserve and North Steyne Beach, there is no demand for additional communal open space for occupants of the development.</p>												
<p><b>Deep Soil Zones</b></p>	<p>Deep soil zones are to meet the following minimum requires:</p> <table border="1" data-bbox="443 1066 1066 1653"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td> <td>-</td> <td rowspan="5">7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup></td> <td>6m</td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Inconsistent</b></p> <p>The proposed development does not provide for compliant deep soil zones. This is a direct result of excessive gross floor area and outdoor living areas to the rear of the site.</p> <p>A significant proportion of the noted landscaped open space to the rear of the site does not meet the minimum 3m dimensions.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													

<p><b>Visual Privacy</b></p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="432 389 1051 748"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Inconsistent</b> See comments below</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
<p><b>Pedestrian Access and entries</b></p>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b> The pedestrian entry is located to the front of the building (Raglan Street) making it easily identifiable.</p>												
<p><b>Vehicle Access</b></p>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Inconsistent</b> The location of the proposed driveway is generally acceptable in relation to the streetscape.</p>												

<p><b>Bicycle and Car Parking</b></p>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>• On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>• On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><b>Inconsistent - Acceptable in merit</b></p> <p>The parking shortfall of two (2) spaces is considered acceptable given that:</p> <ul style="list-style-type: none"> <li>• some relaxation of DCP requirements in this location could be considered to reduce traffic levels in the area and given the proximity of the site to good public transport, shops and recreational uses and the high level of walking and cycling activity in the vicinity.</li> <li>• section 4.2.5.4 of Manly DCP gives some exceptions to parking rates/ requirements where the constraints of the site preclude the provision of some or all of the required parking spaces and where the movement of</li> </ul>
---------------------------------------	--	--

		<p>vehicles to/from the site would cause unacceptable conflict with pedestrian movements.</p> <ul style="list-style-type: none"> <li>To offset the shortfall in parking and facilitate alternate travel modes, parking for bicycles (10 spaces) and motorcycles (2 spaces) is provided.</li> </ul>
--	--	--

#### Part 4 Designing the Building

##### Amenity

<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p>Inconsistent Not compliant (4 units - two on ground floor and two south facing upper floor)</p>
	<ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>consistent</b></p>
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li> </ul>	<p><b>Consistent</b></p>

	<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<b>Consistent</b>												
<b>Ceiling Heights</b>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2"><b>Minimum ceiling height</b></th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	<b>Minimum ceiling height</b>		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<b>Consistent</b>
<b>Minimum ceiling height</b>														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th><b>Apartment type</b></th> <th><b>Minimum internal area</b></th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	<b>Apartment type</b>	<b>Minimum internal area</b>	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>Inconsistent Not compliant - Apartment 6 - 7.7sqm upper level western unit.</p>		
<b>Apartment type</b>	<b>Minimum internal area</b>													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<b>Consistent</b>												

	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<b>Consistent</b>															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<b>Inconsistent</b> Not compliant - two ground floor units.															
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	<b>Consistent</b>															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	<b>Consistent</b>															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	<b>Consistent</b>															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	<b>Consistent</b>															
<b>Private Open Space and Balconies</b>	All apartments are required to have primary balconies as follows: <table border="1" data-bbox="435 1178 1054 1480"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	<b>Consistent</b>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m <sup>2</sup>	-															
1 bedroom apartments	8m <sup>2</sup>	2m															
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	<b>Consistent</b>															
<b>Common Circulation and Spaces</b>	The maximum number of apartments off a circulation core on a single level is eight.	<b>Consistent</b>															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	<b>Not applicable</b>															



<b>Storage</b>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="435 389 1054 712"> <thead> <tr> <th data-bbox="435 389 715 434">Dwelling type</th> <th data-bbox="715 389 1054 434">Storage size volume</th> </tr> </thead> <tbody> <tr> <td data-bbox="435 434 715 488">Studio apartments</td> <td data-bbox="715 434 1054 488">4m<sup>2</sup></td> </tr> <tr> <td data-bbox="435 488 715 562">1 bedroom apartments</td> <td data-bbox="715 488 1054 562">6m<sup>2</sup></td> </tr> <tr> <td data-bbox="435 562 715 636">2 bedroom apartments</td> <td data-bbox="715 562 1054 636">8m<sup>2</sup></td> </tr> <tr> <td data-bbox="435 636 715 712">3+ bedroom apartments</td> <td data-bbox="715 636 1054 712">10m<sup>2</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	<p><b>Consistent</b> The building design is satisfactory in this regard.</p>
Dwelling type	Storage size volume											
Studio apartments	4m <sup>2</sup>											
1 bedroom apartments	6m <sup>2</sup>											
2 bedroom apartments	8m <sup>2</sup>											
3+ bedroom apartments	10m <sup>2</sup>											
<b>Acoustic Privacy</b>	<p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</p>	<p><b>Consistent</b> The building design is satisfactory in this regard.</p>										
<b>Noise and Pollution</b>	<p>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</p>	<p><b>Consistent</b> The building design is satisfactory in this regard.</p>										
<b>Configuration</b>												
<b>Apartment Mix</b>	<p>Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.</p>	<p><b>Consistent</b> The proposed apartment mix is acceptable in the context of the site.</p>										
<b>Ground Floor Apartments</b>	<p>Do the ground floor apartments deliver amenity and safety for their residents?</p>	<p>Consistent The two ground floor apartments allow for adequate amenity and safety</p>										
<b>Facades</b>	<p>Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.</p>	<p><b>Consistent</b> The facade design is well-articulated, incorporates common elements of nearby contemporary developments and will contribute to the visual interest of the streetscape.</p>										
<b>Roof Design</b>	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</p>	<p><b>Consistent</b> The proposed flat roof design is compatible with contemporary developments in the locality.</p>										

<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Inconsistent</b>																																			
<b>Planting on Structures</b>	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	<b>Inconsistent</b>																																			
	<table border="1"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m<sup>3</sup></td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m<sup>3</sup></td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m<sup>3</sup></td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </tbody> </table>		Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm	
	Plant type		Definition	Soil Volume	Soil Depth	Soil Area																															
	Large Trees		12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent																															
	Medium Trees		8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent																															
	Small trees		6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent																															
	Shrubs				500-600mm																																
	Ground Cover				300-450mm																																
Turf			200mm																																		
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	<b>Consistent</b> 2/10 apartments incorporate the Livable Housing Guideline's silver level universal design features																																			
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<b>Not applicable</b>																																			

<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	<b>Consistent</b> The site is easily accessible by public transport noting its proximity to the Manly Town Centre.
<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.	<b>Consistent</b> Awning over Raglan Street have been provided by the proposed development.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b> The minimum NATHERS and BASIX requirements are included on the submitted plans
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Inconsistent</b> GTA's from Water NSW have not been provided.
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>Consistent</b> The proposal complies with Council's Waste Management Design Guidelines.
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Consistent</b> The material selection is satisfactory with regard to longevity and sustainability.

## Detailed ADG Discussion

- **Part 2 (Developing the controls)**

The subject site is located in the R3 Medium Density Residential zone. The subject site is a suitable site for a Residential flat building, noting the size of the site and surrounding land uses. However, the proposed size and scale of the proposed development particularly noting the non-compliant setbacks and additional storey, results in unreasonable visual presentation to the streetscape. The indicates that the proposed development is an overdevelopment of the site.

- **Overshadowing of adjoining properties (3B-1 and 3B-2)**

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

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

The application is supported by shadow diagrams as well as 'view of the sun' diagrams and a shadowing report. The properties vulnerable from shadowing from the proposed development are the apartments of No.18 Raglan Street, Manly

The apartments of No. 18 Raglan Street, Manly would be most compromised by shadowing from the proposed development during the afternoon (12pm-3pm) However, the overshadowing is minimal and will not have any unreasonable impact on these apartments. A suitable level of solar access will be maintained at all hours during the day. The totality of impact to these apartments is at worst minor, with a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter being maintained to all apartments within the building.

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

The control requires a 6m setback for habitable rooms and a 3m setback for non-habitable rooms for developments up to four storeys, to mitigate overlooking between properties. The lack of separation between each of the proposed buildings will result in direct overlooking between apartments.

For new development adjacent existing buildings 6m of separation is required to the boundary. The proposed level 2 balconies along the southern side of the proposed development are setback 4.5m from the southern property boundary, non-compliant with the numeric control. The proposal provides insufficient separation to the boundaries to ensure the privacy of the neighbouring properties. The proposed balconies along the northern side of the development will have a direct line of the site to the private open space of apartments of No. 23-31 Whistler Street, Manly. The issue of non-compliance with the building separation requirements in relation to the northern boundary and between the proposed individual buildings has been included as a reason for refusal.

## **STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT**

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

The application is recommended for refusal due to various inconsistencies with the design criteria of the ADG, as discussed above.

## **SEPP (Transport and Infrastructure) 2021**

### **Ausgrid**

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

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

Comment:

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

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

## **Chapter 4 – Remediation of Land**

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

### **Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	No
zone objectives of the LEP?	No

### **Principal Development Standards**

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
Height of Buildings	11m	13.4m to 14.5m	31.8% (3.5m)	<b>No</b>
Floor Space Ratio	0.75:1 (534.75m <sup>2</sup> )	1.77:1 (1,260m <sup>2</sup> )	135.6% (725.25m <sup>2</sup> )	<b>No</b>

### **Compliance Assessment**

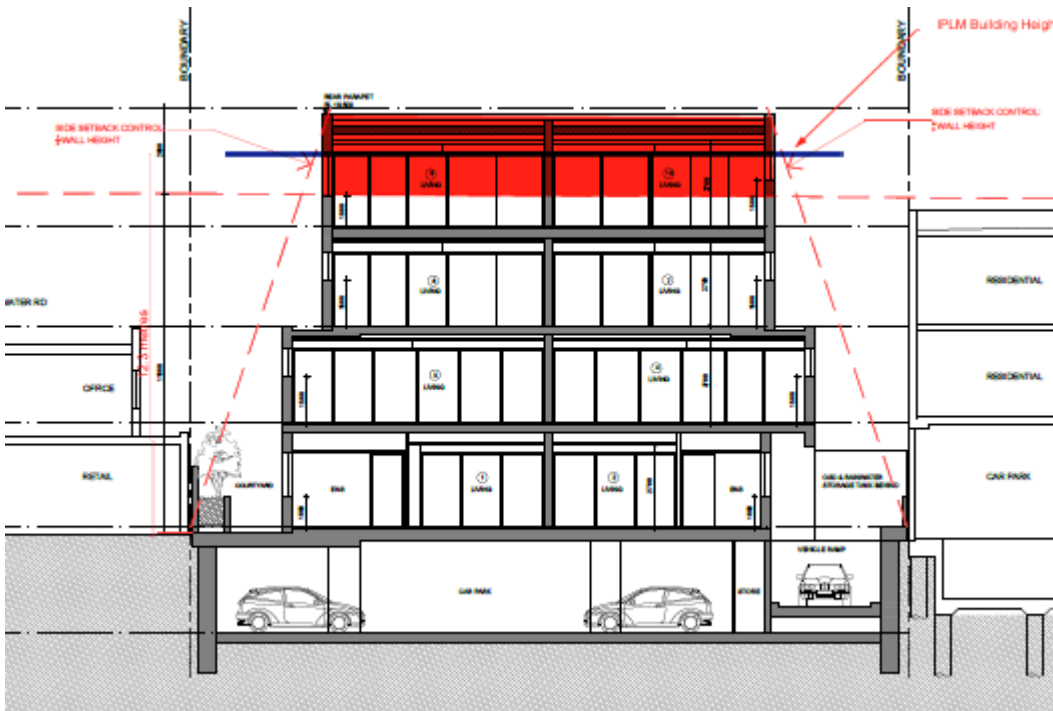
<b>Clause</b>	<b>Compliance with Requirements</b>
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	No
5.21 Flood planning	Yes
6.1 Acid sulfate soils	No
6.2 Earthworks	Yes
6.4 Stormwater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

### **Detailed Assessment**

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

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	13.2m - 14.5m
Percentage variation to requirement:	31.8%



**Figure 1 - Building height non-compliance**

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written



request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

*"Sufficient environmental planning grounds*

Despite non-compliance with the 11m building height development standard, the proposed development is compatible with the height of development within the visual catchment of the site. The proposed development has been designed with a three storey dominant façade presenting to Raglan Street that is consistent with the heights of immediately adjacent development. The proposed upper level is then setback from all boundaries and is finished in dark materials to ensure that it is visually recessive as seen from the public domain (see Figure 3).

The proposed design solution is generally consistent with that recommended by Council’s Design and Sustainability Advisory Panel who confirmed that the proposal demonstrated an acceptable urban and architectural design character, and who were generally supportive of a four storey built form at the subject site.

The proposed height breach also provides for an appropriate distribution of floor space across the subject site, noting that the proposal essentially seeks to relocate existing floor space from the rear of the site to a new upper level, where it will not result in any adverse impacts upon the amenity of adjoining properties. Rather, this redistribution of floor space has a positive impact upon the amenity of adjoining development to the east at 18 Raglan Street, who will receive significantly more direct sunlight in the afternoon during midwinter and who will be afforded with a greater sense of openness as a consequence of the increased rear setbacks proposed.

Allowing for a height breach associated with development that is compatible with the nearby development is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act. Furthermore, the proposed development is a

high-quality design that provides for enhanced amenity for adjoining properties, which promotes good design and amenity of the built environment, consistent with Objective 1.3(g) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard."

#### Council's Assessment of the Clause 4.6 Request

The applicant has not satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, in seeking to demonstrate that sufficient environmental planning grounds exist.

The applicant's request argues that the proposed breach to the height control is compatible with nearby development. The proposed development is not considered to be compatible with regard to the bulk and scale with neighbouring development, neighbouring development which is subject to the 11m height and control and within R3 Medium Density zone are all limited to three storeys, allowing for an additional storey above the height plane would start a precedent for new development to breach the control. The planning ground are not considered sufficient planning grounds to vary the development standard.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Medium Density Residential Zone. An assessment against these objectives is provided below.

#### Objectives of development standard

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

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

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

#### Comment:

The proposed building height would be an aberration from neighbouring development along the northern side of Raglan Street.

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

Comment:

The bulk and scale of the development is considered to be excessive, as evidenced by the proposed variations both the building height and floor space ratio development standards.

*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 is not considered to cause adverse impacts to views to, from or between nearby residential developments and public spaces, including the harbour and foreshores.

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

Comment:

The proposed development will not unreasonably compromise solar access for adjoining properties.

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

Comment:

Not applicable.

## **Zone objectives**

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

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

Comment:

The proposal provides a medium density development on the site to meet the housing need of the community.

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

Comment:

The proposal provides apartments which add to housing diversity within the R3 Zone and for the wider Northern Beaches locality where housing need and affordability is an issue.

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

Comment:

Not applicable.

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

Comment:

The proposed development is not a suitable redevelopment of the site as the proposal is an overdevelopment of the site.

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

Comment:

The proposed apartments will not be utilised for tourist accommodation.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.75:1 (534.75m <sup>2</sup> )
Proposed:	1.77:1 (1,260m <sup>2</sup> )
Percentage variation to requirement:	135.6% (725.25m <sup>2</sup> )

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 not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

**"Sufficient environmental planning grounds**

*Raglan Street is characterised by multistorey buildings built with nil setbacks to both the front and side setbacks to achieve continual, unbroken runs of built form, ensuring active street frontages and a vibrant pedestrian experience. The existing building at the subject site contributes to this character, with a cohesive streetscape outcome achieved on both sides of the street, as shown in Figure 4, over the page.*

*For whatever reason, the subject site was not zoned to reflect adjoining and nearby development along Raglan Street, but was zoned R3 Medium Density Residential with an associated floor space ratio of 0.75:1. The existing built form outcome at the subject site is not reflective of the R3 Medium Density Residential zoning of the site or the floor space ratio, with an existing floor space ratio of approximately 1.514:1, well in excess of the 0.75:1 floor spaceratio prescribed.*

*The 0.75:1 floor space ratio assumes compliance with the built form controls that would typically be applicable to medium density residential development, with generous side setbacks to each boundary and a higher proportion of at-grade landscaping. However, it is my opinion that compliance with such controls is unreasonable in the circumstances of the subject site, noting the established character of the streetscape and the presence of development built with nil setbacks to both side boundaries.*

*In fact, compliance with the 0.75:1 floor space ratio development standard and associated built form controls would likely be detrimental to this character, creating gaps in the streetscape and exposing the unarticulated blank facades of the adjoining buildings.*

*The proposed development provides an appropriate distribution of floor space on the site that is contextually appropriate and responsive to the massing and form of surrounding development.*

*High levels of amenity are achieved for future occupants of the development, with no adverse impacts upon the amenity of nearby or surrounding properties. Despite the non-compliance proposed, the development enhances the amenity of the adjoining development to the east, with a reduction of massing at the rear of the site providing for improved solar access throughout the afternoon.*

*Allowing for a breach of the floor space ratio to provide for a development consistent with the scale of the existing development on the site and that is compatible with the nearby development is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act. Furthermore, the proposed development is a high-quality design that provides for enhanced amenity for adjoining properties, which promotes good design and amenity of the built environment, consistent with Objective 1.3(g) of the EP&A Act.*

*Overall, there are sufficient environmental planning grounds to justify contravening the development standard."*

#### Council's Assessment of the Clause 4.6 Request

The applicant has not satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, in seeking to demonstrate that sufficient environmental planning grounds exist.

The extent of the gross floor area breach results in an additional non-compliant storey, which would be incompatible with both the existing and desired character of the area. It is not agreed that the breach of floor space will provide a development that is consistent with the scale of the development. The proposed development is not a orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R3 Medium Density 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 bulk and scale of the development, specifically the fourth floor is inconsistent 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:

While the building bulk of the proposal is not considered acceptable in relation to the site area, this excessive bulk will not cause adverse view impacts or obscure any important townscape features.

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

Comment:

The proposed building, by virtue of its excessive gross floor area, height and envelope, does not maintain an appropriate visual relationship with 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 proposed extent of gross floor area will result in a unreasonable loss of privacy for the adjoining property as a result of the non-compliant rear setbacks. Specifically, the rear elevations are not sufficiently articulated to provide visual relief and facilitate visual privacy and the proposed setbacks do not achieve the separation distances required by the ADG.

*(e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

Not applicable

**Zone objectives**

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

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

Comment:

The proposal provides a medium density development on the site to meet the housing need of the community.

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

Comment:

The proposal provides apartments which add to housing diversity within the R3 Zone and for the wider Northern Beaches locality where housing need and affordability is an issue.

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

Comment:

Not applicable.

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

Comment:

The proposed development is not a suitable redevelopment of the site as the proposal is an overdevelopment of the site.

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

Comment:

The proposed apartments will not be for tourist use.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard cannot be assumed.

**5.10 Heritage conservation**

Merit Consideration

The development is considered under the objectives of the clause below:

*The objectives of this clause are as follows:*

- (a) to conserve the environmental heritage of Manly,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Comment:

The proposed development involves the demolition of the existing building and does not allow for any conservation of the existing building. As such, the development is inconsistent with this objective as it does not retain or conserve the cultural significance of Manly. For detailed heritage assessment see referral comments under Strategic and Place Planning (Heritage Officer).

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

**6.1 Acid sulfate soils**

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

The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metre below the natural ground surface within a Class 4 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 3.42m below the natural ground level. No Preliminary Acid Sulfate Soil Assessment has been undertaken

This has been included as a reason for refusal.

## **6.2 Earthworks**

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

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

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

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

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

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

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

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

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

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

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

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

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

*(f) the likelihood of disturbing relics*

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of WLEP 2011, MDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal cannot be supported, in this particular circumstance.

## Manly Development Control Plan

### Built Form Controls

<b>Built Form Controls - Site Area: 715sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 4.76 dwellings	10 residential dwellings	53%	No
	Dwelling Size: 50sqm- 90sqm	Each dwelling meets numeric requirement	-	Yes
4.1.2.1 Wall Height	East: 9m	13.2m	53%	No
	West: 9m	13.2m	53%	No
4.1.2.2 Number of Storeys	3	4	25%	No
4.1.2.3 Roof Height	Height: 2.5m	1.2m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m, consistent with prevailing setback	-	Yes, see merit assessment
4.1.4.2 Side Setbacks and Secondary Street Frontages	4.4m (based on eastern wall height)	0.9m - 4.3m	79.4%	No
	4.4m (based on western wall height)	0m - 4.3m	up to 100%	No
	Windows: 3m	Minimum 3 - 4.3m	-	Yes

4.1.4.4 Rear Setbacks	8m	Ground terrace- 2.1m Ground wall- 5.69m First floor terrace- -6.19m First floor wall- 8.39m Second floor terrace- 6.18m Second floor wall- 8.28m Third floor terrace- 6.18m Third floor wall- 8.28m	up to 74%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area	46.2% 331sqm	7.6%	No
	Open space above ground 40% of total open space	N/A	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 30% (99.3sqm) of open space	2.6% (8.8sqm)	86%	No
	3 native trees	3 trees	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.5m	-	Yes
Schedule 3 Parking and Access	16 spaces	14 spaces	12.5%	No

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	No	No
3.3.1 Landscaping Design	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### **3.2 Heritage Considerations**

#### Merit consideration:

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

*Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

#### Comment:

The proposed development involves the demolition of the existing building and does not allow for any conservation of heritage significance. As such, the development is not consistent with this objective as it does not retain or conserve the cultural significance of Manly. For detailed heritage assessment see referral comments under Strategic and Place Planning (Heritage Officer).

*Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*

#### Comment:

The proposal involves the demolition of a building of heritage significance. The proposal is not of an appropriate design to ensure that it does not adversely impact the significance of the item and the locality.

*Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*

Comment:

As discussed above, the proposal will result in a significant adverse impact on the significance of the existing building.

*Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

Comment:

Not applicable.

*To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*

Comment:

The proposed demolition of the existing building is not supported. The proposal will not have any unreasonable impact on the neighbouring or nearby heritage items.

*Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

Comment:

Heritage management has been incorporated into the planning process and found the development to result in a significant impact on the cultural heritage of Manly.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

Description of non-compliance

##### **Wall Height**

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

South-eastern elevation: 13.2 metres - does not comply with numeric requirement of 9 metres.

North-western elevation: 13.2 metres - does not comply with numeric requirement of 9 metres.

##### **Number of Storeys**

The control stipulates that development shall be limited to a maximum of 3 storeys. The proposed development results in 4 storey mixed use development, which conflicts with this requirement.

#### Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal is not considered to be consistent with the objectives particularly to control the bulk and scale of the development.

#### **4.1.3 Floor Space Ratio (FSR)**

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has not adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation

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

##### Description of non-compliance

Clause 4.1.4.1 of the MDCP requires development be setback 6m from the front property line or be consistent with the prevailing building line.

Clause 4.1.4.2 of the Manly DCP requires any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed wall along the eastern and western boundary is to be setback at least 4.4m from the southern boundary.

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

**Front setback** - 0m (deemed to be consistent with the prevailing building line)

**East and Western side setback**-0m - 4.3m (up to 100% variation to the numeric control)

##### **Rear Setback:**

Ground terrace- 2.1m

Ground wall- 5.69m

First floor terrace- 6.19m

First floor wall- 8.39m

Second floor terrace- 6.18m

Second floor wall- 8.28m

Third floor terrace- 6.18m

Third floor wall- 8.28m

##### Merit consideration:

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



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

Comment:

The nil (0m) front setback is deemed to be reasonable given the prevailing setback of the street.

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

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

Comment:

The proposed development orientates windows, private open spaces, and communal open spaces in close (non-compliant) proximity to common boundaries. The proposed development does not adequately ensure or enhance amenity by providing suitable privacy (acoustic or visual) or solar access to adjoining sites. The proposed development does not result in any unreasonable view loss, and does not result in undesirable traffic conditions.

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

Comment:

The proposed development is not designed to allow for suitable flexibility in design of adjacent sites, in that the amenity (privacy and solar access) of these sites would be compromised by the proposed development.

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

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

Comment:

The proposed development results in a significant non-compliance with the required total open space on site. As such, the proposed development is unable to provide suitable planting, deep soil zones, and vegetation in order to provide consistency with the landscape character of the area, and in order to suitably soften the proposed built form. The subject sites does not included any open space land, national park or bushland.

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

Comment:

Not applicable

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

Clause 4.1.5.1 of the MDCP requires at 50% of the site being total open space. The application proposes 46.2% (331sqm) of the site as total open space, non-compliant with the numeric control. This represents a 7.6% variation to the numeric control.

Clause 4.1.5.2 of the Manly DCP requires at 30% (99.3sqm) of total open space be landscaped open space. The development proposes 2.6% (8.8sqm), non-compliant with the numeric control (86% variation).

Merit consideration:

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

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

Comment:

The proposal does not provide adequate landscaped area on site so as to retain and augment natural features on the site. In particular, the large paved area to the rear of the site in appropriately restrict opportunity for natural features on the site.

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

Comment:

The proposal involves hard surface to surround the site and as so, does not sufficiently maximise soft landscaped areas at ground level.

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

Comment:

The total amount of open space above ground level results in a situation in which there is an unreasonable privacy outcome for the site. The extent of the rooftop terrace provides unreasonable

opportunity for overlooking and acoustic privacy impact.

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

Comment:

Council's engineers is satisfied with the method of stormwater drainage, see their assessment previously in this report.

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

Comment:

The proposal does not involve any weeds and provides not unreasonable opportunity for the spread of weeds

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

Comment:

The proposal does not comply with the landscaped area control and does not provide enough natural features across the site to maximise wildlife habitat and potential for wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$84,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$8,470,000.

## **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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the 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.

## **PLANNING CONCLUSION**

This proposal, for demolition works and construction of a four storey mixed use development, has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal is subject to the provisions of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65), and because the proposal breaches the building height and FSR development standards by more than 10%.

The proposal includes significant built form non-compliances with respect to the ADG and MDCP 2013. The proposed variations have been considered in relation to the provisions of Clause 4.6 of the Manly LEP 2013.

The DSAP panel provided a clear position that proposal is an overdevelopment of the site and this is a result of the extensive FSR breach. Council concurs with the conclusions drawn by the DSAP panel and the recommended reasons for refusal generally align with the concerns raised with the DSAP.

Furthermore, there are issues that have been raised by Council's internal referral staff with regards landscape design. Additionally, Council Heritage advisor has also raised concern with the complete demolition of the existing building, noting that the existing building contributes to the heritage

conservation area (C1 - Pittwater Road Conservation Area) to which it located in.

The application is therefore recommended for refusal to the Local Planning Panel for the reasons outlined at the end of this assessment report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2022/2256 for the Demolition works and construction of a mixed use development with basement car parking. on land at Lot 100 DP 1009880,22 Raglan Street, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

### Particulars:

Council is not satisfied that:

a) the applicant's written requests under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of the clause 4.3 (Height of Buildings) and clause 4.4 (Floor Space Ratio) MLEP 2013 development standard has adequately addressed and demonstrated that:

- i. compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
- ii. there are sufficient environmental planning grounds to justify the contraventions.

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

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.10 Heritage conservation of the Manly Local Environmental Plan 2013.
6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to satisfactorily meet the relevant Design Quality Principles of SEPP

65 as required by Clause 28(2)(c) of the SEPP, in particular Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density and Principle 5: Landscape.

7. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.1 Acid Sulfate Soils of the Manly Local Environmental Plan 2013.
8. In accordance with the provisions of s.4.47(2) of the Environmental Planning and Assessment Act, consent cannot be granted as general terms of approval have not been obtained from WaterNSW for water supply work required under s90(2) of the Water Management Act.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.2 Heritage Considerations of the Manly Development Control Plan .
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.1.1 Residential Density and Dwelling Size of the Manly Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
13. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.