

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0160
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 1 DP 566121, 41 Whistler Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Garrick John Bryant

Application Lodged:	24/02/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/03/2025 to 19/03/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 14.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 287,870.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) due to a proposed variation to the floor space ratio (FSR) development standard of greater than 10%.

Following public exhibition of the application Council has received no submissions.

Critical assessment issues included assessment of the proposed variation to the floor space ratio development standard, as well as assessment of proposed variations to the following built form controls:

- MDCP Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- MDCP Clause 4.1.5 Open Space and Landscaping
- MDCP Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The 4.6 request for the non-compliance with FSR development standard arises from a 12.6sqm increase in floorspace associated with the infill of an existing central ground floor courtyard and expansion of the side / rear of the existing first floor. This results in a proposed FSR of 0.86:1 (156sqm), representing a 14.6% (19.875sqm) non-compliance with the applicable FSR development standard of 0.75:1 (136.125sqm). However, it is noted that the proposed FSR does achieve compliance with the undersized allotment FSR dispensation stipulated within MDCP Clause 4.1.3 Floor Space Ratio (FSR). The additional floorspace does not increase the bulk or scale of the building and will not be out of character with surrounding development.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a semi-detached dwelling. Specifically, the following works are proposed:

Attic Level

- Demolish and replace existing roof
- Modify existing stair, ensuite, attic study and deck
- New skylights
- New retractable awning over existing deck

Ground Level

- Extend Dining room and move glazed doors
- New skylight

Additional information was requested in relation to a referral response from Council's Heritage Officer. Amended plans / information was provided in response, which did not require re-notification (in accordance with the Northern Beaches Community Participation Plan).

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R3 Medium Density Residential

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

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

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

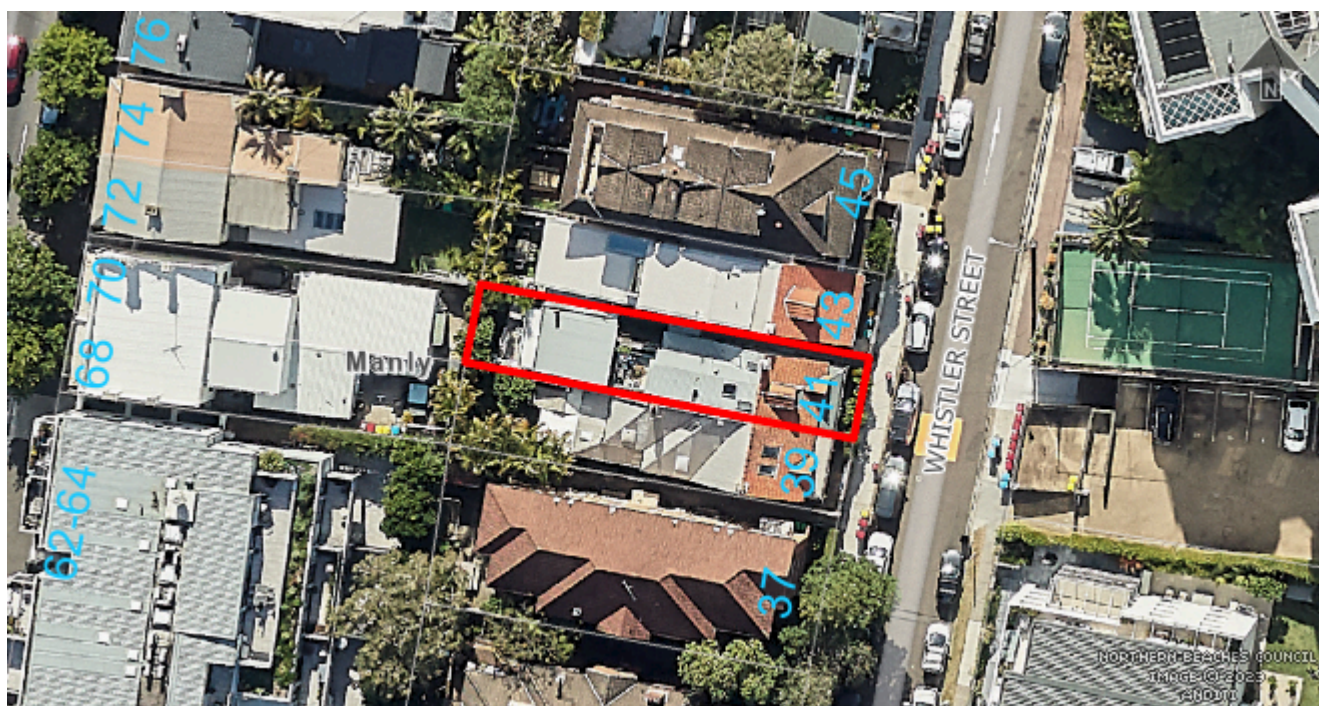
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

SITE DESCRIPTION

Property Description:	Lot 1 DP 566121 , 41 Whistler Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Whistler Street.</p> <p>The site is regular in shape with a frontage of 6.06m along Whistler Street and a depth of 30.32m. The site has a surveyed area of 181.5sqm.</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a semi-detached dwelling.</p> <p>The site is relatively flat.</p> <p>The site contains some garden and lawn areas within the rear yard. There are no details of threatened species at the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by medium and high density residential development, as well as commercial development, within the Manly Town Centre.</p>

Map:



SITE HISTORY

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

Development Application No. DA272/03 for "Demolish Rear & Extend Rear of House, Refurbish Attic and Replace Fences" was approved on 9 September 2003. This consent was subsequently modified on 20 December 2004.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 05/03/2025 to 19/03/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments			
Landscape Officer	<p><i>Supported, subject to conditions.</i></p> <p>The application seeks consent for: Alterations and additions to a semi-detached dwelling.</p> <p>The plans and SEE indicate that no significant landscape features are impacted by the proposed works. No trees are to be removed.</p> <p>No objections are raised regarding landscape issues subject to conditions.</p>			
NECC (Development Engineering)	<p><i>Supported, subject to conditions.</i></p> <p>The proposal is for alterations and additions to the existing semi detached dwelling. No objections to approval subject to conditions as recommended.</p>			
Strategic and Place Planning (Heritage Officer)	<p><i>Supported, subject to conditions.</i></p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td><p>The proposal has been referred to Heritage as the subject property is located within the C1 - Pittwater Road Heritage Conservation Area and in close proximity of a heritage item:</p><p>Item I2 - All stone kerbs - Manly municipal area</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the subject property is located within the C1 - Pittwater Road Heritage Conservation Area and in close proximity of a heritage item:</p> <p>Item I2 - All stone kerbs - Manly municipal area</p>
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Internal Referral Body	Comments																	
	Details of heritage items affected																	
	Details of the item as contained within the Manly inventory is as follows:																	
	C1- Pittwater Road Heritage Conservation Area																	
	<u>Statement of Significance</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.																	
	<u>Physical Description</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually signifigant buildings which are listed seperately. Adjacent streets generally comprise a consistant pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.																	
	Item I2 - All stone kerbs																	
	<u>Statement of significance</u> Stone kerbs are heritage listed.																	
	<u>Physical description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight																	
	Other relevant heritage listings																	
	<table><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No
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Other	No																	
Consideration of Application																		

Internal Referral Body	Comments
	<p>The subject site is located within the Pittwater Road Conservation area and is in the vicinity of heritage listed stone kerb and guttering. The proposal seeks consent for alterations and additions to the existing semi detached Federation era property, which was modified in 2003, with a first floor addition including a dormer window addition at the street frontage. However, these additions do not detract from its heritage values as they are not visible from the street and except the dormer which is in traditional vertical proportions. Therefore, the existing semi is considered to be a contributory item within the heritage conservation area and contributes to the streetscape.</p> <p>The current proposal is mainly confined to the rear of the property involving modifications to the floor plans and the first floor roof form. The proposed modification to the first floor plan removes the existing recessed transition (ensuite) area and extends this section to align with the ground floor external walls below. This extension is not supported as it will remove the current original roof form, therefore the ensuite is required to be recessed from the side boundary to allow part of the main roof form of the original building to be retained as the side elevation of the original building is visible from the street.</p> <p>The proposed new roof over the first floor involves a lower section (a lower level transition roof) that provides separation from the original roof. This separation is required to be greater and should be extended to be in line with the wall between the first floor ensuite and study area to set the higher portion of the new roof further back and to minimise the visibility of the first floor from the street. The upper most level (RL) of this transition roof must be noted on the section and elevation drawings.</p> <p>Additionally, it is noted that the existing dormer facing the street (on both semis) is shown higher and larger than the existing form, which is required to be corrected on the front elevation. It is also noted that the existing front fence is not shown on the front elevation. It must be clarified if there is any modifications are proposed to the front fence.</p> <p>Revised comments - 15 May 2025</p> <p>The applicant has provided updated plans and additional information in response to the initial heritage concerns. The design of the new first-floor roof has been modified to be set behind the main roof and lower than the original ridge cap. This suggests that while Heritage initially had concerns regarding the potential impact on the contributory semi and the overall conservation area, the applicant's design considerations to the new roof (stepped setback and reduced height), have likely addressed these concerns. It indicates an effort to minimize the visual prominence of the first floor. However, a detailed external</p>

Internal Referral Body	Comments
	<p>colour schedule has not been provided. Therefore, the details of the proposed external materials and colours are required to ensure they are appropriate for the heritage context.</p> <p>Therefore, no objections are raised on heritage grounds subject to one condition.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u></p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1783471_03, issued on 13 May 2025).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

There is no currently adopted Coastal Vulnerability Area Map. Nonetheless, the proposed development is for minor alterations and additions to an existing semi-detached dwelling, located on a site already disturbed for residential use, within a developed town centre. The proposed development satisfies the above requirements.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is for minor alterations and additions to an existing semi-detached dwelling, located on a site already disturbed for residential use, within a developed town centre. The proposed development satisfies the above requirements.

Division 5 General

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

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

Comment:

The proposed development is for minor alterations and additions to an existing semi-detached dwelling, located on a site already disturbed for residential use, within a developed town centre. The proposed development satisfies the above requirements.

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

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

Comment:

The proposed development is for minor alterations and additions to an existing semi-detached

dwelling, located on a site already disturbed for residential use, within a developed town centre. The proposed development satisfies the above requirements.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses 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?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	6.6m	-	Yes
Floor Space Ratio	0.75:1 (136.125sqm)	0.86:1 (156sqm)	14.6% (19.875sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R3 Medium Density Residential

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

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

Comment:

The proposed development is for alterations and additions to an existing semi-detached dwelling, allowing for the adaptation of existing housing stock to accommodate for the changing housing needs of owners / occupants and therefore the community.

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

Comment:

The proposed development is for alterations and additions to an existing semi-detached dwelling, a type of housing within a medium density residential environment.

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

Comment:

The proposed development is for residential use within a residential area. Nonetheless, it does not impede on other potential uses in the area.

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

Comment:

The proposed development is for alterations and additions to an existing semi-detached dwelling, allowing for the revitalisation and rehabilitation of existing housing stock.

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

Comment:

The proposed development is for residential use within a residential area. Nonetheless, it will not impact on tourist accommodation in Manly.

Overall, the proposed development is considered to meet the underlying objectives of the R3 Medium Density Residential zone.

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 Floor space ratio

Requirement: 0.75:1 (136.125sqm)

Proposed: 0.86:1 (156sqm)

Percentage of variation: 14.6% (19.875sqm)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 Floor space ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The Applicant's written request seeks to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The written request does make notes on other ways / tests outlined in *Wehbe*, however, they are not considered to be sufficient. Nonetheless, only one of the five ways must be demonstrated, with this assessment focused on the first way. The objectives of the development standard are addressed within the 4.6 request as follows:

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

streetscape character,

Response from the Applicant:

"The contravention would not alter the existing character of the streetscape as it is located behind the front ridge and is associated with already existing elements. Further, the desired future streetscape character is also dictated by Clause 4.1.3.1 of the MDCP which would permit a GFA for the site greater than that which is proposed."

(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,

Response from the Applicant:

"The contravention would be obscured behind and within existing beholding elements and would not result in any landscape or townscape features being obscured."

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

Response from the Applicant:

"The contravention would be visually discrete and not materially alter the visual relationship between new development and the existing character and landscape of the area."

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

Response from the Applicant:

"The contravention would not give rise to any adverse amenity impacts in respect of overshadowing, bulk and scale or privacy."

(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.

Response from the Applicant:

"N/A. The site is not located in Zone E1."

The arguments provided by the Applicant in response to the objectives are generally concurred with. The proposal complies with the dispensation outlined in MDCP Clause 4.1.3 Floor Space Ratio (FSR), which provides guidance for assessing FSR variations where allotments are undersized. In this instance, the Clause stipulates that a variation may be accepted based on calculation of FSR using a 250sqm lot size. If the lot were to have a 250sqm lot size, the FSR of 0.45:1 would allow a GFA of 187.5sqm. The proposed GFA of 156sqm would be compliant in this case. The proposed additional GFA is all located at the rear of the property and comprises of relatively minor additions and infilling of balconies / terraces. The proposed development will not be out of character with surrounding development. It is considered that the objectives of the standard are achieved despite non-compliance with the standard.

(b) 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.'

The Clause 4.6 Request argues, in part:

- *"The lot is an undersized lot being less than the 250m² minimum lot size nominated for the site under cl. 4.1 of MLEP 2013. Clause 4.1.3.1 of the MDCP enables Council to consider an exception to the Floor Space Ratio to the extent of FSR calculated on the basis of a 250m² lot; this would permit a GFA of 187.5m². The proposed GFA is 156.19m² which complies with this."*
- *"The development meets the stated objectives of Clause 4.4."*

The environmental planning grounds provided by the Applicant are generally concurred with. Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 Floor space ratio for the following reasons:

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Support of a variation is generally consistent with recent development consents issued by Council and the Court on undersized allotments (where the MDCP Clause 4.1.3 dispensation is applicable), reflecting orderly development of the land and consistency in the decision making process, thereby satisfying object 1.3(c) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 181.5sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	-	Yes
	Dwelling Size: 95sqm (3 bedrooms, 2 bathrooms)	156sqm	-	Yes
4.1.2.1 Wall Height	North: 9.2m (based on gradient 1:30)	5.4m	-	Yes
4.1.2.2 Number of Storeys	3	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.4m	-	Yes
	Pitch: maximum 35 degrees	5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	All works behind 2.4m existing front setback, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	GF Extension: 0.8m (based on 2.5m wall height) FF Deck Balustrade: 1.3m (based on 3.9m wall height) FF Extension: 1.8m (based on 5.4m wall height)	0.9m 2m 1m	- - 44.4%	Yes Yes No
	No new windows within 3m of a side boundary	One (1) new window within 3m of a side boundary	N/A	No
4.1.4.4 Rear Setbacks	8m	Proposed works: 11m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (90.75sqm)	18.3% (33.2sqm)	63.4% (57.55sqm)	No but existing and unchanged
	No more than 25% of total open space above ground (8.3sqm)	0% (0sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (9.96sqm)	52.7% (17.5sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	100%	No but existing and unchanged

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The proposed development has a FSR of 0.86:1 (156sqm) which represents a variation of 14.6% (19.875sqm) to the prescribed FSR of 0.75:1 (136.125sqm).

Clause 4.1.3 Floor Space Ratio (FSR) of the MDCP includes guidance for assessing variations where allotments are undersized. The subject site is 181.5sqm, and the minimum lot size as stipulated by Clause 4.1 Minimum subdivision lot size of the MLEP 2013 is 250sqm (Area C). Therefore, the subject site is undersized.

In this instance, the Clause stipulates that a variation may be accepted based on calculation of FSR using a 250sqm lot size. If the lot were to have a 250sqm lot size, the FSR of 0.75:1 would allow a Gross Floor Area (GFA) of 187.5sqm. The proposed GFA of 156sqm would be compliant in this case.

As such, the variation prescribed by this MDCP Clause is considered to apply and is an environmental planning ground justifying the variation of the FSR development standard. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to Development Standards for a detailed assessment of this variation to the FSR development standard, which finds that the variation is supported, in this instance.

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

Description of non-compliance

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

At the northern side boundary, the following setbacks are required and exhibited:

- GF Extension: 0.8m (based on 2.5m wall height), 0.9m proposed, complies.
- FF Deck Balustrade: 1.3m (based on 3.9m wall height), 2m proposed, complies.
- FF Extension: 1.8m (based on 5.4m wall height), 1m proposed, 44.4% variation.

Only the proposed first floor extension creates additional non-compliances with this control. Notably, this extension seeks to extend the existing first floor wall, meaning the existing first floor setback is maintained by these additions.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposed development includes the creation of three (3) new windows within 3m of a side boundary. Nonetheless, the proposed windows are considered acceptable from a visual privacy perspective.

Merit consideration

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

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

Comment:

The proposed alterations and additions maintain the established existing building setbacks. All

proposed works are located at the rear of the property, away from the street. Windows on the side elevations proposed within 3m of side boundaries do not compromise the desired streetscape. Given these factors, the streetscape is not considered to be adversely impacted.

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 alterations and additions maintain the established existing building setbacks. The proposal is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain existing streetscape characteristic and not to detrimentally impact on traffic conditions or the privacy of surrounding dwellings.

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

Comment:

Flexibility is required in the siting of alterations and additions to existing structures as the proposal must contend with existing non-compliances. By allowing the adaption and alteration of existing structures to suit the changing needs of owners and occupants, sustainability is encouraged. The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and it has demonstrated it meets the underlying objectives of controls where non-compliance arise. As such, flexibility is warranted in this instance.

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:

All proposed works are located over existing hard surfaces or within existing built form, with no reduction to existing landscaping proposed. Furthermore, the proposal is compliant with the landscape area control of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:

The site is not classified as bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS2, which requires at least 50% (90.75sqm) of the site to be open space. In addition, at least 30% (9.96sqm) of the proposed total open space is to be landscaped area and no more than 25% (8.3sqm) of total open space can be provided above ground level.

The subject site has an existing non-compliant level of total open space of 18.3% (33.2sqm), representing a variation of 63.4% (57.55sqm) to the requirement. However, this is an existing site feature and is unchanged by the proposed development, as all proposed works are located above existing hard surfaces or within existing built form.

It is noted that the subject site achieves compliance with landscaped area, exhibiting a total of 52.7% (17.5sqm). Furthermore, nil (0sqm) open space is provided above ground level.

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 proposed alterations and additions are located entirely within the footprint of existing hard surfaces or built form. The proposal will not alter total open space, landscaped area or landscape planning / trees. In this regard, the proposal retains and augments important landscape features and vegetation.

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 maintains landscaped area with dimensions capable of accommodating for any future plantings and maximises open space 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 proposal does not result in any unacceptable impacts to amenity, including sunlight, privacy, and views. The proposal is consistent with the surrounding area and streetscape character.

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

minimise stormwater runoff.

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area.

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

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment:

The proposed works are not expected to significantly affect wildlife habitat. Existing wildlife corridors will be retained.

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

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

For semi-detached dwellings this Clause requires the provision of two (2) off-street parking spaces. As existing, the semi-detached dwelling provides nil (0) off-street parking spaces and this arrangement is not proposed to be changed.

The proposed development is numerically non-compliant with Schedule 3 of the MDCP 2013 outlining off-street parking requirements. However, the provision of any additional parking spaces on the subject site is not achievable within the existing context, nor expected in this instance considering the nature of the proposed alterations and additions. Furthermore, requiring the provision of parking at the site would negatively impact the existing built form and streetscape, particularly important as this property is situated within the Manly Heritage Conservation Area. As this non-compliance is existing and unchanged, further merit assessment is not required, in this instance.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$2,879 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$287,870.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling has been referred to the Development Determination Panel (DDP) due to a proposed variation to the floor space ratio (FSR) development standard of greater than 10%.

Following public exhibition of the application Council has received no submissions.

Critical assessment issues included assessment of the proposed variation to the floor space ratio development standard, as well as assessment of proposed variations to the following built form

controls:

- MDCP Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- MDCP Clause 4.1.5 Open Space and Landscaping
- MDCP Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The 4.6 request for the non-compliance with FSR development standard arises from a 12.6sqm increase in floorspace associated with the infill of an existing central ground floor courtyard and expansion of the side / rear of the existing first floor. This results in a proposed FSR of 0.86:1 (156sqm), representing a 14.6% (19.875sqm) non-compliance with the applicable FSR development standard of 0.75:1 (136.125sqm). However, it is noted that the proposed FSR does achieve compliance with the undersized allotment FSR dispensation stipulated within MDCP Clause 4.1.3 Floor Space Ratio (FSR). The additional floorspace does not increase the bulk or scale of the building and will not be out of character with surrounding development.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2025/0160 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 566121, 41 Whistler Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans

Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
2412-1_00	03	Site Plan Basix GFA Diagrams	RAA Architects	13 May 2025
2412-1_01	03	Floor Plans	RAA Architects	13 May 2025
2412-1_02	03	Elevations	RAA Architects	13 May 2025
2412-1_03	03	Elevations	RAA Architects	13 May 2025
2412-1_04	03	Sections	RAA Architects	13 May 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1783471_03	-	RAAARCHITECTS PTY LTD	13 May 2025
Waste Management Plan - 41 Whistler Street, Manly	-	-	-
Stormwater Layouts, Drawing No. 2412-5_01	02	RAA Architects	18 February 2025

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$2,878.70 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$287,870.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Boundary Identification Survey

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on a boundary identification survey, prepared by a Registered Surveyor, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

8. External materials and colour scheme

Any new colour scheme on the building or front fence is to be sympathetic to the original architectural style of the semi and any original unpainted brickwork is to remain unpainted. Details of the proposed external materials and colours must be submitted to council prior to issue of the construction certificate to ensure they are appropriate for the heritage context.

Reason: To ensure the external colours are appropriate within the HCA.

9. Compliance with Standards

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

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

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

10. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property:

- 39 Whistler Street, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

12. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),
- Location of site access, proposed roads and other impervious areas (e.g. parking area and site facilities),
- Existing and proposed drainage patterns with stormwater discharge points,
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties,

and

- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

DURING BUILDING WORK

13. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site, unless exempt.
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures

specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and compliant to AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

14. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

15. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are

maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

16. Handling of asbestos during demolition

While demolition work is being carried out, any work involving the removal of asbestos must comply with the following requirements:

- Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material;
- Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and
- Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA online reporting tool WasteLocate.

Reason: To ensure that the removal of asbestos is undertaken safely and professionally.

17. Survey Certificate

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

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

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

18. Maintenance of Sediment and Erosion Controls

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

19. **Stormwater Disposal**

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

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