

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0645
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 101 DP 611231, 26 Whistler Street MANLY NSW 2095
Proposed Development:	Demolition works, construction of a residential flat building and strata subdivision
Zoning:	B2 Local Centre
Development Permissible:	No - Existing Use Rights apply
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 15752
Applicant:	Boston Blyth Fleming Pty Ltd
Application Lodged:	24/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	01/02/2020 to 15/02/2020
Advertised:	01/02/2020
Submissions Received:	17
Clause 4.6 Variation:	4.3 Height of buildings: 18.8% 4.4 Floor space ratio: 39.94%
Recommendation:	Approval
Estimated Cost of Works:	\$ 21,320,155.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/0645 for demolition works, construction of a residential flat building and strata subdivision at 26 Whistler Street, Manly. The proposed development relies on and benefits from existing use rights. As such, development controls do not strictly apply to the site.

The proposed development includes variations to the Height of Buildings, Floor Space Ratio, and Gross Floor Area in Zone B2 development standards of the *Manly Local Environmental Plan 2013* (MLEP 2013) of 18.8%, 39.94%, and 100%, respectively. These non-compliant elements are supported on merit.

The proposal relates to a residential flat building, to which *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* and the Apartment Design Guide would apply, if the development did not benefit from existing use rights. As such, the application requires referral to the Northern Beaches Local Planning Panel for determination.

The proposed development is not compliant with Clauses 4.1.2.2 Number of Storeys, 4.1.5.3 Private Open Space, and Schedule 3 Parking and Access of the Manly Development Control Plan 2013 (MDCP 2013). These non-compliant elements are supported on merit. The proposed development is otherwise compliant with planning controls. The proposed development received 17 submissions relating to development standard non-compliance, bulk and scale, lack of commercial floor space, inadequate design excellence, inadequate landscaping, overshadowing, excavation impacts on groundwater and adjacent properties, safety, property value, parking, view loss, noise- and wind-funneling, consultation with neighbours, construction noise and vibration, and concerns about the pedestrian arcade.

The application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2000* (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. Based on a detailed assessment of the proposal against the applicable planning controls, the proposal is suitable and is an appropriate development for the subject site. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be **approved**.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- Demolition of all structures;
- Construction of a 10-storey residential flat building, comprising:
 - Basement car parking for 33 residential cars, 8 bicycle racks, storage and services;
 - Ground floor car parking for 24 residential cars, 16 bicycle racks, storage, services, and residential apartments;
 - Seven storeys of residential apartments, comprising:
 - 3 x 1-bedroom apartments;
 - 26 x 2-bedroom apartments; and
 - 12 x 3-bedroom apartments.
 - Rooftop communal open space.

On 26 September 2019, Council identified a number of issues including concerns about proximity to the substation next door, inadequate dimensions in the carpark, waste storage concerns, and heritage concerns. Throughout October 2019, the Applicant provided documentation in order to address the concerns. The amended documentation demonstrated minor amendments of lesser environmental impact, so did not require re-notification, in accordance with Part 2 Exhibition, Advertisement and Notification of Applications of the MDCP.

On 29 November 2019, Council again identified issues in relation to bulk and scale. Throughout January 2020, the Applicant provided documentation that satisfactorily addressed the concerns. The amended plans were re-notified.

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 B2 Local Centre
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.11 Active street frontages
 Manly Local Environmental Plan 2013 - 6.13 Design excellence
 Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.2.1 FSR (Consideration of Exceptions including Arcades)
 Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
 Manly Development Control Plan - 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access
 Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones

SITE DESCRIPTION

Property Description:	Lot 101 DP 611231 , 26 Whistler Street MANLY NSW 2095 Lot CP SP 15752 , 26 Whistler Street MANLY NSW 2095
Detailed Site Description:	The Assessing Officer visited the site on 6 August 2019. The subject site consists of one (1) allotment located on the eastern side of Whistler Street. The site is irregular in shape with frontages of 36.585m along Whistler Street and 43.595m along Short Street, and a depth of approximately 30m. The site has a surveyed area

of 998m².

The site is located within the B2 Local Centre zone and accommodates a four-storey residential flat building, consistent of a level of at-grade car parking, with apartments above.

The site is relatively level and contains some vegetation.

Detailed Description of Adjoining/Surrounding Development

To the north of the subject site is a substation. To the east, west and south are shop top housing developments. The surrounding locality contains large-scale residential and mixed-use developments.

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:

- Pre-lodgement Meeting PLM2018/0280 was held on 27 November 2018 for alterations and additions to the existing building.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, allow Council to request additional information. Council requested additional information in relation to concerns about proximity to the substation next door, inadequate dimensions in the carpark, waste storage concerns, heritage concerns, and bulk and scale concerns. All required information was provided.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building</p>

Section 4.15 Matters for Consideration'	Comments
	designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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 2013 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 accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 4.65 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of Compliance Certificate No. 41/80 pertaining to Building Application 256/79 for a three-storey residential flat building with parking, which reveals that the use of the land commenced as a lawful purpose on 25 July 1980, prior to the coming into force of the *Manly Local Environmental Plan 2013* on 5 April 2013.

Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was lawfully approved by the former Manly Municipal Council on 25 July 1980, prior to the coming into force of the *Manly Local Environmental Plan 2013* on 5 April 2013.

Has the use of the land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The Applicant has provided evidence in the form of Compliance Certificate No. 41/80 pertaining to Building Application 256/79 for a three-storey residential flat building with parking, which reveals that the use of the land was lawfully approved and constructed at 25 July 1980, and has continued in such use since that time, beyond the date on which the provision having the effect of prohibiting the use commenced.

What is “the land on which the existing use was carried out” for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and, therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that are applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The following four principles adopted by the Court in this case will have general application in dealing with development applications that rely on existing use rights:

How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed development is located in an area that allows for buildings with a maximum height of 25m under Clause 4.3 Height of Buildings of the MLEP 2013, a maximum floor space ratio of 3:1 under Clause 4.4 Floor Space Ratio of the MLEP 2013, and nil setbacks to boundaries under the MDCP 2013. It is understood that these (and all other relevant development standards and controls) do not strictly apply to the development. However, these controls are relevant in establishing the context of this particular locality. Given these controls, it is readily established that the area anticipates large-scale development.

The majority of the building envelope of the proposed development achieves what would be a compliant

building height if controls were to apply, with the exception of a small portion of the upper floor, the communal open space, lift shaft and mechanical plant. These elements reach a maximum height of 29.71m (which would equate to a variation to the height of buildings development standard of 18.8%). However, these elements are predominantly centrally located within the roof footprint of the proposed development and are therefore not readable from the streetscape. This means that the readable bulk from the streetscape is generally compliant with the maximum building height that would apply, and the elements that would be non-compliant do not result in any unreasonable visual impact.

The proposal includes what would be a non-compliant floor space ratio of 4.21:1, which would equate to a variation to the floor space ratio development standard of 39.94%. However, the proposal demonstrates consistency with the setbacks envisaged by the MDCP 2013, and is acceptable in relation to the building separation requirements of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG). Again, while the requirements of SEPP 65 and the ADG do not strictly apply, the proposal's consistency with these documents demonstrates the design (and resultant bulk and scale) are suitable.

The immediate vicinity of the subject site contains numerous large-scale residential and mixed-use developments. For example, to the east of the subject site, across Short Street, is a 23-storey shop top housing development, at 22 Central Avenue. Immediately south of the subject site, a seven-storey shop top development exists, at 48-52 Sydney Road. The surrounding locality includes developments of similar height, bulk and scale.

Given the above, the proposal is demonstrated to be of consistent bulk and scale to development existing within, and anticipated for, this locality. The proposal demonstrates a suitable relationship between the subject site and adjacent and surrounding sites in relation to existing and future context.

What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposed development does not include change of use. The proposal includes demolition of the existing residential flat building and construction of a new, larger residential flat building. It is understood no automatic entitlement exists for a building of the same or larger floor space ratio or other provision exists. However, as demonstrated above, the proposal is of acceptable bulk and scale, consistent with development envisaged for this location.

What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed development is acceptable in relation to the amenity of the subject site and adjoining sites, in accordance with SEPP 65 and the ADG. While these documents do not strictly apply, the requirements within guide assessment in relation to acceptable impacts. The proposed development results in a reduction in solar access for the property to the south at 48-52 Sydney Road. However, the accompanying Solar Access Analysis prepared by Walsh² Analysis demonstrates that the adjacent site retains sunlight access consistent with the requirements of SEPP 65 and the ADG. The proposal retains adequate privacy (both acoustic and visual) for the subject site and adjacent sites, in accordance with the requirements of SEPP 65 and the ADG. The proposed development does not result in any unreasonable view loss.

What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposed development includes apartments that are consistent with, or acceptable in relation to, the requirements of SEPP 65 and the ADG. While these documents do not strictly apply in this case, the development's consistency with the requirements contained in the documents demonstrates that the proposal provides adequate internal amenity. The proposal is consistent with residential development anticipated for the site. The proposal is anticipated to have higher amenity than development generally.

Conclusion

Existing use rights have been established as detailed above and the proposal is supported based on the continuation of the existing use as a residential flat building in a built form that is consistent with the Planning Principle.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 17 submission/s from:

Name:	Address:
Withheld	BALMAIN NSW 2041
A Hatch	Address Unknown
Simon Laurance Waddington	10 Pitt Street MANLY VALE NSW 2093
Print And Copy Works	6 / 22 Central Avenue MANLY NSW 2095
Ashley Talbot Architect	5/22 Central Avenue MANLY NSW 2095
Mr Jason Hamish Eggleton	78 Darley Road MANLY NSW 2095
Mr Paul David Mowbray	21 Lakehave Drive WAGGA WAGGA NSW 2650
Ms Jenny King	912 / 22 Central Avenue MANLY NSW 2095
Mr Louise Marie Goldsbury	826 / 22 Central Avenue MANLY NSW 2095
Ms Miles Mr Miles	637 / 22 Central Avenue MANLY NSW 2095
Ms Karen Angela Hayes	PO Box 402 GORDON NSW 2072
Ms Lucie Skraskova	118/48-58 Sydney Road MANLY NSW 2095
Mr Jaroslav Zverina	118 / 48 - 52 Sydney Road MANLY NSW 2095
Mrs Jane Patricia English Mr Jeremy Paul English	812 / 22 Central Avenue MANLY NSW 2095
Girdlers - Manly	22 Central Avenue MANLY NSW 2095

Name:	Address:
Mr George Michael John Kaye	50 Manyana Drive MANYANA NSW 2539
Mr Ronald Ly Mrs Scarlett Xiao Zou	813 / 22 Central Avenue MANLY NSW 2095

The issues raised in submissions included:

- Non-compliance with the floor space ratio development standard. Car park should be included in the floor space ratio calculation.
- Non-compliance with the height of buildings development standard.
- Excessive bulk and scale, and inadequate setbacks - the development should remain the same size as existing.
- Inconsistency with the commercial gross floor area requirement and objectives of the B2 Local Centre zone. The proposal does not provide retail or mixed use.
- Inadequate design excellence.
- Inadequate landscaping.
- Overshadowing of the Short Street plaza and adjacent properties.
- Noise- and wind-funneling along the Short Street plaza.
- Existing use rights rely on the existing building envelope being retained.
- Impacts on the groundwater table and acid sulfate soils due to excavation.
- View loss from the Manly National Building to Manly Oval / Ivanhoe Park.
- Loss of property value.
- Inadequate parking in the Manly area.
- Proposed car spaces, bicycle spaces, and storage areas seem excessive.
- No consultation with neighbours.
- Noise and vibration impacts during construction - dilapidation surveys should be required.
- The proposed pedestrian arcade is not safe.
- The proposed pedestrian arcade will have hot air blown on it from the air conditioning exhaust units in the carpark.

The matters raised within the submissions are addressed as follows:

Height / Floor Space Ratio / Bulk and Scale / Setbacks

Comment:

The proposed development includes variations to the height of building and floor space ratio controls. These variations are acceptable for the reasons detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the *Manly Local Environmental Plan 2013*. It should be noted that these development standards, and other planning controls (including setbacks) are not applicable to the development other than to establish anticipated development for the site. The proposal demonstrates suitable bulk and scale for the reasons detailed in the section of this report relating to Existing Use Rights. As per Clause 4.5 Calculation of Floor Space Ratio and Site Area and the definition of gross floor area' under the Dictionary of the *Manly Local Environmental Plan 2013*, car parking is not included in the calculation of floor space ratio.

B2 Local Centre

Comment:

The proposed development is acceptable in the B2 Local Centre zone for the reasons detailed in the section of this report relating to B2 Local Centre Zone of the *Manly Local Environmental Plan 2013*. The proposal relies on existing use rights as a residential flat building, so does not require provision of

commercial or mixed use floor space.

Design Excellence

Comment:

The proposed development is acceptable in relation to design excellence for the reasons detailed in the section of this report relating to Clause 6.13 Design Excellence of the *Manly Local Environmental Plan 2013*. Further, the proposed development has been reviewed by Council's Urban Designer, who raised a minor objection to the proposed design that has been resolved via amended plans.

Landscaping

Comment:

Development in the B2 Local Centre zone does not require a minimum area of landscaping under the Manly Development Control Plan 2013. However, the proposed development provides an improved landscape response for the subject site, by replacement of low significant vegetation with a suitable variety of plant sizes and species. The proposal also provides screen planting at Level 1 adjacent to the existing shop top housing development to the south.

Overshadowing

Comment:

The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan 2013.

Funneling - Noise and Wind

Comment:

While the proposed development includes additional bulk and scale beyond that of the existing development, the proposal is consistent with the bulk and scale of development anticipated in this locality, so is suitable in the area and not anticipated to result in unreasonable noise or wind funnelling.

Existing Use Rights

Comment:

Existing use rights rely on the existing building envelope being retained only in cases where an exact rebuild is proposed. Where demolition and construction of a new building is proposed (as in this case), existing use rights rely on the proposed development being consistent with the character and context of the area. The proposed development is acceptable in this regard for the reasons detailed in the section of this report relating to Existing Use Rights.

Excavation - Groundwater and Acid Sulfate Soils

Comment:

The proposed development has been reviewed by Council's Development Engineer in relation to groundwater impacts, and by Council's Environmental Health Officer in relation to Acid Sulfate Soils. The proposed development is supported in relation to these matters, subject to conditions of consent.

View Loss

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013.

Property Value

Comment:

Property value is not a matter for assessment under the *Environmental Planning and Assessment Act 1979* and is therefore not a consideration for this proposal.

Parking

Comment:

The proposed development provides car parking commensurate to the use. The proposed development is supported by a Traffic and Parking Assessment, and has been reviewed by Council's Traffic Engineer. Subject to conditions of consent, the proposed development is acceptable in relation to parking.

Neighbour Consultation

Comment:

Neighbour consultation prior to lodging a development application is not mandatory. Due process has been followed via public notification of the application.

Construction Noise and Vibration

Comment:

Impacts of noise and vibration during construction are addressed via conditions of consent, preventing generation of offensive noise, and requiring preparation of pre- and post-construction dilapidation reports for relevant properties.

Pedestrian Arcade

Comment:

The proposed pedestrian arcade presents an improvement on the existing arcade, as it is wider and provides greater access. Further, the proposed arcade is adjacent to balconies and windows to habitable rooms, thus allowing for increased passive surveillance beyond the existing scenario. Amended plans have been provided that rectify the issue of hot air blowing into the arcade from the air conditioning vents.

Throughout January 2020, the Applicant provided documentation to address concerns raised by Council in relation to the substation next door, inadequate dimensions in the carpark, waste storage, urban design, and heritage. The plans were re-notified. Two submissions were received (from individuals who had previously objected during the first notification period) and the following issues were raised:

- The submitted view loss analysis in the amended report is inaccurate and misleading.
- Non-compliance with the floor space ratio development standard.
- Non-compliance with the height of buildings development standard.
- Excessive bulk and scale, and inadequate setbacks - the development should remain the same size as existing.
- Dilapidation surveys should be required.
- View loss from the Manly National Building to Manly Oval / Ivanhoe Park
- Existing use rights rely on the existing building envelope being retained.
- Impacts on the groundwater table due to excavation.
- Overshadowing of the Short Street plaza and Whistler Street.
- Inadequate design excellence.
- Inadequate landscaping.

The matters raised within the submissions that have not already been addressed above are addressed as follows:

Submitted View Loss Analysis

Comment:

The submitted view loss analysis is noted, but is not relied upon in assessment of the application. The Assessing Officer carried out inspections of each property with view loss objections. These inspections form the basis for the view sharing assessment in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013, in accordance with relevant case law and planning principles.

Overshadowing of Whistler Street

Comment:

The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan 2013.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No Comments
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>Environmental Health was given a referral about Acid Sulphate Soils, further to this we investigated matters relating to industrial concerns. This included noise, excavation dust, EMR exposure, Acid Sulphate Soils etc. In summary, we support the proposal approval subject to certain conditions. Points regarding the electromagnetic radiation on the site:</p> <ul style="list-style-type: none"> • If Ausgrid, owners of the adjacent substation, object to the proposal, we should not proceed and Environmental Health must again be referred to for comment. • The report identified alleged shortfalls of current regulations and standards in setting safe and precautionary long-term exposure levels e.g. general exposure limits outlined in National and International standards are much higher than the levels where bioeffects have been observed in clinical trials. • In the independent assessment of electromagnetic radiation, the survey failed to mention the amplifiers located on top of the building (adjacent) at 22 Central Avenue, Manly. • Environmental Health can only have faith in the survey conducted, that the conclusion of "no significant magnetic fields" is correct and intends to provide the lowest level of harm to residents. <p>Recommendation APPROVAL - subject to conditions</p> <p><u>Assessing Officer's Comment:</u> The application (including in reference to electromagnetic radiation) has been reviewed by Ausgrid, who are supportive of the proposal, subject to conditions of consent.</p>
Landscape Officer	<p>Original Comment:</p> <p>The application seeks approval to demolish an existing residential flat building and construct of an 8 storey residential flat building containing</p>

Internal Referral Body	Comments
	<p>41 apartments. The application also proposes the implementation of an enhanced site landscape regime, the strata subdivision of the completed development and the widening of the existing publicly accessible through site link.</p> <p>The landscape component of the proposal is acceptable subject to the completion of landscape works.</p> <p>The public domain landscape proposal along Short Street Plaza generally provides an enhanced quality benefitting public movement and landscape amenity. The proposal provides for landscape treatment to the ground floor interface with Short Street Plaza to enhance the public domain to satisfy Manly DCP 2013 and SEPP 65, as well as planter landscaping to level 1, which provides screen planting along the southern boundary to satisfy SEPP65 landscape requirements.</p> <p>The application requires the removal of all vegetation on the site, consisting of Exempt species (Chinese Elm, Alexander Palms, Murraya and Yucca).</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types,. and SEPP 65 Design Principles</p> <p>An Arboricultural Impact Assessment is provided with this application that satisfies the DA Lodgement Requirements. The Arborist recommendations are supported. Conditions of consent shall be imposed to ensure protection of the existing public domain trees within Short Street Plaza.</p> <p>A Landscape Plan referenced as 19/2064 and prepared by Paul Scrivener Landscape Architecture satisfies the DA Lodgement Requirements, subject to conditions.</p> <p>Updated Comments - Amended Plans:</p> <p>Amended plans are noted. The landscape area to the Short St frontage adjoining the plaza is supported. A new roof terrace outdoor area appears to have been added. No objections from a landscape perspective, but as it is all above slab, the following condition has been included:</p> <p><i>On slab landscape planting and associated works</i></p> <p><i>a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.</i></p> <p><i>b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating</i></p>

Internal Referral Body	Comments
	<p><i>the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.</i></p> <p><i>c) The following soil depths are required in order to be counted as landscaping:</i> <i>-300mm for lawn</i> <i>-600mm for shrubs</i> <i>-1metre for trees</i></p> <p><i>Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.</i></p> <p>No objections are raised to the plans as amended.</p>
NECC (Coast and Catchments)	<p>The land is located outside the coastal zone and also outside the Sydney Harbour Catchment.</p> <p>Hence, no assessments are needed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan (SREP), 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005.</p>
NECC (Development Engineering)	<p>Original Comments: The applicant proposed an absorption tank to discharge the on site stormwater into underground.</p> <p>The consultant stated that the absorption tank was designed in accordance with a infiltration rate from the submitted geotechnical report. In the report, the suggested infiltration rate is between 0.001 to 0.0001 m/s which is vary by factor of 10 time. And the consultant did not specific the infiltration rate which governed the design. It means the volume of the tank may be 10 times bigger than the proposed design when applying a different filtration rate. It impacts the basement structures of the proposed building.</p> <p>Secondly, the ground water table level RL 1.1 m to 1.3 m is only an estimation. The ground water table level must be identified based on an on site infiltration testing/ monitoring. It is because the ground water level is the one of the critical factors in the design of the absorption system and the building.</p> <p>Furthermore, the additional water discharge from the proposed absorption tank into the underground may cause an significant impact and change to the ground water table level. It means the surrounding buildings and infrastructures may be influenced by the changing of the ground water level. A geotechnical report must investigate the possible impact on the surrounding properties and infrastructures due to the possible change</p>

Internal Referral Body	Comments
	<p>on ground water level and recommend an appropriate methodology in design and construction of the building with protection on these surrounding properties and infrastructure.</p> <p>As such, Development Engineering cannot support the application with insufficient information on ground water issue in accordance with Section 6.4 of Council's Manly DCP 2013. An amended geotechnical report and absorption design with supportive information must be submitted for assessment.</p> <p>Updated Comments - Amended Plans: Additional supporting information of the absorption system has been provided. Development Engineering has no objection to the application subject to conditions of consent.</p> <p><u>Assessing Officer's Comment:</u> The additional information provided clarified that the proposed development will not encounter groundwater or seepage, and thus will not require dewatering.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The lot is outside of the 1 in 100 year flood area, Flood Planning Area and Probable Maximum Flood Area, as determined by the Manly to Seaforth Flood Study 2019. Therefore the development is not subject to Flood Prone Land controls.
Property Management and Commercial	<p>The proposal is for the demolition of the existing apartment building and construction of a new apartment building.</p> <p>Property has no objections to the proposal as submitted.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject property is adjacent to a State heritage listed item: Electricity Substation No 15009 at 34A–36 Whistler Street.</p> <p>The subject property is within proximity of heritage items: Congregational Church - Sydney Road (corner of Whistler Street) St Mary's Church, presbytery and school - Whistler Street (corner Raglan Street)</p>
	Details of heritage items affected
	<p>Details of the items as contained in the Manly heritage inventory is as such:</p> <p>Statement of Significance: The Manly Zone substation is a fine and robust, well detailed face brick purpose designed and built structure. It is an excellent and externally intact representative example of the Interwar Art Deco style. It is considered to be a rare example of this style and of State</p>

Internal Referral Body	Comments		
	Significance.		
	Physical description: The Manly Zone substation is a fine and robust, well detailed face brick two storey building built on the street alignment. Stylistic elements of Interwar Art Deco include the extensive use of face brick and brick detailing in the stepped parapet and base of the projecting first floor oriel windows and the use of bold linear motifs. Decorative elements include the use of curved bricks to form unusual framing around windows and doorways. The building incorporates a residential unit titled #15101 RESEDENTIAL UNIT, 34a Whistler Street. The Manly Zone substation is constructed in load-bearing face brick with cement render applied to the plant doorway reveals. Original windows are double hung timber multi pane. Architectural style: Interwar Art Deco Exterior materials: Face brick, Timber Joinery, Steel Roller shutter.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal is for the demolition of an existing residential flat building and the construction of an 8 storey residential flat building containing 41 apartments and both ground and basement level parking for 57 vehicles. The updated plans, dated 23 January 2020, included changes to the building alignment to Whistler Street and addition of a rooftop communal open space and another communal open space adjoining the Short Street Plaza. The application is acceptable on heritage grounds, subject to the imposition of conditions requiring that the glass louvres and the balustrade at level 3, adjacent to 34 Whistler Street are to be clear, and the colour and material of the panels are to be clarified prior to the issue of the Construction Certificate.		

Internal Referral Body	Comments
	<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> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 04 March 2020</p>
Strategic and Place Planning (Urban Design)	<p>Original Comments: The development application can be supported with the following issue to be addressed. The laneway connection between Whistler Street and Short Street is adjacent a carpark which shows air conditioning condenser units against the pathway. Whilst there is a louvred mechanical screen that hides the Condenser units the amenity for pedestrians walking along this path is compromised by the condenser unit air blowing onto the pathway. This may be addressed with an option to provide a narrow planter bed along the length of the area of condenser units to assist to mitigate the hot air.</p> <p>Updated Comments - Amended Plans: Urban Design is satisfied the changes to the drawings as reviewed, and following further comments to address the heritage parapet have been suitably responded to. The development can be supported.</p>
Traffic Engineer	<p>It is proposed to demolish the existing buildings and excavate the site to provide for basement parking and a level building platform. A new 8-level building will be constructed comprising:</p> <ul style="list-style-type: none"> - 3 x One-Bed Apartments - 26 x Two-Bed Apartments - 12 x Three-Bed Apartments <p>Total 41 Apartments</p> <p>A total of 54 parking spaces will be provided in ground and basement levels accessed by a new driveway on the Whistler Street frontage. All of these spaces are to be allocated for residential use. The existing development on the site provides 24 parking spaces all allocated for residential use.</p> <p>Traffic: Proposed 41 apartments @ 0.29 vtpH - 12 vtpH The existing building on the site with 24 units would generate some 7 vtpH Thus, the projected peak traffic generation will only be some 5 vtpH additional</p>

Internal Referral Body	Comments
	<p>No objections are raised in this regard.</p> <p>Parking: It is noted that the applicant has now removed parking spaces which were considered poorly sited where they would obstruct turning movements and circulation within the carpark.</p> <p>It is noted that these amendments now mean that there is a 5 parking space shortfall in terms of DCP requirements. This is not opposed in this instance having considered existing use rights, given the constrained nature of the site and also noting the close proximity of the site to Manly Wharf and bus services on Belgrave St. It is noted that no visitor parking spaces are proposed with all of the spaces being allocated for residential use and the applicant relying on existing use rights whereby the existing development on the site provided no visitor parking. The number of residential spaces would therefore be in excess of the 52 space requirement.</p> <p>It is also noted that the substandard disabled parking space has now been removed with no disabled parking spaces provided on the carpark levels. Having regard to the fact that the developer is providing 4 adaptable parking spaces which would cater for the parking needs of any residents with a disability, and given that there is no visitor parking on site, the absence of any disabled parking spaces is not opposed.</p> <p>It is noted that the revised plans have included a raised marked pedestrian crossing on Whistler Street aligned with the pedestrian through site link. This crossing has not been proposed or suggested by Council and does not comprise part of the development.</p>
Waste Officer	<p>The applicant has not complied with the Northern Beaches Council Waste Management Guidelines as follows. A redesign is required to ensure compliance.</p> <p>Bin room design and location The bin room design to facilitate a wheel out and return service by Council and/or its agents. The bin room access unobstructed and unrestricted with a minimum path of 1200mm wide. Any doors fitted on the Waste Storage Area, pathway and access will be: a) A minimum width of 1200mm. b) Able to be latched in an open position. c) Unobstructed by any locks and security devices. d) Open in an outward direction.</p> <p>A bulky goods waste storage area must also provide a design to facilitate a wheel out and return service by Council and/or its agents. The bulky goods room access unobstructed and unrestricted with a minimum path of 1200mm wide. Any doors fitted on the bulky goods room, pathway and access will be: a) A minimum width of 1200mm. b) Able to be latched in an open position. c) Unobstructed by any locks and security devices. d) Open in an outward.</p>

Internal Referral Body	Comments
	<p><u>Assessing Officer's Comment:</u> A suitable condition (as approved by Council's Waste Officer) has been applied accordingly.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid has raised no objections to the proposal, subject to conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

As the proposed development relies on existing use rights, State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) and the Apartment Design Guide do not strictly apply, beyond for the purpose of establishing that the development's suitability in the context of the site. However, an assessment of the proposal is as follows.

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.*

The proposed development is for the erection of a 9-storey residential flat building development (including basement and at-grade car parking) for the provision of 41 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.

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

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 proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 3: Density

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 4: Sustainability

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 5: Landscape

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 6: Amenity

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

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 is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics,

living needs and household budgets.

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 9: Aesthetics

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Satisfactory. The proposed development adequately addresses the subject site and its context.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Satisfactory. The proposed development is consistent with developments in the streetscape and allows for adequate solar access to the subject site and adjacent sites.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Satisfactory. The proposed development clearly delineates public and private land. The amenity of the public domain is retained and enhanced with the inclusion of the arcade, and in that the facades provide visual interest along each street frontage.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows:	Satisfactory. The proposed

	<ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>development includes 108.6sqm of communal open space at the rooftop, and 46.2sqm at the ground floor, adjoining the Short Street plaza. This equates to 15.5% of the site area, which is a minor numerical non-compliance with the requirement. However, the ground floor communal open space is in a key location, providing connection between the subject site and Short Street Plaza. Further, the setting of the site provides reasonable access to public open space, with both Manly Beach and Manly Oval within short walking distance of the subject site. The close proximity of these locations and the Short Street Plaza means the site is well-served in this regard. Finally, the proposed development is consistent with (or an improvement on) other developments in the Manly locality, some of which include little or no communal open space. The proposed development is acceptable in relation to this clause.</p>												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant	6m	<p>Satisfactory. The proposed development does not provide any deep soil zones. However, no deep soil zones currently exist on site, or on surrounding site, and the proposal provides an improved landscape presentation to the Short Street Plaza. Further, similar developments in the locality have been approved with nil deep soil zones. The proposed</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant	6m													

	<table><tr><td>existing tree cover</td><td></td><td></td></tr></table>	existing tree cover			development is acceptable in relation to this clause in consideration of the landscape character of the locality.									
existing tree cover														
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><td>Building height</td><td>Habitable rooms and balconies</td><td>Non-habitable rooms</td></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Satisfactory.</p> <p>The property to the north is zoned SP2 Infrastructure for Electricity Supply. As such, no residential development is foreseen on that site. Sites to the east and west are separated by Short Street and Whistler Street, respectively.</p> <p>The proposed development provides a minimum setback of 3m to the southern boundary of the site, adjoining the nearest residential development. Any windows within 6m of the southern boundary are screened by vegetation or privacy screens, or are orientated to the east or west. Balconies within 6m of the southern boundary are designed to encourage views to the east and west, rather than the south. Finally, the existing development to the south includes a blank wall, but for four balconies facing north to the subject site. The proposed development responds to this by increasing the setback to 6.2m where it aligns with the balconies. As such, while the proposed development results in a numerical non-compliance with the 6m set back requirement, the design response provides suitable building separation and visual privacy for the adjacent site to the south.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Satisfactory.</p> <p>The proposed development provides clear pedestrian entry to the Whistler Street frontage. The proposed development also includes a 3m wide pedestrian arcade through the property between Whistler Street and Short Street.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Satisfactory.</p> <p>The proposal provides clear vehicular access, separate from the pedestrian entry. Vehicular and pedestrian access points are suitably located and designed so as to provide high quality streetscape presentation.</p>
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <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>This clause is not applicable, as the subject site is not located within 80m of a railway station or light rail stop in the Sydney Metropolitan Area and is not on land zoned or within 400m of land zoned, B3 Commercial Core, B4 Mixed Use. In this case, the parking requirement under the MDCP 2013 applies, as follows:</p> <p>Residential:</p> <p>0.6 spaces per 1-bedroom apartment: $3 \times 0.6 = 1.8 = 2$ spaces</p> <p>1 space per 2-bedroom apartment: $26 \times 1 = 26$ spaces</p> <p>2 spaces per 3-bedroom apartment: $12 \times 2 = 24$</p> <p>Total residential spaces required = 52</p> <p>Total residential spaces provided = 54 (22 at ground, 32 at basement)</p>

		<p>Visitor: 0.16 spaces per dwelling: $41 \times 0.16 = 6.56 = 7$ spaces Total visitor spaces provided = 0</p> <p>This non-compliance is addressed in the section of this report relating to Clause 4.2.4 of the MDCP 2013.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	Satisfactory. 30 of the 41 apartments proposed receive a minimum of 2 hours of direct sunlight between 9am and 3pm at midwinter, equating to 73.2% of the apartments.
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	Satisfactory. 4 of the 41 apartments receive no direct sunlight, equating to 9.8% of the apartments.
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	Satisfactory. All apartments are cross-ventilated.
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	Not applicable.
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Satisfactory. The proposed development includes floor to ceiling heights of minimum 2.72m at each residential level.
	Minimum ceiling height	
	Habitable rooms	
	Non-habitable	
	For 2 storey	2.7m for main living area floor

	<table><tr><td>apartments</td><td>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 areas</td></tr></table>	apartments	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 areas					
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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 areas											
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Satisfactory. All units within the development are of compliant size.
	Apartment type	Minimum internal area										
	Studio	35m ²										
	1 bedroom	50m ²										
	2 bedroom	70m ²										
3 bedroom	90m ²											
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.											
	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.	Satisfactory. Each habitable room has access to a window of sufficient dimensions.										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Satisfactory. Habitable rooms include depths of less than 6.8m, except where in relation to open plan living, dining and kitchen areas.										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Satisfactory. The proposed development includes one apartment with a non-compliant room depth, being Unit 206, with a depth of 8.4m. The non-compliance is considered minor. The internal amenity of the apartment is not compromised as a result of this non-compliance, as the furthest point from the window is within the										

		kitchen space, rather than a space of living or recreating. The bedroom, living and dining areas are a maximum of 6.5m from a window.															
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Satisfactory. All bedrooms achieve minimum areas.															
	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.	Satisfactory. All bedrooms achieve minimum dimensions.															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Satisfactory. All living/dining rooms achieve the minimum dimensions.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Not applicable.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>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 ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Satisfactory. Of the 41 apartments proposed, four include balconies of non-compliant areas, being Unit 108 (2-bed) at 7sqm, Unit 206 (2-bed) at 8sqm, Unit 304 (2-bed) at 9sqm and Unit 406 (2-bed) at 9sqm. However, in each case, the balcony space is accessed via an open plan living/dining area that is of greater dimensions than required, demonstrating that each unit retains suitable living space. As such, the proposed non-compliant balcony spaces are minor in impact and acceptable.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	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 ² and a minimum depth of 3m.	Not applicable.															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Satisfactory. The maximum number of units accessed via the lift core at any one level is eight.															
	For buildings of 10 storeys and over, the	Not applicable.															

	maximum number of apartments sharing a single lift is 40.	The proposed development includes eight storeys of residential apartments (being seven full levels, plus home offices at the ground floor).										
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Satisfactory. All apartments achieve minimum storage area.										
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²
	Dwelling Type		Storage size volume									
	Studio apartments		4m ²									
	1 bedroom apartments		6m ²									
	2 bedroom apartments		8m ²									
	3+ bedroom apartments		10m ²									
At least 50% of the required storage is to be located within the apartment.												
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Satisfactory. The proposal includes four apartments that contain bedrooms adjoining circulation areas (Units 302, 303, 402 and 501). However, the bedrooms are each designed in such a way to avoid unreasonable acoustic impacts. The apartments include ensuites or wardrobes adjacent to the circulation space in order to muffle noise. Additionally, each apartment is designed to achieve compliance with the relevant acoustic treatment standards.										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Satisfactory. The proposed development is laid out and designed to mitigate noise disruption from external sources.										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within	Satisfactory. The proposed development includes a mix of one-, two-, and										

	the building.	three-bedroom apartments.				
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Satisfactory. Two apartments (Units 101 and 102) include home offices at the ground floor level, with the remainder of the apartment at the next level, accessible via stairs. The apartments are designed for suitable amenity and security.				
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Satisfactory. Each building facade provides visual interest consistent with the existing character of that streetscape.				
Roof Design	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.	Satisfactory. The roof contains centralised plant and a rooftop terrace for the purpose of communal open space.				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Satisfactory. The Landscape Plan details suitable landscaping and vegetation that is consistent with the landscape character of existing and approved developments in the vicinity.				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Satisfactory. The proposed development includes planting areas that achieve the minimum soil depths and areas.	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm		6m x 6m or equivalent

	<table><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</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></table>	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent																		
Shrubs			500-600mm																			
Ground Cover			300-450mm																			
Turf			200mm																			
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Satisfactory. The proposed development provides four adaptable units, where nine adaptable apartments are required to achieve 20%. This cannot be used as a reason for refusal, as the development relies on existing use rights, and as such, development controls do not strictly apply. Adaptable units are supported by adaptable parking spaces. Each adaptable unit is compliant (or capable of complying) with the relevant accessibility standards. The proposed development is acceptable in relation to this clause.																				
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.																				
Mixed Use	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.	Not applicable.																				
Awnings and Signage	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.	Satisfactory. The proposed development includes a partial awning over the southern pedestrian arcade, in order to provide shelter without resulting in a sense of enclosure to the																				

		arcade.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Satisfactory. The proposed development is supported by a set of plans with BASIX stamp attached.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Satisfactory. The proposed development is supported by suitable water management plans.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Satisfactory. The proposed development is supported by a suitable waste management plan.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Satisfactory. The proposed development is designed in such a manner that will ensure the longevity and sustainability of the building.

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:

The car parking proposed for the site exceeds the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments). However, this parking rate does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The parking rate within the MDCP 2013 has been applied. The proposed internal areas for each apartment exceed the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide. The proposed ceiling heights achieve the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. The application is not being refused in relation to these matters.

(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 proposal demonstrates that adequate regard has been given to the design quality principles and the objectives of the Apartment Design Guide, as certified by the accompanying Design Verification Statement.

CONCLUSION:

The proposed development includes some technical non-compliance with the requirements of SEPP 65 and the ADG. However, these non-compliant elements are acceptable for the reasons above. Further, the non-compliant elements are such that they do not indicate that the proposed development is unsuitable in the context of the site and the character of the locality, so cannot be used as reasons for refusal.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1001320M dated 6 June 2019). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	25	35

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. Ausgrid raised no objections to the proposal, subject to conditions of consent.

Manly Local Environmental Plan 2013

Is the development permissible?	No
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

As the proposed development relies on existing use rights, development standards under the MLEP 2013 do not strictly apply, beyond for the purpose of establishing that the development's suitability in the context of the site. However, an assessment of the proposal is as follows:

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	25m	29.71m	18.8%	No
Floor Space Ratio	3:1 2,994sqm	4.2:1 4,190sqm	39.94%	No
Gross floor area in Zone B2	Min. 25% Commercial GFA Max. 1,000sqm Commercial GFA	Commercial GFA: 0% / 0sqm	100%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
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
6.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	No
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	No

Detailed Assessment

Zone B2 Local Centre

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

To encourage employment opportunities in accessible locations.

To maximise public transport patronage and encourage walking and cycling.

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

The proposed development does not include any retail, business, entertainment or community uses to serve the needs of people who live in, work in, or visit the local area. The proposed development does not provide employment opportunities. The proposed development is for residential use only. However, the existing development on site is also for residential use only. In this way, the proposed development does not result in the loss of any non-residential use. The proposed development is in an accessible location, being within short walking distance of public transport (bus and ferry) and cycling/walking tracks. The proposed development does not result in any conflict between land uses. In consideration of the reliance on existing use rights, the proposed development is acceptable in the context of the site and locality.

4.6 Exceptions to development standards

The proposed development is not compliant with the development standards within Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio, or Clause 6.16 Gross Floor Area in Zone B2. The application is not required to be supported by written requests to vary these development standards, as the proposal relies on existing use rights, and development controls and standards do not strictly apply. However, each non-compliance is assessed as follows, in order to establish the suitability of the proposal in the context of the site.

HEIGHT OF BUILDINGS

Development standard:	Height of Buildings
Requirement:	25m
Proposed:	29.71m
Percentage variation to requirement:	18.8%



Above: Portion of the building above the 25m height limit shown in yellow.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Buildings has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

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 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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

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

Comment:

As detailed above, no written request is required.

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

Clause 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 B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the MLEP 2013 are addressed 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 subject site and surrounding sites are relatively level, and the proposed development retains this topography. The proposed development includes a flat roof form, consistent with the overwhelming majority of roof forms in the Manly locality. The predominant roof form presents a minor non-compliance with the height of buildings development standard, with the communal open space, lift shaft and screening to the rooftop plant being the larger breaching elements. As these elements are centralised on the roof, they will not be read from the street level. As such, the non-compliant elements will generally not be visible, and will therefore not impact upon or detract from the desired future streetscape character in the locality.

b) to control the bulk and scale of buildings,

Comment:

The MLEP 2013 envisages development to a height of 25m in the locality of the subject site. As above, the elements that are not compliant with this requirement do not result in any unreasonable visual impacts. As such, the proposed development is visually consistent with the expected height of building on site. The MDCP 2013 envisages development with nil setbacks to boundaries. The proposed development provides nil setbacks, except where greater setbacks are required to provide adequate building separation and visual privacy to adjoining sites. In this way, the proposed development is suitably designed and sited in relation to bulk and scale, and reflects height, bulk and scale consistent with that anticipated for the subject site.

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 proposed development does not unreasonably disrupt view to, from, or between nearby residential development or public spaces, and is acceptable for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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 retains suitable solar access to public and private open spaces and habitable rooms, as detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

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. The subject site is zoned B2 Local Centre.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are addressed as follows:

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

To encourage employment opportunities in accessible locations.

To maximise public transport patronage and encourage walking and cycling.

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

Comment:

The proposed development does not include any retail, business, entertainment or community uses to serve the needs of people who live in, work in, or visit the local area. The proposed development does not provided employment opportunities. The proposed development is for residential use only. However, the existing development on site is also for residential use only. In this way, the proposed development does not result in the loss of any non-residential use. The proposed development is in an accessible location, being within short walking distance of public transport (bus and ferry) and cycling/walking tracks. The proposed development does not result in any conflict between land uses. In consideration of the reliance on existing use rights, the proposed development is acceptable in the context of the site and locality.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the height of buildings development standard is assumed by the Local Planning Panel.

FLOOR SPACE RATIO

Development standard:	Floor Space Ratio
Requirement:	3:1 (2,994sqm)
Proposed:	4.21:1 (4,190sqm)
Percentage variation to requirement:	39.94%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 Floor Space Ratio has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

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 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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

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

Comment:

As detailed above, no written request is required.

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

Clause 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 B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.4 Floor Space Ratio of the MLEP 2013 are addressed as follows:

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

Comment:

The MLEP 2013 envisages development to a height of 25m in the locality of the subject site. As described in relation to the building height non-compliance, the elements that are not compliant with the height of building development standard are generally not readable from the street level. As such, the proposed development is visually consistent with the expected height of building on site. The MDCP 2013 envisages development with nil setbacks to boundaries. The proposed development provides nil setbacks, except where greater setbacks are required to provide adequate building separation and visual privacy to adjoining sites. In this way, the proposed development is suitably designed and sited in relation to bulk and scale, and reflects height, bulk and scale consistent with that anticipated for the subject site and the streetscape character.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features

Comment:

The proposed development does not unreasonably obscure important landscape or townscape features, and is acceptable for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The proposed development provide suitable setbacks to adjoining sites in order to provide suitable visual relationship between the proposed new development of the subject site and the existing developments in the immediate vicinity. The proposed development does not provide extensive landscaping, though this is consistent with the landscape character of the area. Additionally, being nearby the Town Centre Conservation Area and adjacent to the heritage-listed electricity substation to the north, the proposed development does not attempt to replicate the heritage significance of historical development in the locality, consistent with the requirements of Clause 3.2 Heritage Considerations.

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

Comment:

The proposed development is adequately designed and sited so as not to unreasonably impact upon the enjoyment of adjoining sites or the public domain. This includes the pedestrian plaza on Short Street, which retains suitable sunlight access.

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

Comment:

The proposed development does not include any business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres. The proposed development is for residential use only. However, the existing development on site is also for residential use only. In this way, the proposed development does not result in the loss of any non-residential use. Additionally, the proposed development contributes to the viability of the B2 Local Centre by providing additional housing for people who will live and work in the local area. In consideration of the reliance on existing use rights, the proposed development is acceptable in the context of the site and locality.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are addressed above in relation to the variation to the height of buildings development standard.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the floor space ratio development standard is assumed by the Local Planning Panel.

GROSS FLOOR AREA IN ZONE B2

Development standard:	Gross Floor Area in Zone B2
Requirement:	Min. 25% Commercial GFA
Proposed:	0sqm
Percentage variation to requirement:	100%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 6.16 Gross Floor Area in Zone B2, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

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 6.16 Gross Floor Area in Zone B2 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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

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

Comment:

As detailed above, no written request is required.

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

Clause 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 gross floor area in zone B2 development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 6.16 Gross Floor Area in Zone B2 of the MLEP 2013 are addressed as follows:

The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres.

Comment:

The proposed development does not include any business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres. The proposed development is for residential use only. However, the existing development on site is also for residential use only. In this way, the proposed development does not result in the loss of any non-residential use. Additionally, the proposed development contributes to the viability of the B2 Local Centre by providing additional housing for people who will live and work in the local area. In consideration of the

reliance on existing use rights, the proposed development is acceptable in the context of the site and locality.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are addressed above in relation to the variation to the height of buildings development standard.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the gross floor area in zone B2 development standard is assumed by the Local Planning Panel.

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 map.

Clause 6.1 requires that 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 to be assessed to determine if any impact will occur. The development proposes to excavate the site to approximately 3.4m below the natural ground level. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by JK Environments dated 19 June 2019. The assessment found that there is low to moderate potential for acid sulfate soils to occur between the ground surface and the proposed bulk excavation and piling works (returning soil) beneath the groundwater table. In this regard, an Acid Sulfate Soil Management Plan (ASSMP) is not necessary for the development of the site.

The preliminary assessment was referred to Council's Environmental Health Officer who concurred with the findings and imposed a condition which requires the Applicant to notify the certifying authority of any new evidence of the presence of acid sulfate soils. This condition, with recommendations made in the preliminary assessment, has been included in the recommendation of this report.

6.11 Active street frontages

The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre. The proposed development is for a residential flat building under existing use rights. As such, the proposal does not include any retail or business premises at the ground level. The proposal otherwise provides alternative activation via a visually interesting presentation to the street with suitable materials and finishes, and home offices orientated to the street on the western elevation.

6.13 Design excellence

The relevant matters under Clause 6.13 Design Excellence of the MLEP 2013 are considered as

follows:

(a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and

Comment:

As demonstrated by the submitted solar access and shadow diagrams, supporting solar analysis, and in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP, the proposed development is of suitable form, bulk, massing and modulation in order to retain adequate and meaningful sunlight to the Short Street Plaza.

(b) is likely to protect and enhance the streetscape and quality of the public realm, and

Comment:

The proposed development presents and improvement to the visual quality of the subject site, and, thus, the streetscape. The proposal incorporates suitable articulation and modulation through design and use of materials, thereby providing positive contribution to the locality.

(c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and

Comment:

The proposed development provides suitable definition at each elevation with clear pedestrian and vehicular entries, a separate shared arcade to the south, and adequate building separation.

(d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and

Comment:

The proposed development does not result in visual or physical clutter in the streetscape. The proposed development widens the existing shared arcade to the south of the site in order to provide a through-site link for pedestrians and cyclists. The proposed development provides suitable vehicular access at the Whistler Street frontage, thereby providing consistency with existing access arrangements, and maintaining the existing pedestrianised setting along Short Street.

(e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and

Comment:

The proposed development includes windows and balconies to all elevations, thereby allowing passive surveillance of the surrounding area. The proposed development widens the existing shared arcade to the south of the site, which is located adjacent to balconies and windows to habitable rooms, so also benefits from passive surveillance.

(f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and

Comment:

The proposed development is of suitable height, bulk and scale to be consistent with the context and character of the surrounding area and demonstrate sympathetic design.

(g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and

Comment:

The proposed development requires the removal of several small trees. The removal of these trees is supported by an Arboricultural Impact Appraisal and Method Statement, and a Landscape Plan, demonstrating compensatory planting. No other natural features of importance are present on the site.

(h) promotes vistas from public places to prominent natural and built landmarks, and

Comment:

The proposed development is acceptable in relation to views and vistas for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP.

(i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and

Comment:

The proposed development is of high quality design merit, using appropriate colours, materials and articulation in order to reduce visual impact and demonstrate appropriateness in the locality.

(j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and

Comment:

The proposed development is designed and sited to as to respond adequately to the site's constraints and surrounding development.

(k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.

Comment:

Services and utilities are incorporated effectively into the proposed development in order to minimise disruption at street level.

6.16 Gross floor area in Zone B2

The proposed development is for a residential flat building under existing use rights, and therefore, does not provide any commercial gross floor area. This non-compliance is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

Manly Development Control Plan

Built Form Controls

As the proposed development relies on existing use rights, built form controls under the MDCP 2013 do not strictly apply, beyond for the purpose of establishing that the development's suitability in the context of the site. However, an assessment of the proposal is as follows:

Built Form Controls - Site Area: 998sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	1-Bed Dwelling Size: Min. 50sqm	>50sqm	-	Yes
	2-Bed Dwelling Size: Min. 70sqm	>70sqm	-	Yes
	3-Bed Dwelling Size: Min. 90sqm	>90sqm	-	Yes
4.1.2.2 Number of Storeys	2 storeys	10, incl. basement and rooftop communal open space	400%	No
4.1.2.3 Roof Height	Height: 2.5m	Flat roof	-	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	7-45sqm	Max. 41.6%	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m	-	Yes
4.2.3 Setbacks Controls in LEP	0m	0m	N/A	Yes

Zones B1 and B2				
Schedule 3 Parking and Access	Residential Spaces: 0.6 per 1 bedroom dwelling, plus 1 per 2 bedroom dwelling, plus 2 per 3+ bedroom dwelling. = 52 spaces	57 spaces	N/A	Yes
	Visitor Spaces: 0.16 per dwelling = 7 spaces	0 spaces	100%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	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
3.5 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
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	No	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	No	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP requires that new development must not eliminate more than one third of the existing sunlight to private open space of adjacent properties, and must retain four hours of solar access to windows to living rooms of adjacent properties. However, *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) applies to this site. Being State legislation, SEPP 65 prevails to the extent of any inconsistency with other planning controls, as in this case in relation to solar access.

SEPP 65 requires that, where an adjoining property does not currently receive the required hours of solar access (as in the case of the adjoining property to the south), a new development must ensure solar access to that adjoining property is not reduced by more than 20%. The Solar Access Analysis provided by Walsh2 Analysis demonstrates that solar access is reduced to the adjacent property to the south by 4.1% as a result of the proposed development. As such, the proposed development provides compliant levels of sunlight to the adjacent shop top housing development and is acceptable in relation to solar access to private land.

The submitted solar access plans also demonstrate that the Short Street plaza is not impacted by the proposed development until after 11:30am. The plans also show that the plaza retains generous levels of sunlight between 9:30am and 2:00pm, with at least two and half hours of almost completely full sunlight. In this way, the proposed development is also acceptable in relation to solar access to public spaces.

3.4.2 Privacy and Security

Clause 3.4.2 Privacy and Security of the MDCP provides controls to limit overlooking, restrict direct viewing and mitigate impacts on privacy. However, *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) applies to this site. Being State legislation, SEPP 65 prevails to the extent of any inconsistency with other planning controls, as in this case in relation to privacy.

SEPP 65 provides that a minimum of 6m building separation between habitable rooms and balconies and property boundaries be provided. As detailed in the section of this report relating to SEPP 65, while the proposed development results in a numerical non-compliance with the 6m set back requirement, the design response provides suitable building separation and visual privacy.

3.4.3 Maintenance of Views

A number of submissions concerned about view loss were received in relation to the proposed development. The proposed development is considered against the outcomes of the control as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

A assessment of the proposed development in accordance with the relevant NSW Land and Environment Court planning principle is as follows, demonstrating that the proposal is does not result in unreasonable view loss.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Comment:

As demonstrated below, the proposed development does not result in unreasonable disruption to views.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

As demonstrated below, the proposed development does not result in view loss creep.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

Concerns arise in relation to views from Units 506, 606, 813, and 912 of No. 22 Central Avenue, to the east of the subject site. Affected views are of other existing buildings and rooftops, Manly Oval and Ivanhoe Park. See photographs below, with the subject site identified with red shading. The red shading indicates the subject site only, and not the proposed building envelope.



Above: View looking west from a standing position across the subject site from Unit 506.



Above: View looking west from a standing position across the subject site from Unit 606.



Above: View looking west from a standing position across the subject site from Unit 813.



Above: View looking west from a standing position across the subject site from Unit 912.

What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The affected views from are available across the western boundary of No. 22 Central Avenue, as follows:

- Unit 506: Views from both seated and standing positions from the main office area and secondary office room towards the west.
- Units 606, 813 and 912: Views from a standing position when standing immediately at the west-facing window.

The western boundary can be considered a street frontage.

Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The views from each unit are likely to be impacted as follows:

- Unit 506: The affected view is likely to be wholly lost. However, the view is minimal from this unit, as demonstrated by the photograph above, and the view is obtained from a commercial unit, rather than a place of residence or recreation. As such, the impact of the view loss to Unit 506 is assessed as minor.
- Unit 606: Half of the affected view to rooftops, Manly Oval and Ivanhoe Park is likely to be lost. However, the view is not readily visible, unless standing immediately at the window, as the view is via a highlight window with a sill height of approximately 1.6m. Further, the proposed development does not impact on the existing corridor view to the ocean and Norfolk Island pines obtained from the eastern living room and balcony of Unit 606 (photograph below). As such, the impact of the view loss to Unit 606 is assessed as minor.
- Units 813 and 912: These units are likely to be impacted by loss of view to other existing buildings and rooftops, and tennis courts at Manly Oval. The view to the oval itself is likely to be somewhat affected due to the proposed rooftop communal open space, and the view to Ivanhoe park will likely remain unaffected. The proposed development does not impact on the existing fairly extensive view to the ocean, horizon, Norfolk Island pines, Manly Beach, Fairy Bower, Shelly Beach, North Head and St Patrick's Estate obtained from the eastern living rooms and balconies of Units 813 and 912 (photographs below). As such, the impact of the view loss to Units 813 and 912 is assessed as minor.



Above: View from a standing position from the eastern balcony of Unit 606.



Above: View from a standing position from the eastern balcony of Unit 813.



Above: View from a standing position from the eastern balcony of Unit 912.

Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The proposed development results in numerical non-compliance with the height of building and floor space ratio development standards under the MLEP 2013, as well as several planning controls under the MDCP 2013. However, the proposed development relies on existing use rights, and as such, planning controls do not strictly apply to the development, other than to establish the development's suitability in respect of the character and context of the site and anticipated development. As detailed in the section of this report relating to Existing Use Rights, the proposed development is demonstrated to be of consistent bulk and scale to development existing within, and anticipated for, this locality. The

proposal demonstrates a suitable relationship between the subject site and adjacent and surrounding sites in relation to existing and future context. As such, non-compliance with development controls cannot be a consideration in relation to view loss in this case, and the reasonableness of the view loss relies solely on whether a more skilful design could provide the applicant the same development potential while reducing the view loss impact. In this case, views can only be retained in their entirety if the site remains in its current, underdeveloped state. However, this does not provide the same development potential to the Applicant, and does not achieve the development height and scale envisaged for the site, so cannot be considered skilful. As such, given the proposed development results in view loss of minor impact only, the development as proposed is reasonable and acceptable.

4.2.1 FSR (Consideration of Exceptions including Arcades)

The proposed development includes a non-compliant floor space ratio. This non-compliance is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

The proposed development includes a non-compliant building height. This non-compliance is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

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

The proposed development includes an increase in the number of residential apartments from 24 to 41. In consideration of the increase in apartment numbers, the proposed development requires 59 parking spaces, being 52 residential spaces, and 7 visitor spaces. The proposed development includes 54 parking spaces, all allocated to residential units. This results in a shortfall of 7 visitor parking spaces.

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

Comment:

Council's Traffic Engineer has reviewed the application and is supportive of the proposed development. The proposed development relies on existing use rights (as detailed earlier in this report). The existing development does not contain any visitor parking spaces. The subject site is located in close proximity (walking distance) to public transport services (both bus and ferry), and local services, such as shops and entertainment. As such, the development is adequately serviced for the proposed use.

Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.

Comment:

The proposed development is adequately designed with separated pedestrian and vehicular entries, so will not result in conflict between pedestrian and vehicular movement in the B2 Local Centre Zone.

4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre

The proposed development includes a non-compliant building height. This non-compliance is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

4.2.5.4 Car Parking and Access

The proposed non-compliance in relation to vehicular parking is addressed in the section of this report relating to Clause 4.2.4 of the MDCP 2013.

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

Clause 4.4.4.1 of the MDCP provides that awnings are to be a minimum of 3.5m above street level. The proposed development includes an awning 3.2m above the ground along the pedestrian arcade at southern elevation. Clause 4.4.4.1 does not have corresponding objectives under which a merit assessment may be conducted. Instead, an assessment is carried out in regards to the requirements of the clause, as follows:

In particular, awnings may be permitted where:

- a) development abuts pedestrian ways;*
- b) aligned with adjoining awnings in height and width;*
- c) it can be demonstrated the specific need for protection of goods or from weather and sun;*
- d) through site links are not obscured; and where*
- e) lighting under the awnings is provided for pedestrian safety and security.*

Comment:

The proposed awning is located above the proposed pedestrian arcade. No awnings are proposed along the street frontages as the development does not contain commercial tenancies. The awning height non-compliance arises as it corresponds to the internal floor levels. The awning is above the minimum height required of a habitable room according to the National Construction Code, thus providing sufficient headroom. The adjoining sites to the south and north do not currently include an awning along the street frontage. As such, the proposed awning has no adjacent awning to align with. Being 1.5m wide, the proposed awning provides shelter from weather for pedestrians accessing the site without obscuring visibility. No additional lighting under the awnings is proposed. However, the subject site is located on a main road, which is sufficiently lit for safety and security.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the *Manly Local Environmental Plan 2013* seeking to justify a contravention of Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio and Clause 6.16 Gross Floor Area in Zone B2 has adequately addressed and demonstrated that:

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

2) 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.

In summary, a detailed assessment has been required for the following specific issues:

Existing Use Rights:

The proposal has adequately demonstrated that existing use rights for the purpose of a residential flat building on the subject site.

Non-Compliances:

The proposed development includes variations to the floor space ratio, height of buildings and commercial gross floor area development standards. The proposed development also includes minor variations to several elements of the Manly Development Control Plan 2013, *State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)* and Apartment Design Guide. As detailed, the subject site benefits from existing use rights. As such, development standards, controls and policies do not strictly apply. However, the proposed development is supported on merit in relation to each of these non-compliant elements.

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 standards at Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio and Clause 6.16 Gross Floor Area in Zone B2, pursuant to Clause 4.6 of the MLEP 2013, as the Applicant's written request to vary these standards has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6, and

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0645 for Demolition works, construction of a residential flat building and strata subdivision on land at Lot 101 DP 611231, 26 Whistler Street, MANLY, Lot CP SP 15752, 26 Whistler Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Basement	23 January 2020	Wolski Coppin Architecture
DA02 Ground	23 January 2020	Wolski Coppin Architecture
DA03 Level 1	21 February 2020	Wolski Coppin Architecture
DA04 Level 2	21 February 2020	Wolski Coppin Architecture
DA05 Level 3	23 January 2020	Wolski Coppin Architecture
DA06 Level 4	23 January 2020	Wolski Coppin Architecture
DA07 Level 5	23 January 2020	Wolski Coppin Architecture
DA08 Level 6	23 January 2020	Wolski Coppin Architecture
DA09 Level 8	23 January 2020	Wolski Coppin Architecture
DA10 Roof	23 January 2020	Wolski Coppin Architecture
DA11 West Elevation	21 February 2020	Wolski Coppin Architecture
DA12 East Elevation	21 February 2020	Wolski Coppin Architecture
DA13 South Elevation	21 February 2020	Wolski Coppin Architecture
DA14 North Elevation	21 February	Wolski Coppin

	2020	Architecture
DA15 Long Section	23 January 2020	Wolski Coppin Architecture
DA16 Section with Substation	23 January 2020	Wolski Coppin Architecture
DA17 Detail Plan & Sections With Electrical Substation	23 January 2020	Wolski Coppin Architecture
DA18 Detail Plan & Sections With Electrical Substation	23 January 2020	Wolski Coppin Architecture
C04.0 Louvre & Finishes Schedule (East)	21 February 2020	Wolski Coppin Architecture
C04.1 Louvre & Finishes Schedule (West)	21 February 2020	Wolski Coppin Architecture
C04.2 Louvre & Finishes Schedule (North)	21 February 2020	Wolski Coppin Architecture
C04.3 Louvre & Finishes Schedule (South)	21 February 2020	Wolski Coppin Architecture
Plan of Subdivision of Lot 101 in D.P. 611231 Sheet 1 of 6 Sheets	28 January 2020	Copland C. Lethbridge
Plan of Subdivision of Lot 101 in D.P. 611231 Sheet 2 of 6 Sheets	28 January 2020	Copland C. Lethbridge
Plan of Subdivision of Lot 101 in D.P. 611231 Sheet 3 of 6 Sheets	28 January 2020	Copland C. Lethbridge
Plan of Subdivision of Lot 101 in D.P. 611231 Sheet 4 of 6 Sheets	28 January 2020	Copland C. Lethbridge
Plan of Subdivision of Lot 101 in D.P. 611231 Sheet 5 of 6 Sheets	28 January 2020	Copland C. Lethbridge
Plan of Subdivision of Lot 101 in D.P. 611231 Sheet 6 of 6 Sheets	28 January 2020	Copland C. Lethbridge

Engineering Plans

Drawing No.	Dated	Prepared By
CI-070-01 Sediment & Erosion Control Plan	18 June 2019	Wood & Grieve Engineers
CI-076-01 Sediment & Erosion Control Details	18 June 2019	Wood & Grieve Engineers
CI-100-01 Bulk Earthworks Plan	18 June 2019	Wood & Grieve Engineers
CI-520-01 Stormwater General Arrangement - Basement	18 June 2019	Wood & Grieve Engineers
CI-526-01 Stormwater Details	18 June 2019	Wood & Grieve Engineers
CI-546-01 Absorption Tank Details	18 June 2019	Wood & Grieve Engineers

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1001320M	6 June 2019	Senica Consultancy Group

		Pty Ltd
NatHERS Certificate No. 0MAX4RX4SR	6 June 2019	Senica Consultancy Group Pty Ltd
Geotechnical Assessment	13 June 2019	JK Geotechnics
Statement of Compliance Access for People with a Disability	20 January 2020	Accessible Building Solutions
Conceptual Acid Sulfate Soil Management Plan	19 June 2019	JK Environments
Noise Impact Assessment	14 June 2019	Acoustic Logic
Arboricultural Impact Appraisal	6 March 2019	Naturally Trees
Construction Traffic Management Plan	27 May 2019	SBMG Planning
Electromagnetic Report	18 June 2019	EMR Surveys Pty Ltd
Electromagnetic Report	6 September 2019	EMR Surveys Pty Ltd
Letter - Electromagnetic Report	24 May 2019	EMR Surveys Pty Ltd
Flood and Stormwater Report	18 June 2019	Wood & Grieve Engineers
Statement of Heritage Impact	June 2019	Heritage21
Statement of Heritage Impact - Additional Information	23 January 2020	Heritage21
Solar Access Analysis	12 June 2019	Walsh ² Analysis
Solar Access Review	15 January 2020	Walsh ² Analysis
Assessment of Traffic and Parking Implications	June 2019	Transport and Traffic Planning Associates
Driveway and Parking Assessment	15 January 2020	Transport and Traffic Planning Associates

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Ground Floor Level 1 Plan, Details and Notes	22 January 2020	Paul Scrivener Landscape Architecture
Roof Terrace	22 January 2020	Paul Scrivener Landscape Architecture

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Site Waste Minimisation and Management Report	23 May 2019	Senica Consulting Group Pty Ltd

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

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a residential flat building, as follows, according to the Manly Local Environment Plan 2013 Dictionary:

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

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

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 Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which

the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

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) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **On-Slab Landscape Planting and Associated Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule. The following soil depths are required in order to be counted as landscaping:

- 300mm for lawn
- 600mm for shrubs
- 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

7. **Geotechnical Report**

A geotechnical report and certificate shall be prepared by an appropriately qualified geotechnical engineer certifying that the existing and substrate on the site are capable of withstanding:

- the proposed loads to be imposed;
- the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- protection of adjoining properties;
- the provision of appropriate subsoil drainage during and upon completion of construction works.

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

Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process.

8. **On-site Stormwater Disposal System**

An On-site Stormwater Disposal system must be designed and constructed in accordance with Northern Beaches Council's current MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and generally in accordance with the concept drainage plans prepared by Wood & Grieve Engineers, project number 41483 and dated 18/6/2019. Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer. The drainage plans must address the following:

- i) A fail safe overflow outlet must be installed to ensure that any overflow will be directed from the basement

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

10. **Sub-Soil Seepage**

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being Whistler Street and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents.

11. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

12. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. **Construction Management Program**

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community

14. **Amendments to Plans**

Plans are to be amended as follows:

- Plans C04.1, C04.2, C04.3, and C04.4 are to be amended to include reference to the

glass louvres at Level 3, adjacent to 34 Whistler Street. The glass louvres are to be clear glazing.

- Plans C04.1, C04.2, C04.3, and C04.4 are to be amended to identify on the elevations the elements shown as 'FIXED PANEL HORIZONTAL FIXED LOUVRE- C' on the Panel Legend.
- Plans DA11 and C04.2 are to show clear glass balustrading to all trafficable balcony spaces of Units 301, 302, and 303 at Level 3 to a height of 1m above finished floor level.

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

Reason: To ensure suitable materials are used that do not dominate the heritage item.

15. **Amended Waste Management Documentation**

Prior to the issue of the Construction Certificate, the following documentation is to be provided to the satisfaction of the Certifying Authority:

- Amended plans demonstrating:
 - Unobstructed and unrestricted access to the Garbage Room and Bulky Goods Store with a path of minimum 1200mm wide.
 - Doors and access to the Garbage Room* and Bulky Goods Store as follows:
 - A minimum width of 1200mm;
 - Able to be latched in an open position;
 - Unobstructed by any locks and security devices; and
 - Doors must open in an outward direction (for the Bulky Goods Store, a roller shutter may be used).
 - A plan of management for the use of the Bulky Goods Store, demonstrating access arrangements for Council and/or its agents on collection day(s).

* Note: The eastern (internal) door to the Garbage Room may remain at the proposed width.

Reason: To ensure consistency with the Northern Beaches Waste Management Guidelines and to facilitate a wheel out and return service by Council and/or its agents.

16. **Noise from Mechanical Plant**

Mechanical plant situated on the roof area of the premises must be acoustically treated to ensure noise emissions are not audible at the nearest residential premises. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate. Noise from operation of mechanical plant situated in a place other than the roof area must not exceed more than 5dB(A) above the background (LA90, 15 min) level during the day and shall not shall not exceed the background level at night (10.00pm - 7.00am) when measured at the boundary, balcony or habitable room of potentially affected residential occupancies. Council may require the owner or occupier of the premises to engage the services of a suitably qualified professional to undertake an acoustic assessment of the premises in the event concerns regarding the emission of 'offensive noise' are raised and/or justified by Council.

Reason: To protect the acoustic amenity for residents.

17. **Pre-Commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

Reason: Protection of Council and private party infrastructure during construction.

18. **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 Certifying Authority prior to the issue of the Construction Certificate.

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

19. **Submission of Survey**

All works are to be contained wholly within the subject site. A survey, prepared by a Registered Surveyor, identifying the boundaries of the subject site and all existing structures/buildings, is to be prepared. The plans submitted for the Construction Certificate are to accurately reflect the boundaries as shown on the survey. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site.

20. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate. Due to heavy traffic congestion throughout the town centre, truck movements will be restricted and require careful management during the major commuter peak times being 8.00am-9.30am and 4.30pm-6.00pm. Truck movements, including size, routes and timing must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP. The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored within the site (i.e. not on the footpath), at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite.
- All Staff and Contractors are to use Council car parks to park their vehicles.
- Temporary truck standing/queuing locations in a public roadway/domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners and surrounding businesses will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum fourteen (14) days notification must be provided to adjoining property and business owners prior to the

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

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”. All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

21. **On-Street Works Zone**

Should the applicant require a Works Zone for the frontage of the site an application shall be submitted to Council for consideration and approval. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Application forms for work zones are available on Council’s website or at the Customer Service section at Council’s administration building. Applications shall be lodged at least 4 weeks prior to work commencing.

Reason: To allow adequate time for assessment and implementation.

22. **Waste and Recycling Requirements**

Details demonstrating compliance with Development Control Plan, including the required Northern Beaches Council Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Development Control Plan, causes

inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. **Public Liability Insurance - Works on Public Land**

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

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

24. **Tree Removal**

The following existing vegetation is granted approval for removal following assessment and recommendation in the Arboricultural Impact Appraisal and Method Assessment prepared by Naturally Trees:

- Trees 1 to 8 - Alexander Palm (Exempt Species)
- Tree 9 - Yucca (Exempt Species)
- Tree 10 - Chinese Elm (Exempt species)
- Tree 11 - Murraya (Exempt species)
- Tree 12 - Group of Murraya (Exempt species)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. **Road Reserve**

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

Reason: Public safety.

26. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve.

27. **Vehicle Crossings**

The provision of one vehicle crossing 6.2 metres wide in accordance with approved plans and Northern Beaches Council Drawing No A4-3330/ 1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating

compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

28. Maintenance of Sediment

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

29. Protection of Adjoining Property - Excavation

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, an appropriately qualified and practising Civil Engineer must supervise the works.

An person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner in the consent.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure private and public safety

30. Acid Sulphate Soils

All works must comply with the Acid Sulphate Soils Conceptual Plan written by JK Environments on 19 June 2019.

In identifying Acid Sulphate Soils, the investigation plan must be adhered to the above mentioned plan, analyses must be made prior to inserting shoring walls or piling. Option A or B can be used in dealing with Acid Sulphate Soils.

Finally, any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement. In this case, an Acid Sulfate Soils Management Plan is to be prepared by a suitably qualified geotechnical engineer and in accordance with the Acid Sulfate Soils Manual (ASSMAC, 1998) and submitted to the Council for review.

Reason: Manage Acid Sulphate Soils to prevent damage or harm to environment or public health.

31. Dust from Demolition Materials

Vehicles entering and leaving the site with soil or fill material must be covered. Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the Landcom's *Managing Urban Stormwater: Soils and Construction* (The 'Blue Book').

Reason: To ensure residential amenity is maintained in the immediate vicinity.

32. Tree Protection Measures

a) Existing trees and vegetation shall be retained and protected as identified in the Arboricultural Impact Appraisal and Method Assessment prepared by Naturally Trees, including:

i) all trees and vegetation located on adjoining properties, being the existing trees identified as

T13 and T14 - Chinese Elm located within the Short Street Plaza

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
- viii) should either or all of vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) 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 AS 4970-2009, and shall be conducted under the strict supervision of a AQF Level 5 Arborist, and in consideration of the Arboricultural Impact Appraisal and Method Assessment recommendations in section 4. Arboricultural Impact Statement, and specifically section 4.2.1, 4.2.2, 4.2.3, and 4.5.1, as well as section 6.1 and 6.2,
- x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: To retain and protect significant planting on development and adjoining sites.

33. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on

approved plans.

34. Implementation of Construction Traffic Management Plan

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

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

35. Waste/Recycling Requirements (Waste Plan Submitted)

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

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

36. Waste/Recycling Requirements (Materials)

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

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

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

37. Landscape Works

Landscaping is to be implemented in accordance with the Landscape Plan referenced as 19/2064 and prepared by Paul Scrivener Landscape Architecture, inclusive of the following requirements:

- i) the proposed landscape areas at ground level shall be serviced by a 'below the surface' drip-line irrigation system, in accordance with the recommendations on the Landscape Plan,
- ii) all landscape construction elements shall be in accordance with the material recommendations on the Landscape Plan,
- iii) any replacement paving within Council land shall be approved by Council prior to installation,
- iv) a pre-order contract arrangement shall be utilised to ensure the 200 litre *Ulmus parvifolia* is delivered to site as proposed in the Landscape Plan,
- v) all other tree planting shall be installed at 75 litre container size,
- vi) all Level 1 planting within the rectangular planters shall be shade tolerant species, and capable of attaining 1 metre in height at maturity,
- vii) all planters on Level 1 shall be serviced by a 'below the surface' drip-line irrigation system, in accordance with the recommendations on the Landscape Plan,
- viii) landscape establishment maintenance for 12 months shall be undertaken, followed by ongoing maintenance commitments in accordance with the requirements of the Landscape Plan.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape

architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

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

38. Authorisation of Legal Documentation Required for Onsite Disposal System

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

39. Registration of Encumbrances for On-site Stormwater Disposal System

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water disposal system as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

40. Reinstatement of Kerb

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces

41. Positive Covenant and Restriction as to User for On-site Stormwater Disposal System

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater disposal structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater disposal system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

42. Post-Construction Dilapidation Report

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

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

43. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.

44. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf). In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form. External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors. It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency. Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

45. **Basement Garage Traffic Signal System**

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the ramp of any conflicting vehicle approaching.

The signal system must:

- be clearly visible from ramp entrances;
- clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp; and
- incorporate line-marking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Accredited Certifier that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

46. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Manly Development Control Plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

47. **Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled.

48. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

49. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council. If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

50. **Landscape Maintenance**

A 12-month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced. Following the establishment maintenance period, a long term landscape maintenance program shall be entered into by the body corporate with a landscape maintenance company to provide ongoing maintenance.

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

51. **Access to Waste Storage Rooms**

Doors to waste storage areas must be capable of being latched temporarily in the open position. Doors to waste storage areas must be unlocked and accessible on scheduled waste collection days.

Reason: To ensure efficient management and removal of waste.

52. **Whistler Street Pedestrian Crossing**

No consent is granted for the pedestrian crossing shown on plans across Whistler Street.

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

53. **Parking**

54 residential parking spaces must be retained for the life of the development.

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

54. **Resident Parking Permits**

Any residents and/or tenants of the subject site are not eligible for resident parking permits as the parking needs of the development are catered for within the off-street carpark. This condition is to be provided on the property Title.

Reason: To ensure the residents are aware that they are not entitled to a permit.

55. **Stacked Parking Spaces**

Stacked parking spaces are to be assigned to the same residential unit.

Reason: To minimise conflict regarding access to parking spaces.

**CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA
SUBDIVISION OR SUBDIVISION CERTIFICATE**

56. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.