

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0585
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 5 DP 978180, 142 Sydney Road FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to the building to create shop top housing
Zoning:	Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Louise Frances Lamrock Martin Robertson Dunn
Applicant:	Watershed Design
Application lodged:	06/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	22/06/2019 to 06/07/2019
Advertised:	22/06/2019
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 7.1%
Recommendation:	Approval
Estimated Cost of Works:	\$ 699,950.00

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

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

Manly Development Control Plan - 4.2.8.2 Setbacks

Manly Development Control Plan - 4.2.8.3 Landscaping

Manly Development Control Plan - 4.2.8.6 Hours of Operation

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 5 DP 978180 , 142 Sydney Road FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Sydney Road.</p> <p>The site is regular in shape with a frontage of 7.62m along Sydney Road and an average depth of 34m. The site has an area of 260m².</p> <p>The site is located within the B1 Neighbourhood Centre zone and accommodates a single storey commercial building with a garage at the rear.</p> <p>The site slopes from south to north and includes a crossfall of 3.04m.</p> <p>The site does not include any significant landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two storey commercial development fronting Sydney Road and one, two and three storey residential development to the rear.</p>

Map:



SITE HISTORY

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

PLM2018/0242 - Construction of shop top housing - This development included two residential units and no additional parking. It was advised that compliant parking for the commercial uses and one space per dwelling must be provided. The development complies with this advice.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes alterations and additions to the existing building to create shop top housing. In particular the development includes the following:

Lower Ground Floor

- Alterations to provide meeting/staffroom and bathroom associated with ground floor business premise
- Bin room
- Additional covered parking space in a tandem arrangement

Ground Floor

- Alterations to provide business premises at rear, accessible W/C, stairs with storage and access walkway from street.

Upper Floor

- Upper floor addition including one two bedroom unit with northern and southern facing balconies

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 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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000. No additional information was requested in accordance with the regulations.</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 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 insurance requirements under the Home Building Act 1989. 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building 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 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

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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 1 submission/s from:

Name:	Address:
Mrs Bronwyn Renee Raschke	Po Box 1199 MANLY NSW 1655

The following issues were raised in the submissions and each have been addressed below:

- Permissibility
- Eastern Blade Wall

The matters raised within the submissions are addressed as follows:

- **Permissibility**
Concern was raised that the uses on the ground floor were not business or retail in accordance with the definition of shop top housing
Comment:
The plans indicate that the ground floor is proposed as business suites and the existing shop on the frontage retained. The meeting room on the lower ground floor is associated with the ground floor business premises, the size of this room (19sqm) would also preclude it from any use not associated with the ground floor. The development meets the definition of shop top housing and a condition will be included to ensure the definition can be enforced.
- **Eastern Blade Wall**
The submission raised concern over the bulk and scale of the eastern blade wall and its associated visual impact.
Comment:
The Manly DCP 2013 requires development be built to the boundary within this area. The bladewall is non-compliant with the rear envelope control by a maximum of 0.8m. This area will prevent overlooking from the top floor balcony and is not considered to be of an unreasonable bulk or scale within the locality. The development is satisfactory in this circumstance.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions.
Environmental Health (Industrial)	<p>General Comments</p> <p>Thank you for giving Environmental Health the opportunity to review this DA.</p> <p>Our attention was mostly in relation to the noise that may be an issue for residents. For €</p> <p>Other possible implications of commercial operations might include noise or odour from r information provided on the type of business that will operate, we cannot provide precise</p> <p>We recommend approval with a condition.</p> <p>Recommendation</p>

Internal Referral Body	Comments
	APPROVAL - subject to conditions
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions:
Traffic Engineer	<p>The proposal is for the inclusion of a shop top house and addition to the commercial floor</p> <p>Traffic: The site is anticipated to generate some 3 vehicles in the peak hour. This is deemed negligible.</p> <p>Parking: Whilst a fully compliant site would require 5 parking spaces, previous commentary would have been that the site is not suitable for a car stacker. 'The proposal includes one parking space to the dwelling and no visitor parking spaces.</p> <p>This requirement will be able to be accommodated with on-street parking. Furthermore the site is in line with the advice provided to the applicant, the proposed parking provisions are deemed acceptable.</p> <p>Access: The tandem car space in lieu of the car stacker is a preferred option. With the proposed 1 car space, 2 spaces must be allocated accordingly to customers and the resident. Conditions to this effect are recommended.</p> <p>Servicing: The waste services will continue to operate from the street for the residential component of the development.</p>
Waste Officer	The plan is only for one residential dwelling, however I have inserted a condition to separate the residential and commercial components.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial/residential land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development will create a two storey shop top 'housing' development for the provisions of one self-contained dwelling.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are **not applicable** to the assessment of this application.

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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.7m-9.1m	7.1%	No
Floor Space Ratio	FSR: 1:1 (260sqm)	FSR: 0.82:1 (215.5sqm)	N/A	Yes

Compliance Assessment

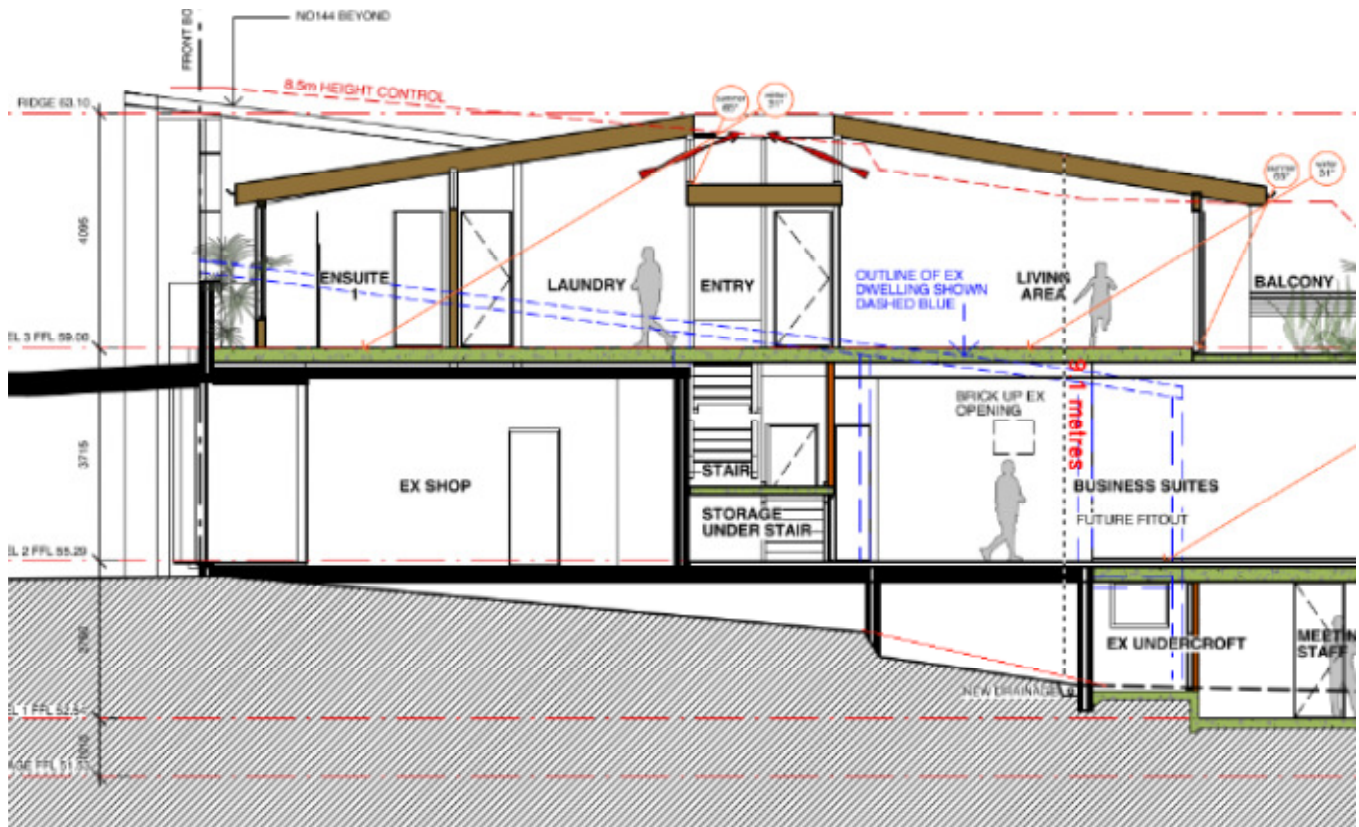
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	7.7m-9.1m
Percentage variation to requirement:	7.1%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the*

circumstances of the case, and

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"In our opinion, there are sufficient environmental planning grounds to justify the variation it being noted that the non-compliance can be directly attributed to the topography of the land and the desire to create a roof pitch and clerestory window design which allows light to penetrate deep within the upper level floor plate proposed. Such outcomes are consistent with objectives 1.3(c) and (g) of the Act."

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal includes a modern facade that is of a scale and design that will complement the form of the neighbouring properties. The non-compliance with the building height development standard is set to the centre of the site and will not be visible from Sydney Road. The non-compliance will not result in any unreasonable impacts on the desired future streetscape character in the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed non-compliance is set to the centre of the site and is adjacent to development constructed to the boundary. Furthermore the extent of the non-compliance is not considered to be such that it will result in a development that is of an unreasonable bulk and scale within the locality. The proposal will not result in any unreasonable impacts due to its bulk and scale.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal will not result in any unreasonable disruption of views.

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 subject site and the neighbouring properties will retain a northern aspect. The Manly DPC 2013 requires development to be built to the side boundaries. As such overshadowing as a result of compliance with this control is not considered to be unreasonable. This proposal will maintain adequate solar access to the adjoining properties.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

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

Comment:

The development will present to the street and the neighbouring properties as a small scale shop top housing development that will provide accommodation and services to meet the needs of the community.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre.

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

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

Planning Circular 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 that are less than 10%. 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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 260sqm	Requirement	Proposed	% Variation*	Complies
4.2.8.2 Setbacks	Front and Side - Nil Rear Ground Level: 8m Upper levels: within envelope	Front and Side - Nil Rear Ground Level: Existing garage nil Tandem parking space 7m Business 12.696m Upper levels - eastern blade wall minor non-compliance	N/A	Yes No No
4.2.8.3 Landscaping - Private open space	20sqm	17sqm	15%	No
4.2.8.4 Residential Density	1 dwelling per 250sqm	1 dwelling per 260sqm	N/A	Yes
Schedule 3 Parking and Access	Commercial - 3 spaces Residential - 2 (1.2 rounded)	3 spaces + 1 space in tandem	33%	No

	Residential (Visitor) -1 (0.25 rounded)		
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***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
3.3.1 Landscaping Design	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
3.6 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
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	No	Yes
4.2.8.3 Landscaping	No	Yes
4.2.8.4 Residential Density	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

Description of Non-compliance

The Manly DCP 2013 requires the three spaces for commercial parking, two for residential parking and one for visitor parking for the residential component. The proposal includes three spaces for the commercial uses (including one in tandem) and one space for the residential component.

Merit Consideration

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

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

Comment:

The parking for the commercial component of the development complies with the requirement. The proposal includes one parking space for one residential unit. It is not expected that one unit will generate a significant requirement for parking, in particular visitor parking. Furthermore, the development is in close proximity to a major bus route that will provide good access to services. The proposed parking is adequate in this circumstance. Councils traffic engineer has recommended a condition to ensure the parking spaces are appropriately allocated and the tandem parking space can be used effectively. The proposal subject to the condition will ensure the development includes adequate provision for parking.

The use of the site will not generate any requirement for a loading bay nor is there any ability for the development to provide one with the retention of the existing garage.

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

Comment:

The proposal will utilise the existing access and will not generate any conflicts between pedestrians and vehicles within the area.

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

4.2.8.2 Setbacks

Description of non-compliance

The Manly DCP 2013 requires a rear setback of 8m at ground level and also requires upper levels to be within an envelope projected from the 8m rear setback line at 45 degrees and 3m above ground level. The development includes the use of the existing garage with a nil setback and an additional tandem parking space setback 7m from the rear boundary. The business premises on the lower ground floor is setback 12.7m from the rear boundary.

The development is non-compliant with the building envelope due to 0.8m of the eastern blade wall.

Merit consideration:

The Manly DCP 2013 does not include objectives for this clause. As such an assessment of the objectives of the parent clause 4.2.8 Neighbourhood Centres (LEP Zone B1) has been carried out below:

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

Comment:

The proposed development is of a scale that is consistent with the neighbouring properties and is adequately setback from the rear boundary to ensure it does not impose on the residential development to the rear.

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

Comment:

The proposal will maintain the existing garage and the additional parking space will be situated behind this garage. These features will not result in unreasonable impacts on the amenity of the adjoining or nearby properties. The non-compliance with the building envelope control is not to an extent that will generate any unreasonable impact due to bulk or scale on the neighbouring properties. The proposal is designed to maintain a reasonable level of amenity for the neighbouring and nearby development.

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

4.2.8.3 Landscaping

Description of non-compliance

The Manly DCP 2013 requires residential units within this zone to have 20sqm of private open space at a dimension of 3m. The proposal includes 15sqm of private open space at a dimension of 2.8m. The proposal also includes two small balconies located off the two bedrooms.

Merit consideration:

The Manly DCP 2013 does not include objectives for this clause. As such an assessment of the objectives of the parent clause 4.2.8 Neighbourhood Centres (LEP Zone B1) has been carried out below:

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

Comment:

The proposed development is of a scale that is consistent with the neighbouring properties and is adequately setback from the rear boundary to ensure it does not impose on the residential development to the rear. The private open space adjoins a 1.5m planter providing a greter sense of depth and amenity to the unit. The private open space is of an adequate size and dimension to service the property.

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

Comment:

The proposal is consistent with the side setback control and has been found to be consistent with the objectives of the rear setback control. The proposal will not result in any unreasonable impacts on the privacy or views. The development site and the neighbouring properties have a northern aspect to the rear. This aspect will ensure the development site receives good solar access and does not result in any unreasonable overshadowing of the neighbouring properties.

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

4.2.8.6 Hours of Operation

Merit Consideration

The applicant has not specified hours of operation in the development proposal. When questioned the applicant advised they would be satisfied with either standard business operating hours for the area or the requirement for a further application be submitted upon leasing the premises. A conditions is recommended requiring a further application be submitted upon leasing the premises. The hours of operation can be considered at this time.

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

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The Manly DCP 2013 permits excavation up to a depth of generally 1m. The proposal includes 1.7m of excavation for the parking area.

Merit Consideration

The development is considered under the objective below.

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The excavation for the development is limited to the area for the development. The proposal does not include excessive excavation and was supported by a preliminary geotechnical report. The excavation will not impact the landscape character nor will it result in a significant change to the topography of the Manly area.

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

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.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$7,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$699,950.

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

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

RECOMMENDATION

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 development standard, has adequately addressed and demonstrated that:

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

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

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

Accordingly Council as the consent authority grant Development Consent to DA2019/0585 for Alterations and additions to the building to create shop top housing on land at Lot 5 DP 978180, 142 Sydney Road, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (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
DA03 Site & Roof Plan - Issue J	13.05.2019	Watershed Design
DA04 Ground Floor Plan - Issue J	13.05.2019	Watershed Design
DA05 Lower Ground Floor Opt 2 Floor Plan - Issue J	13.05.2019	Watershed Design
DA06 Upper Floor Plan - Issue J	13.05.2019	Watershed Design
DA07 Section AA - Issue J	13.05.2019	Watershed Design
DA08 Section BB - Issue J	13.05.2019	Watershed Design
DA09 South Elevation Sydney Road - Issue J	13.05.2019	Watershed Design
DA10 North Elevation Right of Way - Issue J	13.05.2019	Watershed Design
DA11 East Elevation - Issue J	13.05.2019	Watershed Design
DA12 West Elevation /Section Side Passage - Issue J	13.05.2019	Watershed Design
DA14 Excavation & Fill Plan - Issue J	13.05.2019	Watershed Design

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

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 shop top housing.

Shop top housing is defined as:

"Shop top housing means one or more dwellings located above ground floor retail premises or business premises."

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

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.

5. **Separate application for fitout and use of ground floor**

A separate application is to be submitted for the use and fitout of the business premises on the ground floor and lower ground floor and the retail premises on the ground floor.

Reason: To ensure the orderly development of land.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$6,999.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$699,950.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

7. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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

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 Stellen Consulting, drawing number DR001-003, dated 13/03/2019.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer.

The drainage plans must address the following:

- i) the pump system shall be designed in accordance with AS 3500
- ii) Any surcharge from boundary pit shall be directed into Sydney Road.

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. **Compliance with Standards**

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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.

(DACPLC02)

10. **Traffic Management Plan**

Traffic management procedures and systems must be in place and practiced during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans. A plan of traffic management is to be submitted to and approved by the Consent Authority prior to the issue of any Construction Certificate.

Reason: To ensure pedestrian safety and continued efficient network operation. (DACTRCPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **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.

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

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

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

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

13. **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. (DACPLE01)

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

14. **Authorisation of Legal Documentation Required for Onsite Disposal**

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.

15. **Registration of Encumbrances for On-site Stormwater Disposal**

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.

16. **On-Site Stormwater Disposal Compliance Certification**

Upon completion of the on-site stormwater disposal system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved system plans are to be provided to Council.

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 stormwater disposal is constructed to Council's satisfaction.

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

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 disposal and/or pump system is maintained to an appropriate operational standard.

18. Fire Safety Matters

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

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

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

19. Parking Allocation

All parking spaces are to be marked accordingly, including;

- one (1) space to be marked for the owner/operator in the tandem space
- two (2) spaces to be marked for customer use
- one (1) space to be marked for use of the resident

Reason: To ensure all users are allocated parking accordingly (DACTRFPOC1)

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

20. Commercial Waste and Recycling Storage

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

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

21. Deliveries

No deliveries, loading or unloading associated with the premises are to take place between the hours of 7.00pm and 7.00am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties. (DACPLG21)

22. Noise

Operations on this Lot, including but not limited to mechanical plant, amplified music and patrons, must not cause noise nuisance to any residents and accord with the Protection of the Environment Operations Act 1997, Protection of the Environment Operations (Noise Control) Regulation 2017 and Noise Policy for Industry (2017).

Reason: maintain a reasonable level of livable amenity for the residents of this building and surrounding this building (DACHPBOC6)

23. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 8am on any day.

Reason: To ensure the acoustic amenity of surrounding properties. (DACPLG24)

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

Signed



Benjamin Price, Planner

The application is determined on 20/09/2019, under the delegated authority of:



Rodney Piggott, Manager Development Assessments