

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0019
----------------------------	-------------

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot CP SP 12989, 19 - 23 The Corso MANLY NSW 2095
Proposed Development:	termination of the existing strata plans and subdivision of one lot into two
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 12989
Applicant:	Hilrok Properties Pty Ltd

Application Lodged:	28/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	03/02/2021 to 17/02/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 14.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
---------------------------------	---------

EXECUTIVE SUMMARY

Council is in receipt of development application DA2021/0019 to terminate the existing Strata Plan and to subdivide the site into two lots under Torrens title. The proposed subdivision aligns with the two separate buildings located on the site, and is more akin to the subdivision pattern of surrounding sites.

The proposed subdivision results in a technical breach of the floor space ratio development standard prescribed by clause 4.4 of Manly Local Environmental Plan 2013 (MLEP 2013) by 14.9%. The breach is not a result of any additional floor space (as no physical works are proposed), but rather a change to the proportion of existing floor space in relation to the respective lot sizes now proposed. The applicant's written request to vary the floor space ratio development standard satisfactorily address the matters required, and overall, the consent authority can be satisfied of the relevant matters of clause 4.6 of MLEP 2013.

In light of the numerical variation, being greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination. Subject to conditions of consent, the consent authority can be satisfied that the proposal is consistent with the aims and objectives of the relevant plans and policies, and the application is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent to terminate the existing strata plan that relates to 19 - 23 The Corso to facilitate the torrens title subdivision of the land into two lots. Specifically, the resultant lots will comprise:

- Lot 1 (23 The Corso), with a total area of 141.5m², to generally align with the existing two storey commercial premises.
- Lot 2 (19-21 The Corso), with a total area of 382.1m², to generally align with the existing four storey shop top housing development.

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 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

SITE DESCRIPTION

Property Description:	Lot CP SP 12989 , 19 - 23 The Corso MANLY NSW 2095
Detailed Site Description:	The site is trapezoidal in shape, with a 16.835m wide frontage to The Corso, a 16.76m wide frontage to

Market Place, a depth of 31.2m and a total area of 523.9m². The site is situated on the northern side of The Corso, opposite its intersection with Darley Road. The site currently contains an existing four storey shop top housing development (19-21 The Corso) and a two storey retail/commercial building (23 The Corso).

The existing building at 19-21 The Corso is identified as an item of local heritage significance, and the site is located within a heritage conservation area. A small portion of the northern corner of the site is identified as being prone to flooding.

Map:



SITE HISTORY

On 28 January 2021, the subject development application was lodged with Council.

On 7 April 2021, development application DA2020/1711 was approved by the NBLPP for alterations and additions to the existing heritage listed building on the site. In approving the application, the NBLPP supported a variation to the FSR of the site as a whole, in the order of 4.3%.

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	Draft State Environmental Planning Policy (Remediation of Land)

Section 4.15 Matters for Consideration'	Comments
of any draft environmental planning instrument	seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial and residential purposes for an extended period of time. The proposed development does not disturb the substrate of the site and is not considered a contamination risk.
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 can be 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 can be 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 can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
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 from 03/02/2021 to 17/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, no conditions.</p> <p><i>The application seeks to separate a four level mixed use building at 19-21 The Corso and the two storey Hotel section at 23 The Corso Manly.</i></p> <p><i>Works to construct a separating wall have been approved in DA2019/0574 therefore it is stated that no work is proposed as part of this application. No objection subject to conditions.</i></p> <p><u>Planner comment:</u> It is noted that a condition relating to strata subdivision was imposed. As the application does not seek to strata subdivide the resultant development, this condition has been deleted.</p>
NECC (Development Engineering)	<p>Supported, with conditions.</p> <p><i>Development Engineering has no objection to the application subject to the following conditions of consent.</i></p>
Strategic and Place Planning (Heritage Officer)	<p>Supported, no conditions.</p> <p><i>The proposal has been referred to Heritage as the site is part of group heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso. The property is also located in C2 - Town Centre Conservation Area and within the vicinity of a number of heritage items as listed in Schedule 5 of Manly LEP 2013:</i></p> <ul style="list-style-type: none"> <i>• Item I107 - Commercial building - 36 The Corso</i> <i>• Item I113 - St Matthews Church and church hall - 44 The Corso (corner The Corso and Darley Road)</i> <i>• Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</i> <p><i>The proposal seeks consent for subdividing the existing site (Lot 1) which consists of two buildings (being 19-21 The Corso and 23 The Corso) that are not physically connected following the consent of DA2019/0574. Given that the proposed subdivision does not change the established subdivision pattern of the surrounding area, it is</i></p>

Internal Referral Body	Comments
	<p><i>considered that the proposal will not adversely impact the significance or the heritage items or the conservation area.</i></p> <p><i>Therefore, no objection are raised to this application on heritage grounds and no conditions required.</i></p>

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 & commercial purposes for a significant period of time with no prior land uses. Furthermore, the application does not involve any works that will disturb the substrate. 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 continuation of the existing land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	N/A N/A	Lot 1 - 141.5m ² Lot 2 - 382.1m ²	- -	N/A N/A
Height of Buildings:	10m	no works	-	Yes
Floor Space Ratio	Lot 1 - 3:1 Lot 2 - 2.5:1	Lot 1 - 1.89:1 Lot 2 - 2.87:1	- 14.9%	Yes No
Gross floor area in Zone B2	Maximum 1000m ² per	Lot 1 -	-	Yes

	premises	268.84m ² Lot 2 - 170m ²	-	Yes
--	----------	---	---	-----

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	N/A
6.12 Essential services	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

Zone B2 Local Centre

The proposed development is consistent with the objectives of the B2 Local Centre zone, 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.*

Comment: The proposed subdivision does not alter the existing use of the site, and the site will continue to provide a range of retail, business and residential land uses to serve the needs of people who live in, work in and visit The Corso.

- *To encourage employment opportunities in accessible locations.*

Comment: The subdivided premises will continue to provide employment generating floor space, with no physical works or change in use proposed.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment: The site is located in a highly accessible area, in close proximity to public transport, including the main bus stops and ferry services at Manly Wharf. The site is also centrally located on The Corso, surrounded by a range of retail premises, restaurants and services, such that residents/tenants of the development have easy and direct access the services they require.

- *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 application proposes no change the physical form or use of the existing buildings, with no impacts upon the amenity of people who live within the Manly Town Centre.

4.4 Floor space ratio

and 4.6 Exceptions to development standards

With a floor space ratio (FSR) of 2.87:1, Lot 2 is non-compliant with the 2.5:1 maximum FSR prescribed by clause 4.4 of MLEP 2013. The maximum FSR is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause not not apply to those standards expressly excluded, the maximum FSR is not expressly excluded and thus the clause can be applied in this instance.

Extent of FSR breach

In April 2021, the NBLPP approved DA2020/1711 for alterations and additions, which included a minor variation to the FSR calculation. The approval of this development resulted in a FSR of 2.6:1 across the site as a whole, slightly exceeding the 2.5:1 standard prescribed.

The application does not propose any physical works. However, as a result of the proposed subdivision, the proportion of floor space on each lot is altered, resulting in one lot that is below the permitted FSR and one lot that is above the permitted FSR, as follows:

	Standard	Proposed	Variation
Lot 1	3:1	1.89:1	-
Lot 2	2.5:1	2.87:1	14.9%

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clauses 4.4 and 4.6 of MLEP 2013. The submission is considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission relies upon this method.

The applicant's submission satisfactorily demonstrates that compliance with the FSR development standard is both unreasonable and unnecessary in this instance, as the objectives of the control are otherwise achieved.

- 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*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The environmental planning grounds put forward by the applicant include:

- There is no change to the existing form, bulk and scale of the existing building,
- The bulk and scale of the existing buildings are consistent with the existing and desired streetscape character,
- The works do not attribute to any unreasonable impacts upon the amenity of the locality,
- The development is consistent with the underlying objectives of the standard and the B2 zone
- The development will facilitate the existing commercial building on the proposed Lot 1 to be managed independently from the heritage listed shop top housing development on proposed Lot 2 (with potential for LEP heritage mapping amendments in the future),
- The resultant breach to the FSR on the proposed Lot 2 relates to a building of local heritage significance that was constructed prior to the introduction of the current FSR controls.

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically that the requested variation will facilitate the orderly and economic development of the site.

The proposed subdivision of the site is consistent with the prevailing subdivision pattern of the area, essentially reverting to something more akin to the original subdivision of the land.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matters prescribed by clause 4.6(3) of MLEP 2013.

Is the proposal in the public's interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) 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 to be carried out.

The proposed development is consistent with the relevant objectives of the FSR development standard, as follows:

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

Comment: The application does not propose any physical works. As such, the proposal will not result in an intensification of the bulk and scale of the development and the two buildings will remain consistent with the existing and desired streetscape.

- b. *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment: The proposed development does not alter the bulk or density of the existing development, and as the built form of the development remains unchanged, the proposal will not obscure important landscape and townscape features.

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

Comment: The proposal will not alter the form of the development or the visual relationship between the development and the character of the area.

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

Comment: The proposal does not give rise to any adverse environmental impacts.

- 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 seek consent for any changes to the retail floor space of either existing building, or any changes to existing approved land uses. In the long term however, the proposed subdivision will facilitate the further development of 23 The Corso, which is comparably undeveloped compared to surrounding sites.

This is not to suggest that the recent approval for alterations and additions to the existing shop top housing development on the proposed Lot 2 benefitted from the undeveloped state of the existing building on the proposed Lot 1, as the development of the shop top housing development on the proposed Lot 2 predated the introduction of the FSR controls now applicable.

As discussed with regard to the B2 Local Centre Zone of MLEP 2013, the proposal is consistent with the objectives of the B2 zone.

As such, the proposal is considered to be in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposal can be supported, despite contravention of the FSR development standard.

6.9 Foreshore scenic protection area

The consent authority can be satisfied that the matters listed by clause 6.8 of MLEP 2013 have been considered. Noting that the proposed development does not involve any physical works or any changes to approved land uses, the proposed development will not impact upon:

- the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

- the scenic quality of the coastline,
- the suitability of the site given its type, location and design and its relationship with and impact on the foreshore, or
- conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	N/A	N/A
3.1.3 Townscape (Local and Neighbourhood Centres)	N/A	N/A
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	N/A	N/A
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	N/A	N/A
3.4.1 Sunlight Access and Overshadowing	N/A	N/A
3.4.2 Privacy and Security	N/A	N/A
3.4.3 Maintenance of Views	N/A	N/A
3.4.4 Other Nuisance (Odour, Fumes etc.)	N/A	N/A
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	N/A	N/A
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	N/A	N/A
3.9 Mechanical Plant Equipment	N/A	N/A
3.10 Safety and Security	N/A	N/A
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	N/A	N/A
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	N/A
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
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)	N/A	N/A
4.2.3 Setbacks Controls in LEP Zones B1 and B2	N/A	N/A
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	N/A	N/A
4.2.5 Manly Town Centre and Surrounds	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.5.4 Car Parking and Access	N/A	N/A
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	N/A	N/A
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

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 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0019 for termination of the existing strata plans and subdivision of one lot into two on land at Lot CP SP 12989, 19 - 23 The Corso, 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

Subdivision Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Plan of Subdivision of Lot 1 in DP590711, Sheet 1 of 1, reference 6934D_DraftDP1a	[undated]	C.M.S. Surveyors Pty Ltd

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. **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.

3. **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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

4. **No Physical Works**

No physical works are authorised by this consent.

Reason: To protect the heritage significance of the existing building on proposed Lot 2.

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

5. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

6. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

7. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. 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.

8. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

9. **BCA Certification**

Written certification is to be provided by a suitably qualified professional, to confirm that the two buildings are appropriately separated in accordance with the provisions of the BCA.

If physical works are needed to achieve appropriate separation, separate consent will be required from Council. No physical works are authorised by this consent.

Evidence of satisfaction of this condition is to be provided to the Principal Certifying Authority prior to the issuance of the subdivision certificate.

Reason: To ensure compliance with the BCA and to protect the item of local heritage significance.

