

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1469
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<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 4 DP 233249, 43 Pittwater Road MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Philippa Charlotte Marston Nicholas Anthony Farrar
<b>Applicant:</b>	Philippa Charlotte Marston

<b>Application Lodged:</b>	18/11/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	30/11/2020 to 14/12/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 85,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The development application seeks approval for the alterations and additions to an existing heritage attached terrace house.

The works include the following:

#### Ground Floor

- Increase footprint of the ground floor towards the southern boundary
- New internal Stair
- New bathroom
- New roof with highlight windows to the north for solar access.
- Alteration to rear window (W2)

## First Floor

- Increase footprint by 1.8m
- New Juliet balcony and Window 03 off new bedroom
- New Bathroom

## External

- New deck area to the rear

As a result of the notification, one submission was received from the southern adjoining neighbour, No. 41 Pittwater Road Manly, who expressed concern with the removal of the existing boundary fence. Councils Heritage officers also requested design changes for the proposed development to ensure the heritage significance of the dwelling is not compromised. After discussion with the applicant amended plans were received that demonstrated the requested design changes from Councils Heritage Officer, whilst allowing for the retention of the existing boundary fence. As per the Northern Beaches Council Community Participation Plan, the amended plans were not required to be notified due to the reduction in impact of the proposed 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 - 6.11 Active street frontages

Manly Local Environmental Plan 2013 - 6.13 Design excellence

Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

Manly Development Control Plan - 3.2 Heritage Considerations

Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all

LEP Business Zones including B6 Enterprise Corridor  
Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 233249 , 43 Pittwater Road MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Pittwater Road, Manly.</p> <p>The site is regular in shape with a frontage of 3.65m along Pittwater Road and a maximum depth of 28.383m along the northern side boundary. The site has a surveyed area of 103.6sqm. There is no vehicle access to the property.</p> <p>The site is located in the B2 Local Centre zone and accommodates a two (2) storey attached dwelling house. The subject dwelling house is identified as Heritage Item No. I199 "Group of commercial and residential buildings" under the provisions of the MLEP 2013. This dwelling is located within the row of terraced cottages known as Rylands Cottages. Furthermore, the subject site is located within the "Pittwater Road Conservation Area" under the provisions of the MLEP 2013.</p> <p>The site is generally flat and contains a small lawn area within the front yard and a bricked paved area within the rear yard. Moreover, the site contains two (2) small trees within the rear yard and small outbuilding within the rear north-western corner.</p> <p>The site is mapped as containing 'Acid Sulfate Soils Class 4' under the provisions of the MLEP 2013. Furthermore, the site is mapped as being located within the 'Active Street Frontages' area under the provisions of the MLEP 2013.</p> <p>The majority of the site is mapped as being located within the 'Medium Risk Flood Precinct', whereas a small portion within the rear yard is mapped as being located within a 'Low Risk Precinct' under Council's provisions.</p> <p>The area is characterised by a mixture of heritage items and character building interspersed with modern buildings or heritage items that have been altered overtime. The area includes a mixture of retail businesses and residential dwelling and shop top housing.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant development applications:

- Development Application **DA2019/1126** for the alterations and additions to a dwelling house was approved by Council on the 13/12/2019.

## 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	Draft State Environmental Planning Policy (Remediation of Land) 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 residential purposes for an extended period of time. The proposed development retains the residential use 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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration'	Comments
of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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&amp;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&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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 (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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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	See discussion on "Notification & Submissions Received" in this report.



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

## EXISTING USE RIGHTS

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

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

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

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

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

This necessarily requires the following questions to be answered.

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

### Comment:

The applicant has not provided evidence in the form of a planning approval confirming that the use of the land for the purposes of an attached dwelling commenced as a lawful purpose prior to the coming in force of Manly Local Environmental Plan 2013 on 19 April 2013. However, the Heritage Impact Statement submitted with this application (prepared by Marston Architects) and the previously submitted Heritage Impact Statement for an earlier application (by Northpoint Heritage dated 09 October 2019) contains various photographs of the existing dwelling and adjoining heritage items dating back to 1906. Furthermore, the Statement contains a subdivision plan of Pittwater Road during 1967, which depicts the existing dwelling and the adjoining dwelling houses. Whilst the application does not explicitly contain any planning approvals of the subject dwelling, the above-mentioned information confirms the dwelling's prolonged existence on the subject site prior to the coming in force of Manly Local Environmental Plan 2013 on 19 April 2013. Having regard to the prolonged existence of the dwelling, it can be assumed that a planning approval has been granted for the dwelling on the subject site between 1906 and the coming in force of Manly Local Environmental Plan on 19 April 2013. However, Council's records do not contain any historical approvals from the early 20th century for the site.

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

Comment:

As noted above, the dwelling's prolonged existence on the site leads Council to believe that a planning approval has been issued for the existing dwelling. However, such approval would pre-date Council's records. As identified on the land use table of the Manly Local Environment Plan 2011, development for the purposes of a dwelling house is prohibited in the B2 Local Centre zone. However, having regard to the information entailed within the Heritage Impact Statement, it can be assumed that the use of the land was lawfully approved by Council prior to coming in force of Manly Local Environmental Plan on 19 April 2013.

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

Comment:

Any planning approval issued for the dwelling likely pre-dates Council's records. As such, there is insufficient information to determine whether any approved works commenced within one year of the Development Consent.

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

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

Comment:

Having regard to the above case law, the information entailed within the Heritage Impact Statement confirms that the whole of the area of the land was physically used for the purpose of a dwelling house and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole subject site.

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

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

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

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is*

*because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

Comment:

The proposed development has a maximum building height of 6.9m - 7.2m and complies with the 15m building height standard under Clause 4.3 of the Manly Local Environmental Plan 2013. The Floor Space Ratio (FSR) of the proposed development is 0.71:1 (73.9sqm), where the permitted FSR under Clause 4.4 of the Manly Local Environmental Plan 2013 is 2:1. The proposed development generally maintains the existing setbacks of the building, and is not constructed to the public domain and side boundaries of the allotment as required under the controls in Business Zones.

Although not entirely consistent with the current planning controls, the bulk and scale of the proposal is consistent with the existing attached dwellings and is smaller than what would be expected of future development on surrounding sites.

## **2. What is the relevance of the building in which the existing use takes place?**

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

Comment:

The proposal largely retains the existing building, with a minor extension to the building footprint on the ground floor and first floor to provide additional outdoor entertainment space and internal floor space, and remains consistent with the bulk and scale of adjoining and surrounding development.

## **3. What are the impacts on adjoining land?**

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

Comment:

The proposed development is not likely to give rise to unreasonable amenity impacts on adjoining properties, specifically having regard to privacy and solar access.

## **4. What is the internal amenity?**

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

Comment:



The proposed development provides for an acceptable level of internal amenity and is generally consistent with the planning controls for attached dwellings in residential zones. An appropriate amount of private open space is provided within the rear yard and adequate solar access is provided to the living area.

## Conclusion

Whilst Council's records does not contain evidence of any planning approvals consenting to development for the purposes of a dwelling house, the Heritage Impact Statement submitted with this application provides photographic evidence of the existing dwelling occupying the site circa 1906. Therefore, it can be assumed that the use of the dwelling was approved under a previous Environmental Planning Instrument and therefore, is a lawful use. Subsequently, the use can be retained under the Manly Local Environmental Plan 2013.

## 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 30/11/2020 to 14/12/2020 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:
Mr Jens Rodney Charles Ward	41 Pittwater Road MANLY NSW 2095

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

- **Boundary Fencing**

The matters raised within the submissions are addressed as follows:

- **Concern was raised from the adjoining property to the south in regards to the removal of the existing boundary fence. The submission would like to see the existing boundary fence remain in order to screen the proposed ground floor built form.**

### Comment:

After discussion with the applicant amended plans were submitted to Council to demonstrate that the existing southern boundary fence will be retained.

It is considered that this issue has been resolved and there is no requirement for further amendments or refusal.

## REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the partial reconfiguration of the internal layout of the existing dwelling, as well as the extension of the existing deck at the rear of the dwelling, and the extension of the floor plate on Level 1.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> <li>• 3.3.2 Preservation of Trees and Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping</li> </ul> <p>The Statement of Environmental Effects provides no insight into existing vegetation on the site.</p> <p>A Site Survey has been provided in the application which identifies two trees located at the rear of the property. One tree with a large canopy, is located on the southern boundary in the south-west corner of the site. The other tree has a much smaller canopy, and is located centrally in the rear yard adjacent to the northern boundary. The Architectural Plans show the larger tree on all plans, however the smaller tree is not shown. It is unclear if this tree is to be retained or removed, and without further information regarding tree species and height, this tree shall be retained throughout the proposed works.</p> <p>The landscape component of the proposal is therefore acceptable subject to the protection of existing trees.</p> <p><u>Referral Update</u> Additional information was provided by the applicant detailing that the smaller tree on the site is a <i>Dracaena Marginata</i> and under 5m in height. Therefore, the tree is an exempt species that can be removed without consent.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is for a extension to the ground floor and extension to the first floor of a dwelling. Subject to conditions, the proposal is compliant with Council's flood prone land development controls.
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	<p>This application has been referred to Heritage as it is a listed heritage item and is located in the <b>Pittwater Heritage Conservation Area</b>. The building is a part of the heritage item, being <b>Item I199 - Group of Commercial and Residential Building - 35–49 Pittwater Road</b> , as listed in Schedule 5 of Manly LEP 2013.</p>
	Details of heritage items affected

Internal Referral Body	Comments	
	<p>Details of the heritage item and Pittwater Road Conservation Area, as contained within the Northern Beaches Heritage inventory, are as follows:</p> <p><b><i>1199 - Group of Commercial and Residential Buildings</i></b></p> <p><u>Statement of significance:</u> The item is a group of unusual early Twentieth Century terraced two storey residences with shops at each end. Listed due to its originality and uniqueness of concept, layout and mixture of materials. Significance in contribution to streetscape and in relationship to late 19th century development locally.</p> <p><u>Physical description:</u> The subject dwelling is part of the group of 8 terraced buildings comprising 6 terraced two storey houses (originally rendered at ground floor level and timbered at first floor level) with rendered two storey (projecting as one storey shops) buildings at each end. Bullnose verandah roofs to residences have reversed bullnose up to sill level on first floor. Projecting 'gable end' of roof forms pediment over central pair - 41&amp;43 Pittwater Road. Other significant elements include; barge boards to end buildings, rendered pediments over shopfronts, window hoods over first floor windows, Italianate render decoration to ground floor of residences.</p> <p><b><i>Pittwater Heritage Conservation Area:</i></b></p> <p><u>Statement of significance:</u> The street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions. The streetscape provides 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two storey residential cottages, with ocasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.</p>	
	Other relevant heritage listings	
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No
	Australian Heritage	No

Internal Referral Body	Comments		
	Register		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal is seeking approval for alterations and additions to the existing property, which is part of a group of heritage listed two storey terraces with shops at each end. Previously a ground floor extension has been approved and this application is for further extensions to the ground floor and the first floor with a Juliet balcony.</p>		
	<p>It is considered that the proposal will have no impact upon the significance of the conservation area, as the proposed works are mainly confined to the rear of the terrace, however Heritage recommends some amendments to reduce the impact upon the significance of the heritage item:</p>		
	<ul style="list-style-type: none"> <li>Proposed new roof to the first floor extension should be lowered at least 300mm below the main roof ridge height.</li> <li>Internal layout should retain the original fabric of the existing front house, including the arched openings and this should be noted on the plans.</li> <li>Splayed corner to the south section of the proposed Juliet balcony is recommended to be deleted and be symmetrical to the north section.</li> </ul>		
	<p>Therefore, Heritage requires amendments to the proposal.</p>		
	<p><b>Amended Plans 29 December 2020</b></p> <p>Amended plans, submitted in December 2020, have resolved a number of concerns Heritage had with the proposal, but the retention of the original fabric to the front house and the arched openings leading to the existing kitchen area should be noted on the plans.</p> <p>Therefore, no objections are raised to this application on heritage grounds, subject to one condition.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u></p> <p>Is a Conservation Management Plan (CMP) No Required? Has a CMP been provided? No Is a Heritage Impact Statement required? Yes</p>		

Internal Referral Body	Comments
	Has a Heritage Impact Statement been provided? Yes
	Further Comments
	COMPLETED BY: Oya Guner, Heritage Advisor
	DATE: 16 December 2020, Amended 06 January 2021

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

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A392714 dated 27 October 2020).

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



## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

### Comment:

The proposal was referred to Ausgrid. 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?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	15m	6.9m - 7.2m	Yes
Floor Space Ratio	FSR: 2:1	FSR: 0.71:1 (73.9sqm)	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes

Clause	Compliance with Requirements
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	N/A
Schedule 5 Environmental heritage	Yes

#### Detailed Assessment

#### **Zone B2 Local Centre**

Although development for the purposes of an attached dwelling is prohibited within the B2 Local Centre zone under the Manly Local Environmental Plan 2013, and is inconsistent with the zone objectives, the application relies on existing use rights as outlined within this report, and is therefore acceptable.

Nevertheless, the dwelling house is assessed against 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 application proposes alterations and additions to an existing attached dwelling, of which has occupied the subject site for over a century. In this regard, the dwelling is considered to be a relevant community use that contributes to an attractive and unique streetscape, thereby meeting the needs of people who live, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

#### Comment:

This Objective is not relevant to this application.

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

#### Comment:

The subject site contains no off-street parking spaces, nor does the application propose any off-street parking. Therefore, the proposed development will maximise public transport patronage and encourage walking and cycling.

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

#### Comment:

Adjoining development is predominantly characterised by residential land uses. Therefore, the proposed development is consistent with development within the immediate locality.

Having regard to the above assessment, it is considered that whilst the existing use is not permissible within the B2 Local Centre zone, the proposed development is consistent with the relevant Objectives of the zone.

### **6.11 Active street frontages**

Under Clause 6.11 Active Street Frontages, development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

#### Comment:

The proposed development involves alterations and additions to an existing attached dwelling, which benefits from existing use rights, therefore, the requirements of this clause do not apply to the development.

### **6.13 Design excellence**

Under Clause 6.13 Design Excellence, development consent must not be granted for development involving the erection of a new building or external alterations to an existing building, unless the consent authority considers that the development exhibits design excellence.

In considering whether a development exhibits design excellence, the consent authority must give consideration to whether the development:

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and*
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*
- (e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*
- (g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*
- (h) promotes vistas from public places to prominent natural and built landmarks, and*
- (i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*
- (j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*
- (k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

#### Comment:

The proposed development involves external alterations to an existing attached dwelling. The proposed works are isolated to the rear of the building and will not impact on its streetscape appearance. In light of the relevant above considerations, it is considered that the development exhibits design excellence.

### **6.16 Gross floor area in Zone B2**

Under Clause 6.16 Gross Floor Area in Zone B2, development consent must not be granted for the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises and/or if the gross floor area of any retail premises on the land would exceed 1,000 square metres.

Comment:

The proposed development involves alterations and additions to an existing attached dwelling, which benefits from existing use rights, and does not include any retail premises, therefore, the requirements of this clause do not apply to the development.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 103.6sqm	Requirement	Proposed	% Variation*	Complies
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Buildings must be constructed to the public road	<b>Ground Floor</b> 4.5m <b>First Floor</b> 5.6m	- -	No (as existing)
	Buildings must be constructed to the side boundaries of the allotment	<b>Ground Floor</b> Nil - 0.03m (North) 0.03m (South) <b>First Floor</b> 0.04m (North) 0.10m (South)	-	No
Schedule 3 Parking and Access	Attached Dwelling: 2 resident parking spaces for a three (3) bedroom or more dwelling within Manly Town Centre Business Zone, plus 0.16 visitor parking spaces per dwelling (rounded to the next whole number)	0 spaces	100% (3 spaces)	No (As existing)

Although the proposed development is for residential purposes, this assessment has considered the relevant controls under Section 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres) based on the location of the site within the Manly Town Centre Business Zone, as well as the relevant controls under Section 4.1 Residential Development Controls which do not expressly state that they only apply to development in LEP Zones R1, R2, R3, E3 and E4.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	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	No	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	Yes
5 Special Character Areas and Sites	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

### Detailed Assessment

### **3.2 Heritage Considerations**

The proposed development provides no parking spaces within the site and the site does not currently provide any off-street parking.

Schedule 3 of the MDCP 2013 requires two (2) resident parking spaces to be provided for attached dwellings with three (3) or more bedrooms within the Manly Town Centre Business Zone, as well as 0.16 visitor parking spaces per dwelling, which is rounded to a requirement for one (1) visitor's parking space in this instance.

Clause 3.2.5.1 provides exceptions to the parking requirements for alterations and additions to heritage items where car parking will adversely impact on the item.

Due to the siting of the existing building in close proximity to the front boundary and the minimal overall



width of the allotment, it would not be possible to provide any of the required parking spaces without the demolition, or partial demolition, of the building. The front façade of the building forms part of its significance and the loss of any of the existing fabric would have an adverse impact on the heritage item.

Based on the above, it is considered that the application of an exception to the provision of the two (2) resident parking spaces and the one (1) visitor parking space required under this control is reasonable and critical for the retention of the heritage significance of the building.

#### **4.2.3 Setbacks Controls in LEP Zones B1 and B2**

The proposed development maintains the existing building setback of 4.5m for the Ground floor and 5.6m for the First Floor from the public road (Pittwater Road), provides a nil - 0.03m northern side boundary setback and 0.03m southern boundary setback for the Ground Floor, and a 0.04m northern side setback and 0.10m southern side setback to the First Floor.

The control states that all buildings must be constructed to the public road and side boundaries of the allotment, but provides exceptions in certain circumstances, including the following:

*(a) an alternative setback is identified on the townscape and opportunities maps or having regard to established building lines and whether they contribute positively to the streetscape.*

##### Comment:

The proposed development involves alterations and additions to an existing attached dwelling, which benefits from existing use rights and forms part of a group of commercial and residential buildings which are listed as a local heritage item. The proposed development will maintain the existing streetscape appearance and front building line of the dwelling, which is consistent with the dwellings within the row of buildings and which forms part of the heritage significance of the buildings.

The residential dwellings within the group of buildings also have a distinct side setback pattern in which a nil setback is provided to the same boundary with the adjoining building to facilitate a minimal setback from the other side. The proposed development seeks to maintain this pattern of development and is therefore considered to maintain the established building lines for this group of buildings.

Based on the above, the proposed development meets the requirements for the permitted exception under this control and is therefore supported on merit.

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

Refer to the discussion under Clause 3.2 Heritage Considerations of the MDCP for further information regarding the exception to the required car parking rates for alterations and additions to heritage items.

##### **4.4.4.1 Awnings in LEP B1 and B2 Business Zones**

##### Description of non-compliance

The proposed development does not provide an awning over the footpath on Pittwater Road.

The control states that continuous footpath awnings must be provided on all street frontages, generally consistent with the streetscape.

##### Merit Consideration:

The portion of Pittwater Road which adjoins the heritage listed group of commercial and residential buildings does not contain any street awnings, with the existing development generally set back from the street frontage.

As the proposed development involves alterations and additions to an existing attached dwelling, which benefits from existing use rights, and does not include any commercial use, the inclusion of an awning is not considered to be required.

### **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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1469 for Alterations and additions to a dwelling house on land at Lot 4 DP 233249, 43 Pittwater Road, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Site Plan, First Floor and Ground Floor Plan DA/01	October 2020	Marston Architects
South Elevation and Section 1 DA/02	October 2020	Marston Architects
North, East and West Elevation DA/03	October 2020	Marston Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Statement of Heritage Impact	Undated	Vivianne Marston
Flood Report	07/11/2020	Pittwater Data Services

##### 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.

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **4. Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the 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](http://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**

### **5. Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY FOR DEVELOPMENT.

Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

6. **Retention of the original fabric to the front house**

Retention of the original fabric to the front house and the arched openings leading to the existing kitchen area should be noted on the plans. Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To preserve the heritage significance of the the heritage listed terrace.

7. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

8. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 6.3m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 6.3m AHD. All existing electrical equipment and power points located below the Flood Planning Level of 6.3m AHD must have residual current devices installed cut electricity supply during flood events.

Floor Levels – F2

The underfloor area of the ground ground floor extension below the 1% AEP flood level of 5.8m AHD, is to be designed and constructed to allow clear passage of floodwaters. The underfloor perimeter of the dwelling is to have a minimum of 50% open area below the 1% level.

Fencing – H1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open for passage of flood waters - All new fencing on the property must be design with a minimum of 50% open area between the 1% flood level of 5,8m AHD and natural ground level, to allow flood waters to pass through.

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

**Reason:** To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

9. **Compliance with Standards**

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

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

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

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

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the No. 41 Pittwater Road Manly must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this

condition have been met prior to commencement of any works.

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

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

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

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 12. Road Reserve

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

Reason: Public safety.

### 13. 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)];
- 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; and
- 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.

### 14. Survey Certificate

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

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

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

### 15. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

### 16. Tree and vegetation protection

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
  - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
  - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
  - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
  - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.



**17. Protection of existing street trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for the street tree fronting the development site shall consist of standard 2.4m panel length to four sides, located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: tree protection.

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

**18. Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

**19. Stormwater Disposal**

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

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

**20. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Report for No. 41 Pittwater Road Manly, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction

Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

21. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

**Signed**



**Catriona Shirley, Planner**

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



**Rodney Piggott, Manager Development Assessments**