

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1475
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<b>Responsible Officer:</b>	Renee Ezzy
<b>Land to be developed (Address):</b>	Lot 3 DP 86034, 22 Victoria Parade MANLY NSW 2095
<b>Proposed Development:</b>	Demolition of building and construction of a new hotel
<b>Zoning:</b>	Manly LEP2013 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Yin Feng Pty Ltd
<b>Applicant:</b>	Morson Group Architects

<b>Application Lodged:</b>	18/12/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Tourist
<b>Notified:</b>	11/09/2020 to 25/09/2020
<b>Advertised:</b>	11/09/2020
<b>Submissions Received:</b>	62
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 14% 4.4 Floor space ratio: 100.2%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 5,240,785.00
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### EXECUTIVE SUMMARY

Development Application DA2019/1475 has been submitted by Morson Group Architects for demolition works and construction of a four (4) storey hotel containing forty-one (41) rooms, a cafe/ restaurant, separate retail space and basement parking for twenty-two (22) vehicles.

The application was amended following the public exhibition of the proposal which in total has resulted in sixty-two (62) submissions objecting to the proposal and raising concerns relating to amenity (noise, privacy, views, overshadowing), traffic and parking and non-compliance with the building height and floor space ratio requirements of Manly Local Environmental Plan 2013 (MLEP 2013).

The site is zoned R3 Medium Density Residential and development for the purpose of 'tourist and visitor

accommodation' is permissible with consent.

Assessment of the application has found that the proposal in its current form cannot be supported as it fails to satisfy the requirements of MLEP 2013 and Manly Development Control Plan (MDCP) including wall height, number of storeys, front setback, side setback, landscaped area and earthworks.

In addition, the proposed variations to the 'Height of Buildings' and 'Floor Space Ratio' Development Standards under MLEP 2013 at 14% and 100.2% respectively are considered excessive in the context of this site and not in the public interest. There are insufficient environmental planning grounds provided by the applicant to justify contravening these development standards to the extent proposed.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal for the reasons detailed within the 'Recommendation' section of this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The development application as submitted seeks the demolition of the existing structures on site and construction of a new part four/part five storey hotel accommodation comprising 49 rooms, communal rooftop area including spa, ground floor café/restaurant, basement car parking with 22 car spaces and associated site and landscape works.

The application was subsequently amended to reduce the number of storeys from 5 to 4 and reduce the number of rooms to 41. This amended application is the subject of this assessment.

## **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - Zone R3 Medium Density Residential  
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils  
Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Local Environmental Plan 2013 - 6.15 Tourist and visitor accommodation  
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises  
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)  
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)  
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 3 DP 86034 , 22 Victoria Parade MANLY NSW 2095
<b>Detailed Site Description:</b>	The subject site is known as No. 22 Victoria Parade, Manly and is legally identified as Lot



Photograph 1 - The subject site viewed from Victoria Parade

The site is a regular shaped allotment with a 20.29m frontage to Victoria Parade, northern 28 Victoria Parade of 47.69m and a southern boundary adjoining No 18-20 Victoria Parade. The site area is 966m<sup>2</sup>.

The site is generally flat with less than 25mm in fall from back to front.

Surrounding development consists of a range of medium density residential development along Victoria Parade and to the rear south-west of the site, Manly Village Public School opposite low density detached dwellings adjoining the site to the south-east fronting Ashburner Street.

The immediately adjacent properties consist of a 1920's residential flat building to the north and access either side of the building accessing at grade parking to the rear (No.28 Victoria Parade) and a residential flat building to the south (No. 18-20 Victoria Parade).

Map:





## SITE HISTORY

### Development Application DA0167/2015

DA0167/2015 was lodged with the former Manly Council on 20 July 2015 for demolition works and construction of a three (3) storey hotel containing thirty six (36) rooms, basement parking for twenty two (22) vehicles and landscaping. The application was approved by the Manly Independent Assessment Panel (MIAP) on 17 March 2016 subject to conditions.

### Development Application DA2019/1475

DA2019/1475 for demolition works and construction of a part four, part five storey hotel containing forty nine (49) rooms, a communal rooftop terrace with spa, ground floor cafe/ restaurant and basement parking for twenty two (22) vehicles and landscaping was lodged with Northern Beaches Council on 18 December 2019.

A request to withdraw the application was sent to the applicant which identified the following issues with the application:

- Building Height breach of 44% (4.92m)
- Floor Space Ratio (FSR) of 1.73:1 which represents a 950m<sup>2</sup> breach of the 0.75:1 control.
- Urban Design issues
- Privacy and view loss
- Heritage retention of facade
- Inadequate detail in relation to on-site stormwater design
- Driveway crossing
- Insufficient parking

On 22 July 2020 the applicant submitted amended plans to address the some of the issues raised above. The amendments include:

- Reduced FSR from 1.73:1 to 1.50: 1
- Reduced height from 15.92m (4-5 storeys) to 12.54m (4 storeys)

- Reduced front setback at ground level from 4.9m to 3.5m.

These plans were renotified from 9-25 September 2020. This second notification resulting in 23 submissions.

## 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 the purpose of 'tourist accommodation' for an extended period of time. The proposed development retains the 'tourist accommodation' 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)(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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&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 may be 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 clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration'	Comments
	<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 clause is not relevant to this application.</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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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><b>(i) 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. The proposed development is considered to adversely impact the visual and acoustic privacy of the adjoining properties. In addition, the lack of parking and appropriate vehicular access is considered to create an unacceptable impact on the parking and safety of vehicles and pedestrians within Victoria Parade.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal for tourist and visitor accommodation.</p> <p><b>(iii) 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 unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Building Height, Floor Space Ratio , landscaped open space and parking and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 11/09/2020 to 25/09/2020 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 62 submission/s from:

Name:	Address:
Mr Clive Owen Gestern Williams	3 / 29 Victoria Parade MANLY NSW 2095
Mr Mitchell Peter Waters	11 Darley Road MANLY NSW 2095
Mrs Natalie Louise Waters	11 Darley Road MANLY NSW 2095
Mr John Christopher Coffey	49 Robert Street FRESHWATER NSW 2096
Ms Kate Leah Jewell Lorimer	17 / 28 Victoria Parade MANLY NSW 2095
Mr Ricardo Agustin Aravena	3 / 28 Victoria Parade MANLY NSW 2095
Mr Daniel Coleman	3 / 43 Ashburner Street MANLY NSW 2095
Angy Ertel	8 / 25 Ashburner Street MANLY NSW 2095
Mr Mark Joseph Wall	24 / 25 - 27 Victoria Parade MANLY NSW 2095
Adam Paton	25 Vista Street GREENWICH NSW 2065
Cristina Maldonado	2 / 28 Greycliffe Street QUEENSCLIFF NSW 2096
Mr David Lawrence	21 Ashburner Street MANLY NSW 2095
Mr Nicholas David Arneaud	1 / 8 Moore Road FRESHWATER NSW 2096
Mr Trevor George Hodges	15 Darley Road MANLY NSW 2095
James Macdonald	7 / 25 Ashburner Street MANLY NSW 2095
Ms Sybil Mercia Walsh	6 Hoover Place CROMER NSW 2099
Mrs Robyn Patricia Waters	7 / 129 Bower Street MANLY NSW 2095
Mr Mr English	2 / 28 Victoria Parade MANLY NSW 2095
Kristian Bach Kolding	7 / 28 Victoria Parade MANLY NSW 2095
Mr Kenneth Herriot Crawford	C/- Archisol Architects Suite 3, 23 Belgrave Street MANLY NSW 2095
Mrs Pheik Kiang Tang	123 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Joseph Anthony Alagich Mrs Olga Maria Alagich	6 / 34 - 38 Victoria Parade MANLY NSW 2095
Mr Barry William Cross Mrs Robyn Neilae Cross	4 / 34 - 38 Victoria Parade MANLY NSW 2095
Kit Middleton	PO Box 178 TURRAMURRA NSW 2074
Ms Mary Brownhill Pattinson	309 / 15 Wentworth Street MANLY NSW 2095
Mr Niels Pantenburg	2 / 18 Victoria Parade MANLY NSW 2095
Mr John Barry Kay Barry	1 / 34 - 38 Victoria Parade MANLY NSW 2095



Name:	Address:
Mrs Antoinette Therese Bruecher	C/- Red Property Shop 1 5-7 Raglan Street MANLY NSW 2095
Mr Gregg Peter Melrose Ms Deborah Joan Melrose	9 / 34 - 38 Victoria Parade MANLY NSW 2095
Ms Amber Mae Glenister	12 / 25 - 27 Victoria Parade MANLY NSW 2095
Mr Ronald John Challenor	Lot 55 Rosetta Crescent KELLYVILLE NSW 2155
Mr John Graham McDermott	1 / 40 Victoria Parade MANLY NSW 2095
Mr Frederick Journeaux	3/120 Wyong Road KILLARNEY VALE NSW 2261
Mrs Petra Michaela Jirku	7 / 25 Ashburner Street MANLY NSW 2095
Mr Roger Herbert Springer	17 Ashburner Street MANLY NSW 2095
Mr Roger Springer	17 Ashburner Street MANLY NSW 2095
Mr Graham John Butson	5 / 42 Victoria Parade MANLY NSW 2095
Mr Josh Jackson	301 / 25 - 27 South Steyne MANLY NSW 2095
Ruth Jackson	3 / 29 Victoria Parade MANLY NSW 2095
Sara Williams	3 / 29 Victoria Parade MANLY NSW 2095
Rupert Williams	3 / 29 Victoria Parade MANLY NSW 2095
Mr Michael John Harvey	4 / 25 - 27 Victoria Parade MANLY NSW 2095
Ms Jane Ellen Hughes	4 / 25 - 27 Victoria Parade MANLY NSW 2095
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
Proprietors of Strata Plan 4911	18 Victoria Parade MANLY NSW 2095
Mr Scott Murray Freeman	3/14-16 Victoria Parade MANLY NSW 2095
Nevine Isabelle Dinie Te West	3 / 18 Victoria Parade MANLY NSW 2095
Mr Michael William Grundy	16 Carey Street MANLY NSW 2095
Nolan Planning Consultants	75 Oliver Street FRESHWATER NSW 2096
Catherine Tauro	Address Unknown
Mr Martin Nielson Schmidt	4 / 42 Victoria Parade MANLY NSW 2095
Emily Hunter	Address Unknown
Mr Edward Robert McPherson Hunter	11 / 28 Victoria Parade MANLY NSW 2095
Miss Silvana Zappia	8/14-16 Victoria Parade MANLY NSW 2095
Ms Anna Kondritz	15 / 84 A Darley Road MANLY NSW 2095
Alexandre Nollis	5 / 14 Victoria Parade MANLY NSW 2095
Ms Alexandra Louise Kulmar	1 / 28 Victoria Parade MANLY NSW 2095
Mrs Hazel Bambrick	31 Lovett Street MANLY VALE NSW 2093
Mrs Margaret Jennifer McDermott	1 / 40 Victoria Parade MANLY NSW 2095
Mr William Frank Mason	35 Narroy Road NORTH NARRABEEN NSW 2101
Joshua Thomas Jackson	6 / 13 Victoria Parade MANLY NSW 2095
Mr Pierre Lord	5 / 18 Victoria Parade MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

- **Non-compliance with Height and Floor Space Ratio (FSR)**

Comment:

The proposed redevelopment seeks a 14% non-compliance with the building height control and a 100.2% non-compliance with the FSR. The supporting documentation submitted with the original application included a Clause 4.6 variation for the building height, however while it was referenced in contents of the SEE, was not provided. Following amendments to the proposal that changed the developments height and FSR, there was no update to these documents submitted. An assessment of these non-compliances has been provided within this report and are not supported.

- **View Loss**

Comment:

Concerns relating to view loss were received from the adjoining property to the north. The front apartment on the top floor currently has a sight line from their kitchen and living/dining room windows across the front of the subject site toward Manly Cove and Esplanade Park through the Norfolk Pines. The proposed development which has pushed building bulk within the front setback and provides minimal stepping of the facade at the upper levels will result in the loss of this view line. While a full view assessment is provided within this assessment, it is considered that it isn't unreasonable for this view to be retained and given the excessive additional floor space proposed a better more closely compliant scheme could achieve this.

- **Visual and Acoustic Privacy**

*Proposal includes numerous openable windows within 1.8m of the common boundary with No. 28 Victoria Parade*

*Lack of landscaping along common boundary*

*Acoustic Report relies on data from 2015 (dated 29/6/15)*

Comment:

The setbacks to the northern property boundary are considered inadequate. Due to the wall height on the northern facade, the setback to this boundary should be 4.2m. While the use of eyelid windows which seek to direct sight lines toward Victoria Parade and not directly into the neighbouring property are an effective design choice, the proximity of the building given its commercial nature is considered insufficient.

As identified in this submission, the site planning provides for no landscaping at all along the full length of the boundary adjoining the adjacent building. The site layout includes locating mechanical plant along the north-eastern side of the building adjacent to the driveway. While the design includes 'acoustic louvres', the acoustic report is not considered convincing in its support of this ameliorative measure. The location of mechanical plant in this location adjacent to numerous bedrooms and sensitive noise receptors is not a good design response. This infrastructure should be located within the basement.

- **Roof Top Terrace**

Comment:

This element of the proposal has been deleted along with the entire fifth level and is no longer an issue.

- **Amenity**

Loss of sunlight and enclosure of apartments on the south-west elevation

Comment:

The proposed building form results in additional overshadowing of the north-eastern apartments within No. 18-20 Victoria Parade. The apartments affected are the ground and first floor apartments. The ground floor apartment closest to Victoria Parade is impacted for the entire morning period with solar access reaching the east facing windows between 1pm and 2pm before the building casts afternoon shadow across itself.

The first floor apartments are in shadow in the morning until 11am and retain solar access to most windows and balcony areas until approximately 1pm - 2pm.

In terms of the sense of enclosure of these apartments, the development provides a setback to the south which is close to compliant at 3.0m. The inadequate front setback however does result in a sense of overbearing bulk particularly for the front north facing apartments.

- **Traffic and parking**

Proposal requires 52 spaces and has a 30 space shortfall

Comment:

The amended proposal has reduced the number of rooms to 41. Accordingly the number of parking spaces required has also reduced to 45 spaces. The number of spaces proposed remains at 22, a 23 space shortfall. This issue is considered unresolved and forms a reason for refusal of the application.

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- **Over-development of the site**

*Loss of sunlight and enclosure of apartments on the south-west elevation*

Comment:

The proposed development includes a substantial 100.2% non-compliance with the FSR requirement of 0.5:1. The extent of non-compliance is a clear indication the proposal is an over development of the site.

- **Out of Character**

*Proposal is located in a residential area.*

Comment:

While the site is located with the R3 medium density residential zone, the proposed land use for 'tourist accommodation' is a permissible land use. This issue does warrant refusal of the application.

- **Substantially the same development**

*The amended proposal is heavily modified from the original application and should constitute a new development application.*

Comment:

The application as originally submitted was for a five storey hotel accommodation with 49 rooms, communal roof top terrace with spa, ground floor cafe/restaurant and basement car park for 22 vehicles. The application as amended is for a four (4) storey hotel with 41 rooms, ground floor cafe./restaurant and basement car park for 22 vehicles. While the quantum of the proposal

has been reduced in scale, the overall proposal in its nature and use are considered to remain substantially the same.

- **Inadequate parking and driveway access**  
**Inadequate provision for service vehicles**

Comment:

An assessment in relation to parking provision and driveway access has been undertaken by Council's Traffic Engineer and has been found to be inadequate and unacceptable. Parking and access form reasons for refusal of this application.

- **Loss of morning sunlight access**

*Impact on the occupants of No.18-20 Victoria Parade*

Comment:

The application provides a shadow analysis which compares the proposed development with the development approved by DA0167/2015. While this is interesting, it would have been useful for the shadow diagrams to show the pre and post development shadow impacts as the current application has no reliance on the application approved under DA0167/2015.

What is established by the shadow diagrams is that the rear, north-eastern facing lower ground unit is impacted by shadow from the development until 11am mid winter. From 1pm the building is cast in shadow from itself.

The front ground and first floor apartments are entirely in shadow in the morning until 11am when the first floor apartment will gain some daylight access to the two southern windows.

The ground floor apartment closest to the development will be impacted by shadows on eastern facing windows until 1pm and will be in full shadow from itself from 3pm.

Were the development to provide a compliant 6m setback for at least the ground and first floor levels with greater setbacks to Level 2 and 3, it is anticipated that the windows along the north-eastern facade of the building would benefit from increased sunlight access particularly in the morning during mid winter.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>SUPPORTED</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>



Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>SUPPORTED</b></p> <p><u>Acid Sulfate Class 4</u></p> <p>Consultant EIS recommends " excavated soils for footing and shoring systems should be sampled and analysed for SPOCAS to confirm an ASSMP is not required. As a contingency plan during these works any soils excavated for footings and services the material should be stockpiled and separated by a bund wall or a sediment control fence prior to testing for ASS. Alternatively this material could be placed into skip bins prior to testing." Accepted - a suitable condition will be added.</p> <p><u>Noise</u></p> <p>Noise assessment conclusion by TTM Consulting 24.10.2019: "Following a noise assessment conducted by TTM for Morson Group specifically for the proposed Manly Lodge mixed-use development at 22 Victoria Parade, Manly, TTM concludes the following:</p> <ul style="list-style-type: none"> <li>• The noise emissions of individual mechanical plant, including corrections for tonal and impulsive noise characteristics, must not exceed 66 dB(A) measured at one metre from the source.</li> <li>• A detailed noise assessment of the mechanical plant during the detailed design stage is recommended. The noise assessment should include noise source levels of plant, location, adjustments for plant noise characteristics, the cumulative noise effect of all plant noise, and practical effective noise control where required to verify compliance with the criteria.</li> <li>• The effectiveness and performance of the acoustic louvres should be reviewed and investigated to ensure compliance with the relevant noise criteria as part of the detailed mechanical plant noise assessment.</li> <li>• The rooftop communal area is to be suitable for recreational use by the guests, with the implementation a noise management plan.</li> <li>• The noise management plan is recommended to be reviewed on a regular basis.</li> <li>• Noise from additional road traffic generated from the development is predicted to be insignificant.</li> </ul> <p>The assessment and recommendations contained in this report demonstrate the development is feasible and reasonable, whilst keeping an appropriate acoustic amenity and controlled noise impact to the local community."</p> <p>The applicant is also in the application proposing to :</p> <ul style="list-style-type: none"> <li>• Restrict use of terrace to the day-time and evening assessment periods only, which is from 7am to 10pm, Monday to Saturday or 8am to 10pm on Sundays and public holidays.</li> <li>• Display signs to ensure noise is kept to a minimum of the</li> </ul>

Internal Referral Body	Comments
	<p>adjacent properties.</p> <ul style="list-style-type: none"> <li>• Position outdoor speakers away from any window of the adjacent properties.</li> <li>•</li> </ul> <p>The roof top spa and lounge area, are of concern due to potential noise to residential receivers surrounding the site. Signage does not ensure noise is minimised. Use by groups has the potential for offensive noise and complaints to Council. To enable approval conditions can be added.</p> <p>Likewise water quality/management/registration of the spa will require conditions.</p> <p><u>Amended Plans Reviewed 25.9.2020</u> APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>SUPPORTED</b></p> <p>No objections to the internal Restaurant operation , spa will be dealt with in industrial referral.</p> <p>Therefore conditions relating to the food business are provided.</p> <p>APPROVAL - subject to conditions</p> <p><u>Amended Plans Reviewed 25.9.2020</u> No objections to the internal Restaurant operation. Conditions relating to the food business are provided.</p>
Landscape Officer	<p><b>SUPPORTED</b></p> <p>The development application proposes the demolition of the existing structures and the construction of a new part four/part five storey hotel accommodation comprising 49 rooms, rooftop terrace, ground floor café/restaurant and associated site and landscape works.</p> <p>The landscape proposal to the upper-most level of the rooftop level consists of a spa and open pergola structure over the spa, with climbers proposed over the pergola frame to provide shade and weather protection to the occupants of the roof level of the building.</p> <p>Landscape Referral have considered this application against the relevant statutory requirements under Manly Local Environmental Plan, and Manly Development Control Plan, including Part 3 General Principles of Development; and Part 4 Development Controls and Development Types, and specifically 3.2.1.1 Consideration of Heritage Significance, and 3.5.5 Landscaping.</p> <p>In accordance with DA Lodgement Requirements, both a Landscape Plan and an Arboricultural Impact Assessment is provided with the development application.</p> <p>The Norfolk Island Pine located within the road carriageway at the</p>

Internal Referral Body	Comments
	<p>frontage of the development site is identified in the Local Environment Plan with heritage value under NSW Heritage Listing Number i238, as part of a significant group of street trees.</p> <p>The existing Norfolk Island Pine shall be protected from construction work impact as recommended in the Arboricultural Impact Assessment report prepared by NSW Tree Services dated 23 June 2015. The Norfolk Island Pine is identified as tree number 1 in the report.</p> <p>At ground level the Landscape Plan proposes boundary planting, planter walling, seating and lawn area. The planting areas consist of deep soil planting to the southern boundary (on slab with 1 metre soil depth); western boundary (part natural ground / part on slab with 1 metre soil depth); and northern boundary (natural ground), with planting of native trees, feature accent planting, and native understorey planting.</p> <p>On level 4, a raised tree planter is proposed, and on level 5 the landscape treatment consists of planting to the pergola, raised planter boxes, timber decking, seating, and lawn areas.</p> <p>No objections are raised in regard to the Landscape Plan and the recommendations of the Arboricultural Impact Assessment, subject to conditions.</p>
NECC (Development Engineering)	<p><b>NOT SUPPORTED</b></p> <p><u>2nd Development Engineering referral</u> A new set of plan was submitted on 30/7/2020. The issues raised in previous referral response have not been addressed. As such, Development Engineering cannot support the application due to the section 3.7 and 4.1.1 of Council Manly DCP 2013</p> <p><u>1st Development Engineering referral</u> The applicant proposed to re-develop the existing hotel. Development Engineering has reviewed the submitted plan and provides the following comments:</p> <p><b>On site stormwater management design</b> The applicant proposed an absorption system to discharge the on site stormwater. However, there is no soil infiltration rate provided in design. Development Engineering cannot undertake further assessment.</p> <p>The proposed kerb outlet pipe will connect to the existing crossing at no.28 Victoria Parade. The location of the kerb outlet shall be relocated.</p> <p>Some tall narrow trees are proposed to be planted on the proposed absorption trench in accordance with submitted landscape plan. This</p>

Internal Referral Body	Comments				
	<p>will influence the future functionality of the absorption trench.</p> <p><b>Driveway crossing</b> The proposed driveway crossing shall be at least 5.5 m wide to prevent any delay of traffic on Victoria Parade. It must also be separated from the crossing at No. 28 Victoria Parade.</p> <p>Development Engineering cannot support the application due to the section 3.7 and 4.1.1 of Council Manly DCP 2013.</p> <p>Furthermore, the applicant has no mention about any loading dock/area to serve the hotel.</p>				
Strategic and Place Planning (Heritage Officer)	<table><tr><th>SUPPORTED</th></tr><tr><td><p>The proposal has been referred to Heritage as it is adjacent to the <b>Manly Town Centre Conservation Area</b> and within the vicinity of a number of heritage items listed in the Manly LEP 2013, Schedule 5, being:</p><p><b>Item I120 One of a pair of semi-detached cottages</b> - 11 Darley Road</p><p><b>Item I238 Street trees</b> - Victoria Parade</p><p><b>Item I247 Manly Village Public School</b> - Wentworth Street (corner of Wentworth Street, Darley Road and Victoria Parade)</p></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of the items as contained within the Manly Heritage inventory are as follows:</p><p><b>Item I120 One of a pair of semi-detached cottages</b> <u>Statement of Significance:</u> This item is of local significance for its ability to demonstrate the pattern of development of Manly and in particular the area south of the Corso. The property was within an area set aside as Victoria Park, remaining undeveloped until the late 19th century when the Wentworth Estate was sold and sub-divided as the Bassett-Darley Estate. These simple semi-detached cottages reflect the early development of the area, simple dwellings for local residents/workers, and are now an uncommon example of their kind in the flat area south of the Corso. <u>Physical Description:</u> One of a pair (nos. 11 &amp; 13 Darley Road) of single storey timber semi-detached cottages. The cottages have a corrugated iron roof [sic] with gable feature to each. The gables have weatherboard cladding and a simple</p></td></tr></table>	SUPPORTED	<p>The proposal has been referred to Heritage as it is adjacent to the <b>Manly Town Centre Conservation Area</b> and within the vicinity of a number of heritage items listed in the Manly LEP 2013, Schedule 5, being:</p> <p><b>Item I120 One of a pair of semi-detached cottages</b> - 11 Darley Road</p> <p><b>Item I238 Street trees</b> - Victoria Parade</p> <p><b>Item I247 Manly Village Public School</b> - Wentworth Street (corner of Wentworth Street, Darley Road and Victoria Parade)</p>	Details of heritage items affected	<p>Details of the items as contained within the Manly Heritage inventory are as follows:</p> <p><b>Item I120 One of a pair of semi-detached cottages</b> <u>Statement of Significance:</u> This item is of local significance for its ability to demonstrate the pattern of development of Manly and in particular the area south of the Corso. The property was within an area set aside as Victoria Park, remaining undeveloped until the late 19th century when the Wentworth Estate was sold and sub-divided as the Bassett-Darley Estate. These simple semi-detached cottages reflect the early development of the area, simple dwellings for local residents/workers, and are now an uncommon example of their kind in the flat area south of the Corso. <u>Physical Description:</u> One of a pair (nos. 11 &amp; 13 Darley Road) of single storey timber semi-detached cottages. The cottages have a corrugated iron roof [sic] with gable feature to each. The gables have weatherboard cladding and a simple</p>
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Internal Referral Body	Comments		
	<p>collar tie and finial. There is a terracotta tiled awning roof over the front verandah running continuously across both cottages. Cast metal filigree brackets to the verandah posts are a later addition. The cottages are clad with lapped weatherboards. The entries are adjacent, to the centre, and have panelled doors with highlight over. There is a group of three double hung windows with very narrow side sashes...The front verandahs appear to have been tiled.</p> <p><b><i>Item I238 Street trees</i></b> <u>Statement of significance:</u> Historical line of HG Simth's intended Victoria Park. Aesthetic. <u>Physical description:</u> Norfolk Island Pines on both sides of road planted in carriageway.</p> <p><b><i>Item I247 Manly Village Public School</i></b> <u>Statement of Significance:</u> Manly Village Public School is of significance for the Manly local area for historical, associative, social and reasons of representativeness, primarily based on its ongoing use in education since 1882. The school is held in high esteem by the local community and it has special associations with a number of widely known local residents, notably A R Cutler the war hero and once Governor of NSW. <u>Physical Description:</u> The School as seen from Victoria Parade consists of two plain, rectangular, dark brown brick structures (one three- and one two-storey) with clay-tiled hipped roofs and timber double-hung windows. The two-storey section is directly opposite the subject site, being separated from it by the notable width of Victoria Parade.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		

Internal Referral Body	Comments
	<p>The application seeks consent for demolition of the existing building (from the Inter-war Period) on the subject site, and the construction of a new hotel accommodation, comprising 49 rooms. A Development Application No. DA167/2015 was approved for the subject site, by MIAP on 17 March 2016 for demolition of the existing structures and construction of three storey hotel comprising 36 rooms.</p> <p>The subject site is located adjacent to the Manly Town Centre Conservation Area and within the vicinity of heritage items. The existing building is not heritage listed but it is from the Inter-war period, built in the first half of the 1900's, and has historic development and association with the community of Manly as a place of recreation and holidays. Its design and fabric are significant to the aesthetic presentation of the urban development in this part of Manly. Therefore, it is recommended to retain the front façade of the existing building to be incorporated into the facade design of the proposal. This will provide consistency with the character of the area and maintain the aesthetics of the streetscape.</p> <p>Therefore, no objections are raised to this application on heritage grounds subject to 2 conditions, requiring a photographic heritage record and design amendments to the front facade.</p> <p><b>Amended Plans - 21 July 2020</b></p> <p>Amended plans and the supporting statement have been reviewed. It would had been a better outcome if the existing facade of the building was retained, as it is believed that this facade is a much better character and it relates the heritage, given the historic nature of the building and its association with the community of Manly as a place of recreation and holidays.</p> <p>Given the proposal maintains the demolition of the existing building which is not heritage listed, Heritage would recommend that, an archival recording of the facade be undertaken.</p> <p>In relation to the heritage items in the vicinity, it is considered that the proposed development, being on the opposite side of the road, will have a minimal and acceptable impact upon the identified significance of the listed heritage items.</p> <p>Therefore, Heritage raises no objections to the proposal on heritage grounds subject to two conditions of consent: photographic archival recording and protection of the street trees.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u> Is a Conservation Management Plan (CMP) Required? No</p>

Internal Referral Body	Comments
	<p>Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? A HIS was provided with the previous DA, dated July 2015.</p> <p>Plans reviewed: 30 April 2020, Amended 09 October 2020</p>
Strategic and Place Planning (Urban Design)	<p><b>NOT SUPPORTED</b></p> <p>The amended proposal (Oct 2020) is to add one new storey to the approved DA167/2015 of 3 storeys. Shadow impact has been reduced but there are still additional shadows cast compared to the approved DA. The built form impact of the additional top storey remains as it breaches the 11m building height by about 2m affecting view corridors from surrounding apartments. The proposed FSR of 1.5:1 is still double what is permissible (0.75:1).</p> <p><b>Previous Urban Design Comments:</b></p> <p>The proposal is to add two new storeys to the approved DA167/2015 of 3 storeys.</p> <ol style="list-style-type: none"> <li>1. The building height control of 11m will be breached by up to 4.9m. The floor space ratio has also been increased to 1.73:1 over the permissible 0.75:1. These will set negative precedents for future developments in the area.</li> <li>2. The increased building height and bulk will cast additional shadow to the neighbouring residences and open spaces thereby reducing their solar access further. The solar analysis when compared to the current situation with the existing building will show a greater loss of sunlight access. The submitted solar analysis is done in comparison with the approved DA only.</li> <li>3. The increased building height and bulk will also reduce view corridors of adjacent properties. No view sharing analysis were undertaken with this proposal submission.</li> <li>4. The proposed roof deck will increase overlooking/ privacy and noise nuisance issues to surrounding properties. The proposed plant truss structure can also potentially be enclosed in the future adding to increased building bulk and overshadowing issues.</li> <li>5. The 'mechanical equipment to future detail' notation on the roof plan is a concern as future roof plant proposal could be unsightly and add to the height and bulk of the building.</li> </ol>
Traffic Engineer	<p><b>NOT SUPPORTED</b></p> <p><u>Revised traffic Comments</u></p> <p>The proposed amended architectural plans shows a reduction in number of hotel rooms from 49 to 41 rooms. As a result, the parking requirements in accordance with Manly DCP will be reduced to 45 parking spaces. No changes is proposed on the driveway and car park at the basement level.</p> <p>Given the proposed development is located within close proximity to Manly Town Centre and public transport, the reduced parking rate for the hotel rooms can be considered acceptable. However, it is to be</p>

Internal Referral Body	Comments
	<p>demonstrated on the basement car park plan that the parking spaces allocated to the retail, restaurant, and Hotel staff is in compliance with the DCP. Also, the applicant is to address the service vehicles to be accommodated within the site.</p> <p>The proposed driveway in the current proposed form cannot be supported. The proposed circulating roadway leading from the access driveway to the car parking area is longer than 30m with no provision of sight distance from one end to the other. The location of the vehicular access between the 90 degree parking spaces on Victoria Parade exacerbate the concern and the adverse impact of on the street fronting the proposed site.</p> <p>Therefore, the proposal is considered unsupported on traffic grounds.</p> <p><u>Traffic Comments - Earlier:</u></p> <p>The proposed development involves the redevelopment of Manly Lodge Boutique Hotel containing 22 rooms to a five story building containing 49 suites/rooms, one retail tenancy and a basement level car park. The development proposal includes the provision of 22 car parking spaces of which 2 are accessible parking spaces, 10 motorcycle parking spaces, and 10 bicycle parking spaces. The proposed access is a 3.6m wide single entry / exit driveway access via Victoria Parade, on the northern side of the subject site.</p> <p>In accordance with Manly DCP requirements, the proposed development requires the provision of 53 car parking spaces(including 49 spaces for guests, 2 spaces for staff and 2 parking spaces for the retail component) as well as 18 bicycle spaces within the site. The location of the premises being in close proximity to public transport (ferries) could be considered in assessment of minor parking shortfall on merit.</p> <p>Based on the parking requirements of 53 car parking spaces, provision of the minimum of 5.5m wide passing bay will be required for at least the first 6m of the driveway from the property boundary as well as the cross over. This is considered necessary to prevent vehicles from queuing / reversing on to Victoria Ave.</p> <p>In the traffic report, in order to assess the traffic generating from the proposed development, trip rate assumptions have been extracted from a traffic study that supported an approved mixed-use and hotel development at Bathurst Street with parking requirements of 1 in 10 rooms. The proposed traffic generation of 5 vehicle trips per peak hour based on the above-mentioned comparison is not considered acceptable. The comparison shall be drawn with an existing operating hotel with similar characteristics and location.</p> <p>In view of the foregoing the proposal is not supported on traffic grounds.</p>



Internal Referral Body	Comments
Waste Officer	<p><b>SUPPORTED</b></p> <p>Amended plans remain for a hotel redevelopment application and there are no residential dwellings - only hotel rooms with no kitchens.</p> <p>The Hotel management will be responsible for all waste management to the property which will not receive a Council domestic service.</p> <p>As such the development proposal is acceptable from a council waste services perspective, subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><b>SUPPORTED</b></p> <p>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.</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 commercial purposes as a hotel (or tourist accommodation) 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 proposed continued (tourist accommodation) commercial land use.

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

Comment:

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

**Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	12.54m	14%	<b>No</b>
Floor Space Ratio	FSR: 0.75:1 (724.5m <sup>2</sup> )	FSR: 1.5:1 (1450.7m <sup>2</sup> as amended)	100.2%	<b>No</b>

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	No
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	No
6.15 Tourist and visitor accommodation	Yes

Clause	Compliance with Requirements
6.21 Noise impacts—licensed premises	No

#### Detailed Assessment

#### **Zone R3 Medium Density Residential**

The proposed development is considered inconsistent with the following objective:

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

The scale, height and intensity of the proposed development fails to meet a number of built form and development control requirements and is not considered a suitable redevelopment of this site.

#### **4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of buildings Floor space ratio
Height Requirement: FSR Requirement	11m 0.75:1
Proposed Height: Proposed FSR:	12.54m 1.5:1
Percentage variation to Height requirement: Percentage variation to FSR requirement:	14% 100.2%

#### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

#### Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards are not expressly excluded from the operation of this clause.

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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix (combined Building Height and Floor Space Ratio)) relates to the application as it was originally lodged and was which not amended to reflect the amended design, has not satisfactorily demonstrated that the objectives of the development standards are achieved, notwithstanding the non-compliance with the development standard.

**In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).**

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

Comment:

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

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written*



request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

### *1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

## **Building Height**

The applicants written request for a variation to Building Height argues, in part:

- *The exceedance above the maximum height of buildings requirement of MLEP2013 is supportable in that the proposed building height plane will be compatible with the size and scale of existing buildings within the streetscape setting of Victoria Parade. The existing streetscape setting consists of residential flat buildings that range between four to six storeys in height. The proposal is five storeys in height, will sit comfortably within the site and be commensurate with the built form pattern along Victoria Parade.*
- *The proposed part-four/part-five storey scale of the building will be compatible with the number of storeys of the existing residential flat buildings within the urban block. The building does not detract from the existing streetscape setting in that the proposed roof parapet will be similar to the height of the neighbouring buildings within the street.*
- *The proposed part-four/part-five storey scale of the building has been sensitively and skillfully designed to appropriate transition between the five-storey building element to the four-storey scale of the southern neighbour through the provision of an increased side boundary setback and a stepped built form transition along the southern façade of the building. The stepping will ensure that the bay window will remain compatible in height with the gable roof element of the building.*
- *The subject allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings along the street being subject to strata subdivision it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum height of buildings, it is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.*
- *The proposal will not contribute to any adverse environmental impacts in terms of solar access*

*and overshadowing, visual and acoustic privacy, view loss or bulk and scale.*

*The provided Clause 4.6 justification relies entirely on the proposed development sitting comfortably within the existing streetscape in terms of its relationship with the height of the other buildings within the street. A large number of the existing building forms pre date the current controls . The written request does not provide adequate environmental planning grounds to justify a height breach for new development or any justification to support a 100.2% variation on Floor Space Ratio.*

## **Floor Space Ratio**

The applicants written request for a variation to Building Height argues, in part:

- *The non-compliant floor area of the proposed development will not result in a development that is excessive in size and scale within the streetscape. The additional gross floor area above the maximum requirements will be distributed to levels four and five of the building and the additional storeys above the approved development will maintain the predominant building height plane of the neighbouring buildings.*
- *The non-compliant floor area will not contribute to adverse visual bulk and scale impacts from the neighbouring buildings. The proposal includes a significant building separation to the southern neighbour through the provision of a large central void within the building footprint. The oversized void will provide ample building separation and recesses the southern external façade which minimises the length of the continuous wall plane along the southern elevation. The northern and southern (side) elevations have also been appropriately articulated through the provision of bay windows and varying window openings to each respective level of the building.*
- *The exceedance to the maximum floor space ratio will result in a similar building footprint as the existing buildings within the street. The proposal will occupy a similar building footprint relative to the site area as the neighbouring developments including nos. 14, 40, 42 and 46 Victoria Parade.*
- *The allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings within the street being subject to strata subdivision, it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum floor space ratio is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.*
- *The proposal will not contribute to any adverse environmental impacts in terms of solar access and overshadowing, visual and acoustic privacy, view loss or bulk and scale.*

*The provided Clause 4.6 justification relies heavily on the fact that most of the surrounding development which (pre-dates the current planning controls) are unlikely to be redeveloped and that the proposal will occupy a similar footprint to the other residential flat buildings in the street. These statements are not considered to constitute adequate environmental planning grounds to justify a 100.2% floor space ratio breach for new development.*

**In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.**

Therefore, the applicant's written request does not adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard for height or floor

space ratio as required by cl 4.6 (3)(b).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings and Floor Space Ratio development standards and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

**Height of Buildings**

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

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

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

Comment:

The proposed amended scheme provides a building height which is not inconsistent with the prevailing existing building height which is apparent in Victoria Parade. A large proportion of the existing building stock pre-dates the current planning controls for this location which seek to establish the desired built form character for future development.

*b) to control the bulk and scale of buildings,*

Comment:

The bulk and scale of the proposal is unacceptable and this is reflected in the numerous non-compliance with the relevant controls for the site.

*c) to minimise disruption to the following:*

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

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

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

Comment:

The views from the adjoining property (No. 28 Victoria Parade) across the site to Manly Cove development have been identified as impacted by the positioning of Level 3 relative to the front boundary. It is considered that a better design could provide an increased

setback at Level 3 to retain existing views of Manly Cove from this neighbouring property.

*d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The orientation of the site north-west to south-east means that the bulk of shadow cast by the proposed development will impact on the north-eastern façade of the existing building at No. 18-20 Victoria Parade, predominantly the ground and first floor levels. The main impact is from 9am to midday for the windows to the ground floor and first floor units.

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

Comment:

The site is located within the R3 medium density residential zone and will not impact on any vegetation or bushland in surrounding locations.

## **Zone objectives**

### **Floor Space Ratio**

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013 are:

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

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

Comment:

The proposed development is not considered consistent with the desired streetscape character in terms of bulk and scale as it seeks a 100.2% variation to the floor space ratio control.

*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 floor space ratio for this development is excessively beyond that required for this site and has subsequently resulted in a built form which provides inadequate landscaping, excessive building footprint and non-compliance with numerous controls. The building form will impact on the view lines currently available from the adjoining property to the north of iconic Norfolk Pine Trees along Esplanade Park and water glimpses of Manly Cove. These features are considered important townscape elements within Manly.

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

Comment:

The site directly adjoins the rear landscaped setbacks of three (3) low density residential



dwelling to the south-east. While the façade of the building has been maintained at 8m from the rear boundary, the basement structure extends between 0.6m and 1.3m from the boundary with these properties providing minimal meaningful area for deep soil planting that might provide a suitable level of landscape screening commensurate with the size of the development.



**Figure 1** - Relationship of the basement to adjoining properties. Source: Morson Group

Further, the applicant's Clause 4.6 variation claims that the FSR is contained within a footprint which is similar to other properties within the street. It should be noted that most other properties within the street provide a front setback of approximately 6m and do not have basement areas which cover 92% of the site area.



**Figure 2** - Relationship of the building footprint to boundaries. Source: Morson Group

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land



*and the public domain,*

Comment:

The scale of this building has resulted in numerous objections from adjoining property owners in terms of the visual and amenity impacts likely to result from this development. Concerns are raised in terms of the flow on impact which will be created by a significantly deficient rate of on-site parking to service 41 rooms.

*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 subject site is not located within a local centre or business zone. The excessive floor area of this development incorporates close to 100m<sup>2</sup> of retail floor area including a restaurant. While an onsite restaurant/café is permissible and an anticipated ancillary use for tourist accommodation, the additional retail space is undefined and therefore considered unnecessary for this site given the potential for amenity impacts on the adjacent occupants.

## Zone objectives

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

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

Comment:

The development provides for short term tourist accommodation in hotel style rooms which in itself is a form of short term accommodation suited to this location and there is an identified need for tourist accommodation in this location.

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

Comment:

The proposed short term tourist accommodation generally presents as an apartment style building. Apartment buildings are characteristic in this location.

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

Comment:

The development includes two (2) retail tenancies within the site. While a restaurant/cafe facility is considered a suitable ancillary use, the necessity for a second retail premises within the site is considered excessive and not necessary within the R3 zone to meet the day to day needs of residents. The second tenancy which fronts Victoria Parade is unidentified in terms of the anticipated use, although dual access to a central kitchen between the restaurant and second tenancy could imply a second food premises. The second retail space within this development is not supported.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

Notwithstanding the proposed use of this site is for short term tourist accommodation, the site sits within the R3 medium density residential zone and represents a full redevelopment of the site. As proposed, the site includes insufficient landscaped area at approximately 60m<sup>2</sup> (6.2%). This inadequate provision of landscaped area reinforces the excessive scale of this development.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The aesthetics of the architecture proposed is considered unbalanced due to the overhanging bulk of Level 1 and 2 above the recessed street facade. While no objection is raised to the design approach generally, the large floor plates above ground level which result in a significant non-compliance with the floor space ratio are not considered to compliment the presentation of the development to the street and the public domain.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings and Floor Space Ratio Development Standards can not be assumed.

**6.1 Acid sulfate soils**

The application was accompanied by a Preliminary Acid Sulfate Soil Assessment prepared by Environmental Investigation Services (EIS). The report provides the following conclusions:

*The soil samples analysed for this investigation encountered results which indicate potential acid sulfate soils at depths greater than 3 metres. However, these samples have been neutralised by a large quantity of calcium (the source of calcium generally can be associated by the presence of shell fragments). At this stage an ASSMP is not considered necessary for the basement excavation to a depth of 3 metres.*

*EIS recommend excavated soils for footing and shoring systems should be sampled and analysed for SPOCAS to confirm an ASSMP is not required. As a contingency plan during these works any soils excavated for footings and services the material should be stockpiled and separated by a bund wall or a sediment control fence prior to testing for ASS. Alternatively this material could be placed into skip bins prior to testing.*

## 6.4 Stormwater management

The proposed on-site stormwater management design provides insufficient information detailing soil infiltration rates. Further, the proposed landscaping identifies trees to be planted within the absorption trench which is likely to adversely impact on the functionality of the absorption trench.

## 6.12 Essential services

The proposed development is inconsistent with the provisions of Clause 6.12 Essential Services of the Manly Local Environmental Plan 2013 as the development has failed to resolve on-site stormwater management requirements and suitable vehicular access.

## 6.15 Tourist and visitor accommodation

The supporting documentation submitted with the application identifies that the maximum letting period for accommodation on the premises will be for three (3) months. Should the application be considered worthy of approval, an appropriate condition of consent may be imposed in this regard.

## 6.21 Noise impacts—licensed premises

The Acoustic Assessment prepared by TTM dated 24/10/2019 includes a noise assessment of mechanical plant, rooftop communal area, and road traffic noise generated by the development. The report does not provide any analysis or assessment of the potential noise impacts from two (2) retail spaces accommodating a restaurant and potential cafe.

While a license under the Liquor Act 2007, may be sought in future, at this stage there is no detail in this regard. Concerns would be raised in relation to this issue based on the current impacts created by the existing cafe operation.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 966m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 1unit/150m <sup>2</sup> sqm	1 unit/19.7sqm	N/A	No
4.1.2.1 Wall Height	North: 9m (flat land)	12.6m	N/A	No
	South: 9m (flat land)	9.3m - 12.5m	N/A	No
4.1.2.2 Number of Storeys (Area L on HoB Map)	3	4	N/A	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.2m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0.9m - 3.5m to ground floor facade, not consistent with prevailing setback Nil setback to basement	N/A	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 4.2m (based on wall height)	3.0m - 4.8m 0.5m-2.5m to basement	up to 40%	No
	South: 3.1m - 4.2m (based on wall height)	3.0m to building facade Nil setback to basement	3.3%- 40%	No

	Windows: 3m	1.8m to eyelid windows at Level 1, 2 and 3	N/A	No
4.1.4.4 Rear Setbacks	8m	0.6m to basement 8m to face building at ground level	92.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (483m <sup>2</sup> )	32% (310m <sup>2</sup> )	18%	No
	Open space above ground 40% (193.2m <sup>2</sup> ) of total open space	Nil above ground	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 193.2m <sup>2</sup> )	6.2% 60m <sup>2</sup>	N/A	No
	3 native trees (Area C on Lot size map)	>3 trees	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	At ground level	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1.5m from boundary	N/A	Yes
4.4.5 Earthworks (Excavation and Filling)	0.9m of side and rear boundaries	North - 0.5m to basement South - Nil to basement Rear - 0.6m to basement	44% 100% 33%	No No No
Schedule 3 Parking and Access (Hotel and Motel accommodation outside Manly Town Centre)  Commercial Premises (including business, offices and retail premises)  Restaurants or cafes and take away food and drink premises	1 space/ room and 1 space/2 employees at peak times  Retail - 1 space/ 40m <sup>2</sup>  Restaurant - 1 space/ 40m <sup>2</sup>  TOTAL SPACES REQUIRED = 45 spaces	41 spaces (41 rooms) 2 spaces for staff  Retail - 49.9m <sup>2</sup> / Restaurant - 48.4m <sup>2</sup> (2 spaces)  PROPOSED SPACES = 22 spaces	51%	No

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	No	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	No	No
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	No
4.1.1.1 Residential Density and Dwelling Size	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	No
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 3 - Parking and Access	No	No

### Detailed Assessment

#### **3.1.1 Streetscape (Residential areas)**

The proposed development is not considered satisfactory in relation to the requirements of Part 3.1.1 which states the following:

#### *Setback Principles in Higher Density Areas*

- c) *In higher density areas (including LEP Zones R1 & R3), careful consideration should be given to especially relevant in the design of new residential flat buildings adjacent to smaller developments*

The proposed development provides an excessive scale and site coverage which results in inadequate building separation, landscaped area, privacy and view impacts. The design of the building is not considered to provide a suitable response to the site or the controls which apply.

#### **3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)**

The proposed development is considered unsuccessful in terms of satisfying Objective 1 or addressing



the design criteria for amenity.

*Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*

*Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

#### Designing for Amenity

*a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.*

The proposed development raises concerns in relation to sunlight access, privacy, views and noise. The works will result in a substantial intensification of the current accommodation and cafe uses which currently generate regular complaints from the neighbouring residents. The scale of this development is considered excessive and does not suitably address the impacts on amenity raised in the submissions.

*b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.*

The design of this development due to its substantial non-compliance with the floor space ratio requirements is considered to result in a building mass which is unacceptable. The protruding frontage of the building form and insufficient setback particularly from the north-eastern boundary contribute to a building bulk and scale which is not supported.

*c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards.*

No objection is raised in relation to the materials palette proposed. While the design includes a two storey glass wall on the south-western facade, this element is not considered to cause concern in terms of reflectivity.

### **3.4.2 Privacy and Security**

The development includes an area for mechanical plant which extends for approximately 12.5m along the north-eastern side of the building adjacent to the driveway. This location provides a separation of around 7m from the bedrooms and internal living spaces of the adjoining apartment building with an 'acoustic louvre' the ameliorating solution. Given this is a major redevelopment on this site, the location of all mechanical plant is considered to be more appropriately located within a basement area and away from sensitive residential receptors.

The proposed development therefore fails to satisfy Objective 1 of the control which seek to achieve the following:

*"To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;"*

### 3.4.3 Maintenance of Views

The development is considered against the underlying Objectives of the Control as follows:

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

Comment:

A submission was received in relation to view loss from the property to the north-east.

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

#### 1. Nature of the views affected

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

Comment to Principle 1:



The existing views are of Manly Cove visible through the Norfolk Pines which line Esplanade Park. The view captures glimpses of the Manly Ferry approaching Manly Wharf. The view is a



partly obscured view due to the foliage on the Norfolk Pines.

## **2. What part of the affected property are the views obtained**

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

### Comment to Principle 2:

While the view line is from the front of the site across the front setback area. These views are available from the only windows within the kitchen and living/dining room within the adjoining apartment building and are available from a standing position.

## **3. Extent of impact**

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

### Comment to Principle 3:

Due to the projection of the building toward the street, it is expected that the entire view line will be lost as a result of the proposed development. While this is a partly obscured view, it is the 'only' view available from this apartment. Accordingly, the impact of no view through to water or trees replaced by a 12.6m high facade wall in the context of this apartment is considered severe.

## **4. Reasonableness of the proposal that is causing the impact**

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

### Comment to Principle 4:

The proposed development exceeds the overall building height requirement by 1.54m, the FSR by 726m<sup>2</sup> (100.2%) and the wall height by 3.6m. In addition, the front setback of the dwelling is less than 6m at between 0.9m and 2.2m and at the top level is only 4.3m. Were the development to comply with the 6m setback for Level 1 and 2 and step any additional building bulk back from the front boundary by 9m the existing view line to Manly Cove would be retained. As the site proposes a substantial non-compliance with the FSR requirements, a more skillful

design that provides a much reduced Level 3 is not only achievable but also a very reasonable option.

- **Objective 2**

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

Comment:

As detailed in the view assessment above, no attempt has been made to provide a design which minimises impact on the adjoining properties as the design maximises site coverage to create excessive floor space.

- **Objective 3**

*To ensure existing canopy trees have priority over views.*

Comment:

The site does not contain any canopy trees which would be impacted by the development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

### **3.9 Mechanical Plant Equipment**

The proposed development includes mechanical plant equipment at ground floor level adjacent to the driveway access and directly opposite the dwellings within No.28 Victoria Parade.

No detail is provided in relation to what mechanical plant is to be located in this area. While the Noise Assessment submitted with the application identifies the adjacent residential flat building as a sensitive receiver, the proposal appears to provide only 'acoustic louvres' to address noise in this location. The following conclusion is provided within the report:

*"Future mechanical plant may have an adverse effect onto nearby existing noise sensitive receivers and is required to meet the PNTL derived in this report from the NSW Noise Policy for Industry 2017. The most stringent PNTL is during the night-time period for residential premises at 38 dB(A) Leq (Refer Table 4), and is required to be met at the boundary of R1.*

*Acoustic louvres are also proposed to mitigate the noise impact of future mechanical plant. Acoustic louvres typically provide an additional noise reduction of 10-15dB. The performance of the acoustic louvres is required to be reviewed during detailed design stage by a suitably qualified acoustic consultant once selections are made.*

*Based on the location of mechanical plant relative to R1 and considering the additional noise reduction from the acoustic louvres, the noise limit of each mechanical plant must achieve 66 dB(A) Leq measured at one metre from the plant to achieve compliance."*

The location and proposed mitigation measures are not considered sufficiently adequate given their

proximity of 5m within the boundary. The use of louvres requires an assumption that this treatment will be maintained and reviewed in perpetuity which is not acceptable. This equipment should be designed to be located within the basement area of the development to ensure that future impacts from this plant equipment is not an issue.

#### **4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

The proposed development fails to comply with the Wall Height and Number of Storeys requirements. The site is located within Area L on the Height of Building (HoB) map where the maximum height is 11m. The maximum wall height for the site is 9m. The proposed development includes wall heights which are in excess of the maximum at 12.6m on the norther and up to 12.5m on the southern facade. As this is a new development, there is no justification for a variation to the wall height.

Further, the proposed built form seeks consent for four (4) storeys where the requirement is for a maximum of (3) storeys. Clause 4.1.2.2 provides the following conditions where a variation may be considered:

- c) *Variation to the maximum number of storeys may be considered:*
  - i) *where specific physical site constraints warrant an exception to this requirement. In the height controls and development standards; and*
  - ii) *to allow an additional understorey where that storey satisfies the meaning of basement.*

The site does not contain any physical constraints that would justify a variation in this instance.

#### **4.1.3 Floor Space Ratio (FSR)**

The specified FSR for the site is 0.75:1. The proposed development seeks a floor space ratio (FSR) of 1.5:1. which represents a 100.2% variation to the control. Manly DCP provides the following objectives for the control:

- Objective 1) To ensure the scale of development does not obscure important landscape features.
- Objective 2) To minimise disruption to views to adjacent and nearby development.
- Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the develop adjacent residential development.

Due to the excessive exceedence of the FSR for the site, the overall scale of the development fails to satisfy these objectives. The protruding upper levels effectively block sight lines toward Manly Wharf, Esplanade Park and Manly Cove from the adjacent building at No. 28

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

The proposed development seeks variation to the front and side building setback controls as identified within the compliance table under Built Form Controls. The proposed non-compliances are considered on merit in each instance.

##### **Front Setback**

The buildings on the south side of Victoria Parade exhibit a range of setbacks to the street between nil setback up to 8m. The adjacent property at No. 18-20 contains the 8m setback while the subject site



and No. 28 to the north provide a nil setback. The remaining buildings along Victoria Parade provide between 5m and 6m setbacks. As there is no consistent prevailing setback, it is considered acceptable that the site apply the 6m front setback.

The development includes a nil setback to the basement structure, a 3.5m setback at ground level, a 0.9m setback at Level 1, 2.2m setback to Level 2 and up to 4.5m setback at Level 3. The proposed setbacks are considered inconsistent with the objectives as they fail to enhance the spatial proportions and landscape character of the street. Further, the design results in some view loss to the adjoining building impacting on the views and vistas currently available.

### Side Setback

As a result of the proposed wall height, the building should provide a 4.2m setback to the north and a 3.1m setback to the south. The basement structure provides a setback of 0.5m-2.5m to the north and nil setback to the south. The levels above ground to the north provide a 3m setback with eyelid window forms protruding up to 1.8m from the boundary. Similar setbacks are provided to the south. The controls provide exceptions for projections into the side setback for *'unenclosed balconies, roof eaves, sun-hoods and the like'*. The applicant has not provided any justification for this new development to vary the side setback requirements. Accordingly, as it appears the only reason for the proposed setbacks is to maximise the floor space, a variation to this requirement is not supported.

### Rear Setback

The proposed basement structure includes a setback of between 0.6m and 1.3m. The Landscape Plan indicates five (5) large trees to be planted in this location being 2 x Scribbly Gum, 1 x Chinese Pistachio and 2 x Cheese Trees. The proposed deep soil available within this setback is considered restricted and the longevity and mature range of these trees questionable.

### 4.1.5 Open Space and Landscaping

The site is located within Area OS2 on Map B, Residential Open Space Areas.

The proposed development is deficient in the amount of Total Open Space and Landscaped Area provided on the site. Deep soil areas on the site are restricted around the perimeter of the basement at 60m<sup>2</sup> with boundary planting along the south-western boundary contained to a planter above the basement structure approximately 650mm deep. The only area of deep soil planting unrestricted by the basement up to 2.5m in width is along the north-eastern boundary where the proposed absorption trench is to be located. Accordingly, the proposed development fails to satisfy objective 4 of the control which states:

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

This issue forms a reason for refusal.

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

The proposed development fails to provide satisfactory parking within the basement carpark in accordance with the requirements of Schedule 3 of MDCP. The development proffers 22 parking space where there is requirement for 45 spaces. Justification for such a reduced rate of parking relies on a traffic study undertaken for a mixed use and hotel development located in Bathurst Street in Sydney CBD. This comparison does not contain the characteristics or location which could be considered similar to the subject site and has been rejected as a justifying case study.

In addition, the proposed driveway access to the basement requires a 5.5m wide passing bay to be provided within the first 6m of the driveway from the boundary to prevent vehicles queuing or reversing

onto Victoria Parade.

The proposed basement and parking is considered unsatisfactory and inconsistent with the requirements of the control.

#### **4.4.5 Earthworks (Excavation and Filling)**

The proposed development includes substantial excavation of the site with 92.2% of the site excavated. Accordingly, the development fails to satisfy the following objective:

*"Limiting excavation, "cut and fill" and other earthworks"*

### **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.

### **NORTHERN BEACHES SECTION 7.12 CONTRIBUTIONS PLAN 2019**

Were the application to be approved, the proposal would be subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$52,407.85 would be required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,240,785.

### **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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and 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.

This report provides a comprehensive assessment of the application for the redevelopment of the site as a hotel/motel tourist and visitor accommodation containing forty-one (41) rooms.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, SEPP 55, SEPP (Infrastructure), MLEP 2013, the relevant codes and policies of Council, the relevant provisions of the Manly DCP.

#### Public Exhibition

The public exhibition of the DA resulted in a very significant response from the community of concerned residents. Objections to the proposed development include concerns relating to building height, floor space ratio, noise, parking, vehicular access and over-development of the site.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report and are generally concurred with.

The application was referred to a number of internal departments. Fundamental concerns have been raised by Council's Development Engineer, Urban Designer and Traffic Engineer.

The assessment of the application against the provisions of MLEP 2013 and MDCP has identified that the proposal is not satisfactory in relation to a number of areas, particularly the breach of the 'height of buildings' and 'floor space ratio' development standards.

Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the recommendation of this assessment, and any amendments to those reasons.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2019/1475 for the Demolition of building and construction of a new hotel on land at Lot 3 DP 86034,22 Victoria Parade, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.3 and 4.4 of Manly Local Environmental Plan 2013 as the applicant's written requests under Clause 4.6 has failed to adequately address and demonstrate that:
  - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case
  - b) there are sufficient environmental planning grounds to justify the contraventions.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of Manly Development Control Plan:
  - Clause 4.1.1.1 Residential Density and Dwelling Size
  - Clause 4.1.2.1 Wall Height
  - Clause 4.1.2.2 Number of Storeys
  - Clause 4.1.3 Floor Space Ratio
  - Clause 4.1.4.1 Street Front Setbacks
  - Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages
  - Clause 4.1.4.4 Rear Setbacks
  - Clause 4.1.5.1 Minimum Residential Total Open Space Requirements
  - Clause 4.1.4.2 Landscaped Area
  - Clause 4.4.5 Earthworks
  - Schedule 3 Parking and Access
  - Clause 6.12 Essential services
4. Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the local public interest.