

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0008
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 22 DP 7577, 14 Ponsonby Parade SEAFORTH NSW 2092 Lot 21 DP 7577, 12 Ponsonby Parade SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a seniors living development over basement car parking
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stephen John Petesic James Stephen Petesic
Applicant:	Gartner Trovato Architects

Application Lodged:	15/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	22/01/2021 to 5/02/2021
Advertised:	Not Advertised
Submissions Received:	31
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 5,541,900.00
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### EXECUTIVE SUMMARY

The application seeks consent for an in-fill self-care seniors housing development under the provisions of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004* (**SEPP HSPD**). The proposed development has a floor space ratio (**FSR**) of 0.59:1, far exceeding the 0.45:1 FSR prescribed by *Manly Local Environmental Plan 2013* (**MLEP 2013**) and the 0.5:1 FSR 'cannot refuse' standards of SEPP HSPD. The non-compliant FSR contributes to excessive bulk and scale, particularly when viewed from Ponsonby Parade, and results in a development that is inconsistent with

the character of the low density residential area. Further concerns are also raised in relation to impacts upon the amenity of adjoining and nearby development and the amenity of the dwellings proposed, noting multiple areas of non-compliance with the design principles of SEPP HSPD, the Seniors Living Policy and the requirements and objectives of *Manly Development Control Plan 2013 (MDCP 2013)*.

These concerns, in addition to others, have been echoed in submissions received from adjoining and nearby residents and members of the wider community. These concerns have been maintained throughout each of the three rounds of notification.

Whilst it is appreciated that a number of concerns highlighted in this assessment can be resolved with further refinement of the scheme and the submission of additional information, the applicant has been afforded two opportunities to address these matters during the application process, in addition to feedback provided during the prelodgement process, and the response received to date has fallen short of what is required. Furthermore, as a result of amendments, the application is now littered with inconsistencies, creating unnecessary confusion for all involved. Accordingly, the application is reported to the Northern Beaches Local Planning Panel with a recommendation of refusal.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the demolition of all existing site improvements and the construction of a seniors housing development under the provisions of SEPP HSPD. The proposed seniors housing development comprises nine self-contained dwellings spread across two two-storey buildings, with basement parking below. The proposal comprises a mix of dwelling configurations, as follows:

- Two x two bedroom, two bathroom (Units 2 and 8),
- One x two bedroom, two bathroom + media room (Unit 9),
- One x three bedroom, two bathroom (Unit 1),
- Five x three bedroom, two bathroom + media room (Units 3, 4, 5, 6 and 7).

Each unit is inclusive of a double garage within the basement.

The application also seeks consent for tree removal, stormwater infrastructure, the construction of a new access driveway and landscaping.

## **ASSESSMENT INTRODUCTION**

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings  
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio  
Manly Local Environmental Plan 2013 - 6.2 Earthworks  
Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
Manly Local Environmental Plan 2013 - 6.8 Landslide risk  
Manly Local Environmental Plan 2013 - 6.12 Essential services  
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)  
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing  
Manly Development Control Plan - 3.4.2 Privacy and Security  
Manly Development Control Plan - 3.4.3 Maintenance of Views  
Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size  
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)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 22 DP 7577 , 14 Ponsonby Parade SEAFORTH NSW 2092 Lot 21 DP 7577 , 12 Ponsonby Parade SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The site is rectangular in shape, with a 40.235m wide frontage to Ponsonby Parade to the south, a 40.235m wide frontage to Ross Street to the north, a depth of 50.29m and a total area of 2023m<sup>2</sup>. The site currently contains two single storey dwelling houses (one on each existing lot), with vehicular access gained via Ross Street. The vegetated nature of the site is consistent with a residential garden, with a handful of mature canopy trees on the site. The site experiences a fall from Ross Street to Ponsonby Parade of approximately 5.6m, with a slope of approximately 11.1%.</p> <p>Views towards the harbour and the city skyline are available from and over the subject site in a southerly direction.</p> <p>The site is predominately surrounded by low density residential development (dwelling houses), which vary in size and scale (from single storey to three storey), age and architectural design. A seniors housing development is located opposite the site on the high side of Ross Street, and childcare centres are located to both the north-east and north-west. The site is in close proximity to Seaforth Local Centre, which is located approximately 200m to the east of</p>

the site.

Ponsonby Parade is a two lane local road with unlimited parking available on both sides of the street. Ross Street is a two lane local road, with parking restricted on the northern side of the street and partially restricted on the southern side of the street.

A bus stop regularly serviced by Sydney Buses is located on Ponsonby Parade, approximately 75m from the south-west corner of the site. There are two other bus stops located in close vicinity of the site that are serviced by the same services; being the bus stop located on the corner of Ponsonby Parade and Panorama Parade (35m from the south-west corner of the site) and the bus stop on the southern side of Ross Street (140m from the north-east corner of the site).

Map:



## SITE HISTORY

### Background of Site

On 27 December 2017, Development Application DA2017/1364 was lodged with Council, seeking consent for a seniors housing development at 14 Ponsonby Parade (only), comprising 4 dwellings.

On 19 December 2019, Development Application DA2017/1364 was refused by the Northern Beaches Local Planning Panel for the following reason:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan.



Note: Whilst not evident in the determination notice, the concerns relating to views were limited to the loss of harbour views at 9/14 Ross Street, Seaforth.

On 28 March 2019, a Class 1 appeal was filed with the NSW Land and Environment Court (NSW LEC) against the refusal of DA2017/1364.

On 11 December 2019, DA2017/1364 was approved by the NSW LEC by means of a s.34 agreement between the parties. The development ultimately approved comprised 4 in-fill self-care dwellings, with a FSR of approximately 0.53:1.

On 10 November 2020, a prelodgement meeting was held with Council with regard to a seniors housing development at 12 and 14 Ponsonby Parade. The proposal comprised 10 in-fill self-care dwellings, with a FSR of approximately 0.63:1. The prelodgement minutes concluded:

*The bulk and scale of the building was raised at the meeting as a particular concern. Primarily, the extent of building mass across the frontage of the site was considered to be visually excessive.*

*The building is to modulate the built form to respect the predominant character described above by providing substantial separation at the centre of the street facing façade(s).*

*Consideration is to be given to the sensitive use of materials and finishes which provide a visual reference to the more traditional buildings in the local area – particularly given the comments provided by Council's Heritage Officer in these Notes.*

*The street facing facades of the development are to be addressed by well-considered landscaping which assists in softening the final built form and contributes towards the landscaped setting of the local area.*

### Background of Application

On 15 January 2021, the subject application was lodged with Council. At lodgement, the proposal comprised 9 in-fill self-care dwellings, with a FSR calculation of 0.6:1.

On 25 February 2021, the application was referred to the DSAP for comment. The Panel concluded:

*The Panel supports the proposal with minor amendments to address the design issues raised above.*

*The design is generally of good quality, and the increased FSR could be supported if the following were addressed, as detailed above:*

- *Articulation of the façade*
- *Improved privacy between the dwellings*
- *Provision of a detailed landscape plan from a suitably qualified professional*
- *Inclusion of more small endemic trees in the landscape plan*
- *Connection of all units to rainwater reuse*
- *Connection of some of the solar panels direct to some of the units*
- *Reconsideration of the car park design*

On 29 March 2021, Council wrote to the Applicant and advised of the concerns relating to the following:

- a. Access to services, as the application relied upon bus services that no longer serve the bus stop in question,
- b. Building height, as portions of the development exceeded 8m in height (as defined by SEPP HSPD),
- c. Urban design, as the width of the streetscape presentations exceeded that of surrounding development,
- d. Privacy, with concerns regarding overlooking of adjoining properties and between units within the site,
- e. View sharing, as height poles had not been erected despite known potential impacts to views,
- f. Solar access as appropriate solar access diagrams were not provided,
- g. Landscaping, as adequate landscape plans were not provided,
- h. Heritage, as the existing dwelling at 12 Ponsonby Parade was considered to have potential heritage value,
- i. Waste management, as the proposal did not comply with Council's policy,
- j. Floor space ratio, as the scale and amenity of the proposal was questioned,
- k. Others general design matters raised by DSAP.

On 21 April 2021, amended plans were received from the Applicant. The amended plans were accompanied by an amended Access Report, a Heritage Report and height pole certification. The amended proposal was re-exhibited.

On 31 May 2021, further amended plans, a further amended Access Report and amended height pole certification were received. Whilst not requested by Council, the plans were accepted and re-exhibited.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly 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	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

Section 4.15 Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters can be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested and a response was provided.</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 can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the scale of 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 requirements of SEPP HSPD and MDCP 2013 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 01/06/2021 to 15/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 31 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mrs Judith Annette Meyer	2 / 14 Ross Street SEAFORTH NSW 2092
Mr Michael Phillip Twigg Ms Nicole Louise Crabb	9 Ross Street SEAFORTH NSW 2092
Mrs Monica Ann Wheeler Mr Peter Charles Wheeler	16 Ponsonby Parade SEAFORTH NSW 2092
Mrs Ann Bridget Hunt	5 / 14 Ross Street SEAFORTH NSW 2092
Mr Michael Angelo Julian	22 Ponsonby Parade SEAFORTH NSW 2092
Ms Orla Michelle Keane	7 Ponsonby Parade SEAFORTH NSW 2092
Mr Steven Seretis	1 A Panorama Parade SEAFORTH NSW 2092
Mr Mark Justin Burslem	41 Ponsonby Parade SEAFORTH NSW 2092
Mr Phillip Stephen Nicholl	32 Ponsonby Parade SEAFORTH NSW 2092
Mrs Valerie Charlotte Bowyer Mr John Russell Bowyer	46 Ponsonby Parade SEAFORTH NSW 2092
Mr Michael Rodney Baker Mrs Roslyn Lucy Baker	33 Ponsonby Parade SEAFORTH NSW 2092
Mrs Ann Gillian De Lasala Mr Jerome Anthony De Lasala	11 Ponsonby Parade SEAFORTH NSW 2092
Mod Urban Pty Ltd	PO Box R1702 ROYAL EXCHANGE NSW 1225
Mr Glenn Stewart Hanna	35 Ponsonby Parade SEAFORTH NSW 2092
Mr David Ian Stewart Mrs Diana Margaret Stewart	15 Ponsonby Parade SEAFORTH NSW 2092
Mrs Nicola Jane Lyne	38 Ponsonby Parade SEAFORTH NSW 2092
Mr Michael John Petrie	37 Ponsonby Parade SEAFORTH NSW 2092
Ms Suzanne Perez Walcott	4 Edgecliffe Esplanade SEAFORTH NSW 2092
Brian O'Donnell	Address Unknown
Ms Denise Ann O'Donnell	82 Frenchs Forest Road SEAFORTH NSW 2092
Dr Catherine Mary Elizabeth Brassill	36 Pearl Bay Avenue MOSMAN NSW 2088
Elizabeth Mary-Angela Ahern	C/- Emmerson & Emmerson Po Box 432 FRENCHS FOREST NSW 1640

Name:	Address:
Felicity Margaret Rose Ahern	PO Box 432 FRENCHS FOREST NSW 1640
Mr Alan Michael Johnson	4 Grandview Grove SEAFORTH NSW 2092
Mrs Margaret Elizabeth Warren	Po Box 443 SEAFORTH NSW 2092
Mr Robert Henry Cockerill Mrs Sue Maree Cockerill	610 Sydney Road SEAFORTH NSW 2092
Mr Paul Anthony Hamblett Mrs Deirdre Diana Hamblett	8 Ponsonby Parade SEAFORTH NSW 2092
Mr Edward Tracogna Mrs Abigail Mary Tracogna	1 Ponsonby Parade SEAFORTH NSW 2092
Mr James Dannaher O'Brien	612 Sydney Road SEAFORTH NSW 2092
Mr David Nelson Mrs Sally Jane Nelson	585 Sydney Road SEAFORTH NSW 2092
John Graham Wood	10 / 14 Ross Street SEAFORTH NSW 2092

The application was publicly notified on three separate occasions, in response to the submission of amended plans and additional information, as follows:

- Notification Round 1: 22/01/2021 to 05/02/2021 - 29 individual submissions
- Notification Round 2: 28/04/2021 to 12/05/2021 - 13 individual submissions
- Notification Round 3: 01/06/2021 to 15/06/2021 - 14 individual submissions

In accordance with Council's Community Participation Plan, multiple submissions received from the one household throughout the assessment process are counted as one submission. As such, a total of 31 submissions were received.

The primary issues raised in submissions and maintained throughout the assessment process are summarised and addressed, as follows:

- **FSR non-compliance**

Comment: The majority of submissions received object to the proposal on the basis of the proposed FSR and non-compliance with clause 4.4 of MLEP 2013. Submissions also note the lack of a clause 4.6 request in relation to the FSR exceedance. The concerns raised in relation to the FSR exceedance, particularly those relating to inconsistency with the character of the low density area, are echoed by Council and form basis for the refusal of the subject application.

Further submissions raised concerns in relation to the FSR calculation itself, claiming that additional areas within the basement should be included. Council have reviewed the figure provided by the Applicant and endorse the nominated FSR calculation.

The technicalities of the inter-relationship between the provisions of SEPP HSPD and MLEP 2013 are discussed in detail with respect to clause 4.4 of MLEP 2013.

- **Building height non-compliance**

Comment: Concern has been raised in relation to the height of the proposal and non-compliance with the maximum height prescribed by both MLEP 2013 and SEPP HSPD. As addressed with

regard to clause 4.3 of MLEP 2013, the proposed development complies with the height limit of SEPP HSPD and as such, the proposal cannot be refused on the basis of building height, despite contravention of the height limit prescribed by MLEP 2013.

A number of submissions also object to the height of the development presenting to Ross Street, and inconsistency with the development standard prescribed by clause 40(c) of SEPP HSPD which limits height in the rear 25% of the site to single storey. The proposal has two street frontages, with no rear boundary, and as such, the provisions of clause 40(c) are not applicable to this application.

- **Access to services**

Comment: Submissions have been received that question the proposal's ability to meet the access to services provisions of clause 26 of SEPP HSPD. It is acknowledged that statements in earlier versions of the Access Report relied upon incorrect assumptions about the bus routes that service the Ponsonby Road bus stop and the availability of access to Seaforth Local Centre. However, the most recent amendment to the Access Report (21 May 2021) accurately reflects current bus services, and whilst the reduction to the amount of routes serving the Ponsonby Parade bus stop is acknowledged, the 145 bus route meets the minimum requirements of clause 26 of SEPP HSPD.

- **View loss**

Comment: Submissions have been received from potentially impacted property owners and others on their behalf, raising concerns with regard to view loss. As discussed with regard to clause 3.4.3 of MDCP 2013, the proposal is considered to result in unreasonable impacts upon views currently enjoyed by up slope properties to a degree that warrants refusal of the application.

- **Overshadowing**

Comment: Submissions have been received from potentially impacted property owners and others on their behalf, raising concerns with regard to overshadowing. As discussed with regard to clause 3.4.1 of MDCP 2013, the proposal is not supported by sufficient information to confirm the acceptability of additional overshadowing resulting from the proposed development, and the proposal is recommended for refusal in this regard.

- **Visual privacy**

Comment: Submissions have been received from potentially impacted property owners and others on their behalf, raising concerns with regard to visual privacy. As discussed with regard to clause 3.4.2 of MDCP 2013, the proposal is unresolved with regard to visual privacy and the proposal is recommended for refusal in this regard.

- **Setback to Ponsonby Parade**

Comment: A number of submissions have been received in objection to the proximity of the proposal to Ponsonby Parade and inconsistency with the prevailing building line. As discussed with regard to clause 4.1.4 of MDCP 2013, the proposal meets and exceeds the 6m minimum setback prescribed by MDCP 2013. Furthermore, the walls are setback at a minimum distance of 7.5m, consistent with the alignment of the dwelling at 16 Ponsonby Parade, with only elements of articulation protruding forward, consistent with the provisions of MDCP 2013. The setback of the development to Ponsonby Parade was not raised as a concern by Council's



Urban Designer or the DSAP. As such, the siting of the proposal in relation to Ponsonby Parade is not considered to warrant refusal of the application.

- **Access to Ross Street**

Comment: Submissions have been received raising concern with regard to the design of the access pathway connecting to Ross Street, and a perceived lack of consideration of the change in levels within the road reserve. The design of the access pathway connecting to Ross Street has been designed to marry with surveyed levels of the road reserve, and accessible access can be achieved.

- **Construction impacts**

Comment: Objections have been raised in relation to impacts associated with excavation and construction, with a request for the production of dilapidation reports should the application be approved. Conditions of consent can be imposed to require the production of pre and post construction dilapidation reports, should the application be approved.

Additional concern has been raised in relation to the potential impact upon existing canopy trees within the boundary of 10 Ponsonby Parade associated with the basement construction. The application was supported by an Arborist Report which identifies that these trees are able to be safely retained, subject to consistency with protection recommendations. If the application is to be approved, conditions of consent can be imposed to require consistency with the recommendations of the Arborist Report.

- **Traffic**

Comment: A few of the submissions received raised concerns with regard to traffic associated with the proposal and additional pressures on the existing road network. The traffic generation associated with the proposal has been assessed by Council's Traffic Engineer and the proposal was not considered to result in any unreasonable impacts upon traffic in the locality.

Further concerns were raised in relation to risks to bike riders associated with senior drivers leaving the site. The proposal provides appropriate sight lines, in accordance with the provisions of AS2890, and Council's Traffic Engineer raised no concern in this regard.

- **Parking**

Comment: Submissions have been received that raise concerns with regard to the loss of on-street parking on Ponsonby Parade, the shortfall of visitor parking proposed and the additional demand for on-street parking in the vicinity of the site. The proposed development provides appropriate levels of parking for residents of the development and the one dedicated visitor parking spot is compensated by adequate on-street parking. The proposed development meets the minimum parking requirements of SEPP HSPD, and the proposal cannot be refused in relation to parking.

- **Design alternatives**

Comment: A number of submissions received outline a series of design amendments that would work towards alleviating the concerns of neighbouring property owners. Council is required to assess the proposal presented by the applicant. However, noting that amendments to the development are required, the applicant may choose to consider some of the suggestions put forward in submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>No objection - conditions recommended.</b></p> <p><i>This application is for the demolition of two existing residential dwellings on two adjoining lots, and the construction of a new seniors housing development on one consolidated lot. The new development will consist of 9 units in total, including a basement car park.</i></p> <p><i>Councils Landscape Referral section has considered the application against the State Environmental Planning Policy (Housing for Seniors or People with a Disability), Manly Local Environment Plan, and the following Manly DCP 2013 controls:</i></p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping</li> </ul> <p><i>A Landscape Plan is provided with the application and proposed works include the in-ground planting of trees, shrubs, grasses and groundcovers, as well as on-slab planters with palms, shrubs, grasses and groundcovers.</i></p> <p><i>The Arboricultural Impact Assessment provided with the application notes a total of ten trees within close proximity to the site, with nine trees located within the site boundaries, and one tree located in the adjoining property to the east. Of the ten trees identified, six trees have been recommended to be removed, with four trees to be retained. Of the six trees to be removed, two trees, Tree No. 1 and 2, are located adjacent to Ponsonby Street along the southern boundary. These trees are within the footprint of the proposed pedestrian entry, and would therefore need to be removed in order to accommodate the proposed works. The remaining four trees to be removed, Trees No. 3, 4, 5 and 6, are located towards the north-west of the site, and are located within the footprint of the proposed buildings. These four trees would therefore also need to be removed in order to accommodate the proposed works. The Arboricultural Impact Assessment has recommended these six trees to be removed shall be replaced in order to compensate for the loss of landscape amenity and canopy. For this reason the Arborists recommendations are supported.</i></p> <p><i>The four trees to be retained, including Tree No. 10 which is located in the adjoining property to the east, shall all be protected throughout the life of the development in accordance with the Arborists recommendations.</i></p> <p><i>It is worth noting that additional trees, seven in total, are present on the site, located predominantly along the northern boundary adjacent to Ross Street. These trees have been identified in the Arboricultural</i></p>

Internal Referral Body	Comments
	<p><i>Impact Assessment, however it was noted that they did not require discussion. It is unclear as to why these trees shall not be discussed, as all trees within the site should be assessed. Of the seven trees, three have been proposed to be removed. Tree No. 102 is located within the footprint of the proposed pedestrian entry off Ross Street, and would therefore necessitate removal. The other two trees, Tree No. 105 and 106 appear to be either exempt species (pinus spp.) or exempt due to the height being below 5m. These trees therefore do not require Council's approval prior to removal. The current Landscape Plans indicate that sufficient compensation planting has already been proposed therefore no additional planting, in addition to that already proposed, is needed to compensate tree loss.</i></p> <p><i>The protection of trees noted for retention is vital to satisfy control 3.3.2, which seeks to "protect and enhance the scenic value and character that trees and bushland vegetation provide", as well as "to protect and enhance the urban forest of the Northern Beaches".</i></p> <p><i>Concern is raised regarding the proposed landscape works, particularly the use of canopy trees capable of reaching a mature height greater than 25m, the use of palms as vegetative screening between units, as well as insufficient information regarding proposed tree, and plant pot sizes/planting densities. Firstly, the proposed Eucalyptus punctata is recommended to be replaced with an alternative tree species capable of reaching a maximum height of 15m at maturity. Suggested alternatives include Angophora costata (as proposed elsewhere on site), Banksia integrifolia or Eucalyptus haemastoma. This substitution is particularly important in order to ensure views from the existing dwellings on Ross Street (as identified in the site analysis drawing) are maintained, as well as the solar access to adjoining properties to the west is preserved. The use of palms between the two unit blocks is also recommended to be substituted, as these palms are exempt species, and are also not likely to provide sufficient screening and privacy between dwellings on the first floor. These palms should be substituted with trees similar to those proposed elsewhere on site such as Tristaniopsis laurina or Backhousia citriodora, or alternatively Elaeocarpus reticulatus.</i></p> <p><i>The completion of the works as proposed on the Landscape Plans, inclusive of proposed species changes outlined above, is necessary to satisfy control 3.3.1 and 4.1.5. Key objectives of these controls include "to encourage appropriate tree planting and maintenance of existing vegetation", "maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting" as well as "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area".</i></p> <p><i>In order to comply with the State Environmental Planning Policy (Housing for Seniors or People with a Disability), specifically Section 33 (c), the proposed development should "maintain reasonable neighbourhood amenity and appropriate residential character". This is achieved by providing building setbacks that aid in reducing the bulk,</i></p>

Internal Referral Body	Comments
	<p><i>scale and overshadowing of the proposed development. The proposed site is unique within its block, as the two lots that will house the new seniors development are both dual access and are large in comparison to surrounding properties. The existing site, as well as the property to the east, are large parcels of land, with the existing dwellings centrally located. This has resulted in very large setbacks, particularly when compared to other lots immediately to the east and west. The proposed setbacks of 6.5m appear to be in line with those of the dwellings immediately to the west, whilst providing adequate space for landscape, which is in excess of the minimum area required.</i></p> <p><i>Considering the above, the landscape component is therefore acceptable subject to the protection of existing trees, and completion of landscape works as proposed on the Landscape Plans, inclusive of the tree species changes and requirements for increased planting intervals.</i></p>
NECC (Development Engineering)	<p><b>No objection - conditions recommended.</b></p> <p><i>Development Engineering has no objection to the application subject to the following condition of consent.</i></p>
Strategic and Place Planning (Heritage Officer)	<p><b>No objection - conditions recommended.</b></p> <p><i>The proposal has been referred to Heritage as the subject property is within the vicinity of heritage items, listed in Schedule 5 of Manly LEP 2013:</i></p> <ul style="list-style-type: none"> <li> <p><b>• Item I278 - House - 14 Ross Street (corner Panorama Parade)</b>  <i><u>Statement of significance:</u></i>  <i>Small brick cottage unique in age, style and social association for the area; unique to context of local area architecturally. Major significance historically.</i>  <i><u>Physical description:</u></i>  <i>Small brick cottage possibly mid to late 19th century. Iron roof, timber verandah with brick piers. Symmetrical plan, hipped roof, stone foundation. Painted bricks are hand made. Fibro and corrugated iron lean-to to rear. Over looks Spit with views to Middle Head.</i></p> </li> <li> <p><b>• Item I275 - Street trees - Panorama Parade (from Edgecliffe Esplanade to Ponsonby Parade)</b>  <i><u>Statement of significance:</u></i>  <i>Listed for its aesthetic importance as a Streetscape.</i>  <i><u>Physical description:</u></i>  <i>Araucaria Heterophylla street trees</i></p> </li> </ul> <p><i>The proposal seeks consent for the demolition of the existing properties on the subject site and the construction of a seniors housing development incorporating 9 apartments.</i></p>

Internal Referral Body	Comments
	<p><i>The bulk and scale and the unarticulated facade treatment of the proposal is considered to adversely impact the existing streetscape and the character of the locality. Heritage conservation requires retention of an appropriate visual setting that contributes to the existing character of the place. Section 3.2 - Heritage Considerations - Objective 3 of the Manly Development Control Plan 2013, notes that: "To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items."</i></p> <p><i>Section 3.2.1.1 Development in the vicinity of heritage items, or conservation areas.</i></p> <p><i>b) Proposed development in the vicinity of a heritage item or conservation area must ensure that:</i></p> <ul style="list-style-type: none"> <li><i>i) it does not detract or significantly alter the heritage significance of any heritage items, conservation area or place;</i></li> <li><i>ii) the heritage values or character of the locality are retained or enhanced; and</i></li> <li><i>iii) any contemporary response may not necessarily seek to replicate heritage details or character of heritage buildings in the vicinity, but must preserve heritage significance and integrity with complementary and respectful building form, proportions, scale, style, materials, colours and finishes and building/street alignments.</i></li> </ul> <p><i>Additionally Section 3.2.1.2 Potential Heritage Significance of the Manly DCP 2013 notes that:</i></p> <p><i>"If the property is assessed as having merit as a potential heritage item, the heritage controls and considerations in this plan will apply."</i></p> <p><i>Additionally, Heritage recommended in the PLM notes that, a Heritage Report, investigating the potential significance of the property at 12 Ponsonby Parade, be produced by the applicant and included with any future development application.</i></p> <p><i>Amended plans and a heritage report into the property at 12 Ponsonby Parade and its potential significance was submitted on 26 April 2021. The report by Weir Phillips Heritage and Planning concluded that the property was not of heritage significance. This conclusion is considered acceptable by Heritage.</i></p> <p><i>It is noted that the bulk and scale of the proposal is still not compatible with the character of the locality, however, given the physical separation between the subject site and the heritage items; at 14 Ross Street and the Street trees at Panorama Parade, the proposal is considered to have an acceptable impact upon the significance of the heritage items.</i></p> <p><i>Therefore, no objection is raised to this application on heritage grounds, subject to one condition.</i></p>
Strategic and Place Planning	<b>Objection.</b>

Internal Referral Body	Comments
(Urban Design)	<p><i>Amended drawings dated June 2021 were submitted. The amended proposal has not addressed all the urban design issues identified previously:</i></p> <ol style="list-style-type: none"> <li>1. <i>The proposed floor space ratio of 0.6:1 exceeds the floor space ratio control of 0.5:1 (SEPP) and 0.45:1 (Manly LEP) resulting in additional built form bulk and scale. <b>Response:</b> The floor space ratio still exceeds the 0.5:1 permitted by the SEPP. The amended set of drawings have not address this issue.</i></li> <li>2. <i>The proposed street elevations as continuous facades without a middle strong break treatment being a double lot consolidation does not respond to the massing and scale of the existing streetscape of free-standing house forms (SEPP 4.1.6 Design Requirements: Responding to Context - Street and lot layout/ Subdivision layout/ Consistency of built form; Impact on neighbours: Minimise impacts by maintaining a consistency in pattern of building). <b>Response:</b> There could be deeper indents introduced to the middle of both the street facades to help with façade articulation and address the floor space ratio non-compliance. The amended set of drawings have not address this issue.</i></li> <li>3. <i>The proposed building block separation is inadequate resulting in visual and noise privacy issues between habitable rooms and balconies/ compromised sun light access to the private open spaces proposed between the building blocks (SEPP 4.1.6 Site Planning &amp; Design - Maximise solar access and access to private open space; Internal site amenity). Using a guide (Apartment Design Guide) of 12m building separation would be more appropriate. <b>Response:</b> The 12m building separation between habitable spaces has not been achieved resulting in visual and sound privacy issues. The middle courtyard fence should also be raised to 1.8m high to address overlooking issues of higher level units looking down to lower units. The wider building separation will also allow more solar penetration to the lower units on the southern block and address the floor space ratio non-compliance. The amended set of drawings have not address this issue.</i></li> </ol>
Traffic Engineer	<p><b>No objection - conditions recommended.</b></p> <p><i>The development proposes the demolition of existing dwellings on No. 12 &amp; 14 Ponsonby parade and construction of a Seniors Living development containing 9 dwellings and basement parking for 19 vehicles including 18 resident spaces and 1 visitor/wash bay.</i></p>



Internal Referral Body	Comments
	<p><i>Parking:</i></p> <p><i>As a Seniors Living development the parking requirements are assessed in accordance with the relevant SEPP requirements which outline that a minimum of 0.5 spaces per bedroom are required. The development proposes 6 x 3 bedroom and 3 x 2 bedroom dwellings requiring a minimum of 12 car spaces. The SEPP also requires that at least 5% of the total number of parking spaces must be designed to allow the width to be increased to 3.8m. The development proposes 19 carspaces including 1 visitor/wash bay which exceeds the requirements. It is also proposed that 9 of the spaces, 1 for each garage, be of sufficient width to meet the adaptable parking space requirement, again, this is well in excess of the requirement.</i></p> <p><i>Accessibility to public transport:</i></p> <p><i>The developers traffic report and accessibility report both indicate that the site is well served by a range of public transport services. While Route 144 and 145 buses do pass the site on Ponsonby Parade, there are currently no other State Transit services which pass the site with bus passengers having to change services at Seaforth shops or Manly in order to reach destinations other than Manly, Chatswood or Warringah Mall. Further, while the 144 service (Manly to Chatswood) is very regular, the 145 service (Warringah Mall to Seaforth) operates only 5 times a day at hourly intervals. The most accessible bus stop within close proximity to the site is located on Ponsonby Parade approximately 100m to the east of the site. There is a footpath at relatively flat grades between the site and this bus stop. From building number two, which relies on pedestrian access to Ross Street, there is no footpath link to a bus stop and to meet the requirements of clause 26 subclause 4 and clause 38 of the SEPP it is therefore required that a footpath be provided between the Ross Street access and the nearest bus stop sited on Panorama Pde near Ponsonby Pde. This will provide safe, obvious and convenient access to public transport.</i></p> <p><i>Traffic Generation:</i></p> <p><i>The traffic report has estimated the traffic generation of the proposed development from rates in the RMS guide to Traffic Generating Developments for housing for the aged or disabled. Using these rates the development is anticipated to generate only 4 vehicle trips per hour during weekday peak periods. As the development replaces two existing dwellings the increase in traffic generation will be less (in the order of 2 vehicle trips per hour). This level of traffic is unlikely to make a perceptible difference to traffic conditions on the surrounding road network.</i></p>
Waste Officer	<p><b>No objection - conditions recommended.</b></p> <p><i>Waste Management Assessment - Amended Plans Recommendation - Approval subject to conditions.</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

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

A BASIX certificate was submitted with the application at lodgement. However, the application has been twice amended and the data entered into the BASIX Certificate and in turn, the recommendations of the BASIX Certificate are no longer relevant to the proposal and cannot be relied upon.

### SEPP (Housing for Seniors or People with a Disability) 2004

Clause	Standard	Proposal	C
<b>Chapter 1 - Preliminary</b>			
4	Land to which the Policy applies	This Policy applies to land within NSW that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if development for the purpose of dwelling houses or residential flat buildings is permitted.	Y
5	Relationship with	If this Policy is inconsistent with any other	Y

Clause	Standard	Proposal	C
other environmental planning instruments	environmental planning instrument, made before or after this Policy, the Policy prevails to the extent of the inconsistency.		
<b>Chapter 2 – Key Concepts</b>			
11	Self-Contained Dwellings	<p>(1) In this Policy, a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.</p> <p>(2) In this Policy, <b><i>in-fill self-care housing</i></b> is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.</p>	<p>The proposed development is consistent with the definition of a self-contained dwelling, specifically in-fill self-care housing.</p> <p>Y</p>
<b>Chapter 3 – Development for seniors housing</b>			
<b>Part 1 – General</b>			
14	Objectives of Chapter	The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.	Y
15	What Chapter does	This Chapter allows for development on land zoned primarily for urban purposes for any form of seniors housing despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.	Y
18	Restrictions on occupation of seniors housing allowed under this chapter	<p>Development allowed by this Chapter may be carried out for the accommodation of the following only:</p> <p>(a) seniors or people who have a disability,</p> <p>(b) people who live within the same household with seniors or people</p>	<p>Subject to conditions.</p> <p>Y</p>

Clause		Standard	Proposal	C
		<p>who have a disability,</p> <p>(c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.</p> <p>A consent authority must not consent to a development application made pursuant to this Chapter unless:</p> <p>(a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to above may occupy the building to which the application relates, &amp;</p> <p>(b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the <i>Conveyancing Act 1919</i>, limiting the use of any accommodation to which the application relates to the kinds of people referred to above.</p>		
<b>Part 2 – Site-related requirements</b>				
26	Location and access to facilities	<p>The consent authority must be satisfied, by written evidence, that residents of the proposed development will have compliant access to:</p> <p>(a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and</p> <p>(b) community services and recreation facilities, and</p> <p>(c) the practice of a general medical practitioner.</p>	See discussion.	Y
27	Bushfire prone land	The consent authority must not consent to a development application on land identified on a bush fire prone map unless satisfied that the development complies with the requirements of <i>Planning for Bushfire Protection 2006</i> .	Not Applicable – the site is not identified as bushfire prone land.	-
28	Water and sewer	The consent authority is satisfied, by written evidence, that the housing will be		Y

Clause		Standard	Proposal	C
		connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage		
29	Site compatibility criteria to which clause 24 does not apply	<p>Applies to development not subject to clause 24.</p> <p>A consent authority must take into consideration and have regard for the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).</p>	See discussion.	Y
<b>Part 3 – Design requirements</b>				
<b>Division 1 - General</b>				
30	Site analysis	The consent authority must not grant consent unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.		Y
31	Design of in-fill self-care housing	In determining a development application made pursuant to this Chapter to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004.	See discussion.	N
32	Design of residential development	A consent authority must not consent to a development application unless satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.	See discussion.	N
<b>Division 2 - Design Principles</b>				
33	Neighbourhood amenity and streetscape	<p>The proposed development should:</p> <p>(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</p> <p>(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage</p>	See discussion.	N

Clause		Standard	Proposal	C
		<p>items that are identified in a local environmental plan, and</p> <p>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <p>(i) providing building setbacks to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p> <p>(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</p> <p>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</p> <p>(f) retain, wherever reasonable, major existing trees, and</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>		
34	Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents.	See discussion.	N
35	Solar access and design for climate	<p>The proposed development should:</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p>	See discussion.	N



Clause		Standard	Proposal	C
		(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.		
36	Stormwater	<p>The proposed development should:</p> <p>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and</p> <p>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</p>	Subject to conditions.	Y
37	Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>		Y
38	Accessibility	<p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p>	See discussion.	N

Clause		Standard	Proposal	C
		(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.		
39	Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.		Y
<b>Part 4 – Development standards to be complied with</b>				
<b>Division 1 - General</b>				
40	Development standards – minimum sizes and building heights	A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.		
		The <b>size</b> of the site must be at least 1,000m <sup>2</sup> .	2,023m <sup>2</sup>	Y
		The <b>site frontage</b> must be at least 20 metres wide measured at the building line.	40.236m	Y
		<b>Height</b> in zones where residential flat buildings are not permitted –	(a) 8m	Y
		(a) the height of all buildings in the proposed development must be 8 metres or less, and	(b) Two storeys	
		<b>Note—</b>	(c) Not applicable (no rear boundary)	
		Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).		
		(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and		
		<b>Note—</b>		
		The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.		
		(c) a building located in the rear 25% area of the site must not exceed 1		

Clause		Standard	Proposal	C
		storey in height.		
Part 4 – Development standards to be complied with				
Division 3 – Hostels and self-contained dwellings – standard concerning accessibility and useability				
41	Standards for hostels and self-contained dwellings	A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.	See discussion.	Y
Part 7 – Development standards that cannot be used as grounds to refuse consent				
Division 1 - General				
46	Inter-relationship of Part with design principals in Part 3	Nothing in this Part permits the granting of consent to a DA made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.		Y
Division 4 Self-contained dwellings				
50	Standards that cannot be used to refuse development consent for self-contained dwellings  Note: ‘Building height’ and ‘landscaped area’ are separately defined by SEPP HSPD and differ from the standard instrument definitions.	A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling on any of the following grounds:		
		<b>building height:</b>	8m	Y
		if all proposed buildings are <b>8 metres</b> or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),		
		<b>density and scale:</b>	0.59:1	N
		if the density and scale of the buildings when expressed as a floor space ratio is <b>0.5:1</b> or less		
		<b>landscaped area:</b>	45%	Y
	if a minimum of 30% of the site area if to be landscaped.			
	<b>Deep soil zones:</b> if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the <i>deep</i>	37%	Y	

Clause		Standard	Proposal	C
		soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres,		
		<b>Solar access:</b> if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	See discussion.	N
		<b>private open space for in-fill self-care housing:</b> if—  (i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and  (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area.	See discussion.	N
		<b>parking for residents and visitors:</b> if at least the following is provided:  (i) 0.5 spaces for each bedroom where the development application is made by a person other than a social housing provider.	See discussion.	Y
<b>Schedule 3 – Standard concerning accessibility and useability for hostels and self-contained dwellings</b>				
<b>Part 1 Standards applying to hostels and self-contained dwellings</b>				
2	Siting standards	(1) <b>Wheelchair access</b> If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.  ...	Subject to condition.	Y

Clause		Standard	Proposal	C
		(2) <b>Common areas</b> Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.		
3	Security	<p>Pathway lighting—</p> <p>(a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and</p> <p>(b) must provide at least 20 lux at ground level.</p>	Subject to condition.	Y
4	Letterboxes	<p>Letterboxes—</p> <p>(a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and</p> <p>(b) must be lockable, and</p> <p>(c) must be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.</p>	Subject to condition.	Y
5	Private car accommodation	<p>If car parking (not being car parking for employees) is provided—</p> <p>(a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and</p> <p>(b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and</p> <p>(c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.</p>	See discussion. Subject to condition.	Y

Clause		Standard	Proposal	C
6	Accessible entry	Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.	Subject to condition.	Y
7	Interior: general	<p>(1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.</p> <p>(2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres.</p> <p>(3) Circulation space at approaches to internal doorways must comply with AS 1428.1.</p>	Subject to condition.	Y
8	Bedroom	<p>At least one bedroom within each dwelling must have—</p> <p>(a) an area sufficient to accommodate a wardrobe and a bed sized as follows—</p> <p>(i) in the case of a dwelling in a hostel—a single-size bed,</p> <p>(ii) in the case of a self-contained dwelling—a queen-size bed, and</p> <p>(b) a clear area for the bed of at least—</p> <p>(i) 1,200 millimetres wide at the foot of the bed, and</p> <p>(ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and</p> <p>(c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</p> <p>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</p> <p>(e) a telephone outlet next to the bed on the side closest to the door and a</p>	Subject to condition.	Y



Clause		Standard	Proposal	C
		<p>general power outlet beside the telephone outlet, and</p> <p>(f) wiring to allow a potential illumination level of at least 300 lux.</p>		
9	Bathroom	<p>(1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1—</p> <p>(a) a slip-resistant floor surface,</p> <p>(b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,</p> <p>(c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future—</p> <p>(i) a grab rail,</p> <p>(ii) portable shower head,</p> <p>(iii) folding seat,</p> <p>(d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,</p> <p>(e) a double general power outlet beside the mirror.</p> <p>(2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.</p>	Subject to condition.	Y
10	Toilet	A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.	Subject to condition.	Y
11	Surface finishes	Balconies and external paved areas must have slip-resistant surfaces.	Subject to condition.	Y
12	Door hardware	Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance	Subject to condition.	Y

Clause		Standard	Proposal	C
		with AS 4299.		
13	Ancillary items	Switches and power points must be provided in accordance with AS 4299.	Subject to condition.	Y
<b>Part 2 Additional standard for self-contained dwellings</b>				
15	Living room and dining room	<p>(1) A living room in a self-contained dwelling must have—</p> <p>(a) a circulation space in accordance with clause 4.7.1 of AS 4299, and</p> <p>(b) a telephone adjacent to a general power outlet.</p> <p>(2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.</p>	Subject to condition.	Y
16	Kitchen	<p>A kitchen in a self-contained dwelling must have—</p> <p>(a) a circulation space in accordance with clause 4.5.2 of AS 4299, and</p> <p>(b) a circulation space at door approaches that complies with AS 1428.1, and</p> <p>(c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299—</p> <p>(i) benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a),</p> <p>(ii) a tap set (see clause 4.5.6),</p> <p>(iii) cooktops (see clause 4.5.7), except that an isolating switch must be included,</p> <p>(iv) an oven (see clause 4.5.8), and</p> <p>(d) “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and</p>	Subject to condition.	Y

Clause		Standard	Proposal	C
		<p>(e) general power outlets—</p> <p>(i) at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and</p> <p>(ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.</p>		
17	Access to kitchen, main bedroom, bathroom and toilet	In a multi-storey self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Subject to condition.	Y
18	Lifts in multi-storey buildings	In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the <i>Building Code of Australia</i> .	Subject to condition.	Y
19	Laundry	<p>A self-contained dwelling must have a laundry that has—</p> <p>(a) a circulation space at door approaches that complies with AS 1428.1, and</p> <p>(b) provision for the installation of an automatic washing machine and a clothes dryer, and</p> <p>(c) a clear space in front of appliances of at least 1,300 millimetres, and</p> <p>(d) a slip-resistant floor surface, and</p> <p>(e) an accessible path of travel to any clothes line provided in relation to the dwelling.</p>	Subject to condition.	Y
20	Storage for linen	A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.	Subject to condition.	Y
21	Garbage	A garbage storage area must be provided in an accessible location.	Subject to condition.	Y

- **Clause 26 (Access to services) and clause 38 (Accessibility)**

Clause 26(2)(b) of SEPP HSPD requires the site to be located at a distance of not more than 400m from a bus stop that is regularly serviced by public transport that will take residents of the

development to and from a place that is located within 400m from the necessary facilities and services prescribed. The access pathway to the bus stop must be accessible, in accordance with the design criteria prescribed.

The application was supported by an Access Report to confirm that the site is located less than 100m from a bus stop, being the bus stop outside 2 Ponsonby Parade, and that the pathway connecting the site to the bus stop is accessible, as defined by clause 26(3) and 26(4) of SEPP HSPD.

The bus stop is serviced by the 145 route operated by Sydney Buses. The 145 route is a loop service that runs between Seaforth Local Centre and Warringah Mall, via Balgowlah Shops. The shops and services at each of these shopping areas are considered to meet the requirements of clause 26(1) of SEPP HSPD. The service runs at regular intervals, consistent with the frequency requirements of 26(2)(b) of SEPP HSPD.

As such, the consent authority can be satisfied that the proposal is consistent with the provisions of clause 26 of SEPP HSPD.

However, it is noted that clause 38 of SEPP HSPD prescribes that the pedestrian access links to public transport are to be obvious and safe. The circumstances of the bus route and the location of the site present an unusual situation, whereby there are other bus stops located in closer proximity to the site that are serviced by the same route. To get between Warringah Mall and Seaforth, the 145 travels westbound along Ross Street past the site, down Panorama Parade, and undertakes a loop of Seaforth to the west of the site, before passing back past the site in an eastbound direction along Ponsonby Parade.

The Ponsonby Parade bus stop located 75m to the east of the site would be the most obvious and safe choice of bus stops for all future occupants leaving the site, as it would be the most direct route to Warringah Mall, avoiding the need to unnecessarily travel on the loop around Seaforth to the west which would extend ones journey by approximately 7 minutes. The bus stop is also serviced by additional outbound services, that will take residents to additional destinations.

However, the Ponsonby Parade bus stop would not be the obvious choice for occupants returning to the site. As above, the 145 route travels past the site along Ross Street and down Panorama Parade before reaching the Ponsonby Parade stop some 7 minutes later. The bus stop at the corner of Panorama Parade and Ponsonby Parade is 35m from the site, half the distance of that to the Ponsonby Parade bus stop, and is also serviced by the 145 route. Alighting at the Panorama Parade bus stop on the return journey would not only get residents home sooner by means of avoiding the 7 minute detour, but it is also physically closer to the site. As such, the Panorama Parade bus stop is considered to be the obvious choice for future residents returning to the site. However, access to the Panorama Parade bus stop is not currently safe or accessible, as the footpath from Ponsonby Parade does not continue around the corner to the bus stop. There is no physical or practical impediment to the provision of an accessible footpath to the Panorama Parade bus stop, and the imposition of a condition requiring the construction of an accessible path of travel is not considered to be unreasonable.

Council's Traffic Engineer also highlights that the Ross Street bus stop, located 140m to the east of the site, is likely to be the most obvious choice for residents of the building fronting Ross Street when returning from the site, as it would avoid the need to travel up through the building fronting Ponsonby Parade. There is no impediment to the provision of a footpath along the southern side of Ross Street to connect to the subject site.

Should the application be approved, conditions of consent can be imposed to require safe and obvious access to bus stops, through the provision of accessible pathways, to ensure consistency with clause 38 of SEPP HSPD.

- **Clause 29 (Site compatibility criteria)**

Clause 29 of SEPP HSPD requires the consent authority to take into consideration the criteria referred to in clause 25 (5)(b)(i), (iii) and (v). Council can be satisfied that these matters have been considered, as follows:

- (i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,*

Comment: The impact of the proposed development upon the natural environment and the existing uses and approved uses of land in the vicinity of the proposal have been considered with respect to the relevant provisions of SEPP HSPD, MLEP 2013 and MDCP 2013.

- (iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*

Comment: The proposed development is reliant upon existing infrastructure, specifically footpaths and bus services, to meet the provisions of clause 26. However, in accordance with clause 38, the proposal is also likely to require the upgrade of footpaths in the immediate vicinity of the site. Nonetheless, the proposal will not place unreasonable or excessive demand upon existing infrastructure, public transport services, or services/facilities relied upon.

If approved, the cost of any required infrastructure upgrades are to be borne by the applicant, with additional contributions levied for general infrastructure provision under the provisions of Council's Development Contributions Policy.

- (v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,*

Comment: The impacts of the bulk, scale and character of the proposal have been considered in detail throughout the assessment of this report.

- **Clause 31 (Design of in-fill self-care housing)**

Clause 31 of SEPP HSPD requires consideration of the *Seniors Living Policy: Urban Design Guideline for Infill Development*. The Seniors Living Policy essentially replicates the provisions of SEPP HSPD, with additional design criteria and explanatory notes. The proposed development is not considered to have adequate regard for this policy, noting concerns regarding bulk and scale, solar access, visual privacy and general amenity. See further discussions below with respect to each individual matter.

- **Clause 32 (Design of residential development)**

Clause 32 of SEPP HSPD prescribes that a consent authority must not consent to a development application unless satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2. Division 2 of SEPP

HSPD contains principles relating to neighbourhood amenity and streetscape, visual and acoustic privacy, solar access, stormwater, crime prevention and accessibility. As discussed in further detail below, the development is not considered to have adequate regard to the principles relating to neighbourhood amenity and streetscape, visual and acoustic privacy and solar access.

- **Clause 33 (Neighbourhood amenity and streetscape)**

The design principles outlined by clause 33 of SEPP HSPD in relation to neighbourhood amenity and streetscape are addressed, as follows:

- (a) *recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*

Comment: The desired character of the area is influenced by the prevailing low density nature of the area and the low density residential controls that apply to the site and its surrounds. The proposed development is inconsistent with the desired bulk and scale for buildings within the locality, and the form of the development presenting to the public domain, specifically Ponsonby Parade, and does not appropriately reflect the prevailing subdivision pattern and form of surrounding development.

- (b) *retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*

Comment: The subject site will not have any adverse impacts upon nearby items of local heritage significance.

- (c) *maintain reasonable neighbourhood amenity and appropriate residential character by providing building setbacks to reduce bulk and overshadowing, and using building form and siting that relates to the site's land form, and adopting building heights at the street frontage that are compatible in scale with adjacent development, and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*

Comment: The height of the proposed development is compatible with surrounding development and the setbacks from side boundaries are comparatively generous. However, the proposal requires further refinement of the southern facade presenting to Ponsonby Parade to ensure that the scale of the development is compatible with surrounding low density residential dwelling, and additional information is required to qualify and/or resolve impacts of the proposed built form upon the amenity of adjoining properties.

- (d) *be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*

Comment: The proposal is sited at a distance that exceeds the 6m minimum setback prescribed by MDCP 2013, and the alignment of the proposal is compatible with nearby and surrounding buildings.

- (e) *embody planting that is in sympathy with, but not necessarily the same as, other planting*

*in the streetscape, and*

Comment: The proposed landscape solution for the site has been supported by Council's Landscape Officer, subject to conditions of consent requiring minor amendment to plant selection.

*(f) retain, wherever reasonable, major existing trees, and*

Comment: The proposed development has been designed to retain trees around the perimeter of the site.

*(g) be designed so that no building is constructed in a riparian zone.*

Comment: Not applicable - there is no riparian zone affecting the subject site.

The proposed development does not have appropriate regard to the neighbourhood amenity and streetscape design principles.

- **Clause 34 (Visual and acoustic privacy)**

Clause 34 of SEPP HSPD requires appropriate consideration of the visual and acoustic privacy of neighbours in the vicinity of the site and future residents of the development by means of appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping.

As discussed by Council's Urban Designer and with regard 3.4.2 of MDCP 2013, the proposal provides insufficient spatial separation between the northern and southern building proposed on the site, resulting in direct lines of sight and overlooking between properties. The application proposes to mitigate overlooking by reliance upon a combination of landscaping and operable screens, however these cause conflict with solar access requirements and may contribute to view loss.

The proposal is also unresolved with regard to overlooking of 10 Ponsonby Parade from the terrace associated with Unit 8 on the upper floor of the northern building, with no fixed screening along the eastern side elevation to prevent overlooking of the adjoining dwelling. In this regard, it is noted that the Seniors Living Policy identifies that terraces should be oriented to the front and/or rear, and that dwellings should be designed so that they do not overlook neighbours private open space.

The proposed development does not have appropriate regard to the visual and acoustic privacy design principles.

- **Clause 35 (Solar access and design for climate)**

Clause 35 of SEPP HSPD prescribes that development should ensure adequate daylight to the main living areas of neighbours and residents and adequate sunlight to substantial areas of private open space, and involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

In regards to solar access to adjoining properties, the application is yet to demonstrate that reasonable solar access is retained to neighbouring properties, as the solar access diagrams provided to support the application are incomplete and relate to a superseded proposal. Particular concern is raised in relation to overshadowing of the private open space of 16 Ponsonby Parade during the morning in mid-winter.

In regards to solar access to the units proposed, it is noted that clause 50 of SEPP HSPD prescribes that development for the purpose of in-fill self-care housing cannot be refused on the basis of solar access if 70% of dwellings receive a minimum of 3 hours of direct sunlight to living rooms and areas of private open space for a minimum of 3 hours between 9am and 3pm in mid-winter

Based on the information provided to Council, 70% of units do not receive compliant levels of sunlight in mid-winter, as follows:

- Unit 01: Non-compliant - a minimum of 3 hours of sunlight is not received to the private open space, as no sun is obtained at 12pm.
- Unit 02: Non-compliant - no solar access is received to either the living room or private open space.
- Unit 03: Non-compliant - only 1 hour of solar access is achieved to the living room and private open space.
- Unit 04: Compliant.
- Unit 05: Compliant.
- Unit 06: Compliant. However, should the proposed screens be closed to prevent overlooking from Unit 08, the rear private open space will not receive adequate sunlight.
- Unit 07: Compliant. However, should the proposed screens be closed to prevent overlooking from Unit 08, the rear private open space will not receive adequate sunlight.
- Unit 08: Non-compliant. A minimum of 3 hours of sunlight is not received to the living room, as no sun is obtained at 12pm. Reliance upon a skylight is not supported in this instance, as it is not oriented to the sun and is likely to be overshadowed by the surrounding elevated solar panels.
- Unit 09: Compliant.

Only 5 of the 9 (55%) apartments proposed achieve appropriate levels of solar access, and of those 5 units, two are further compromised by landscaping and screens required to mitigate overlooking.

Whilst it is appreciated that the units are oriented towards available views to the south, the obtainment of views is not considered to outweigh compliance with minimum solar access and general amenity provisions. It is considered that solar access could be improved by virtue of greater spatial separation between the two building proposed on site, and an overall reduction to FSR.

- **Clause 41 (Standards for hostels and self-contained dwellings)**

Clause 41 of SEPP HSD prescribes that a consent authority must not consent to a development application for the purpose of a self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.

The proposed development was supported by an Access Report to confirm that the proposed development is capable of achieving consistency with the standards prescribed by Schedule 3 of SEPP HSPD. Whilst it is noted that the Access Report does not relate to the most recent version of the plans before Council, none of the changes proposed fundamentally impact upon the conclusions reached in this report, and should the application be approved, conditions can be imposed to ensure consistency with all matters prescribed.

- **Clause 50 (Standards that cannot be used to refuse development consent for self-**



**contained dwellings)**

In addition to the solar access requirements discussed above, clause 50 of SEPP HSPD prescribes a range of criteria that if met, cannot be used as grounds for the refusal of development proposed for the purpose of in-fill self-care housing. The proposed development is inconsistent with the following matters:

- (b) Density and scale (if expressed as a ratio is 0.5:1 or less). As the development has a FSR calculation in excess of 0.5:1, the proposal can be refused in this regard. As discussed with regard to clause 4.4 of MLEP 2013, the proposal is recommended for refusal in relation to the proposed FSR calculation.
- (f) Private open space (if 15 square meters of private open space, with dimensions of not less than 3m, is not provided for ground floor dwellings). The size of the terrace associated with Unit 02 is 11 square metres, with a minimum dimension of 2.4m. This unit also lacks any direct sunlight in midwinter. This is considered to contribute to concerns relating to proposed amenity, which forms part of the reasons as to why the application is recommended for refusal.

Overall, the proposal falls short of the requirements and objectives of SEPP HSPD, and the proposal is recommended for refusal in this regard

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	8.5m	8.6m	100mm	No*
Floor Space Ratio	0.45:1	0.59:1	281.65m <sup>2</sup>	No*

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	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

## Detailed Assessment

### **4.3 Height of buildings**

The proposed development reaches a maximum height of 8.6m, as measured vertically from ground level (existing) to the highest point of the building in accordance with the building height definition of MLEP 2013. As such, the proposal is non-compliant with the 8.5m maximum building height development standard prescribed by clause 4.3 of MLEP 2013.

However, the application has been lodged under the provisions of SEPP HSPD, which contains separate building height development standards; specifically that the height of the development shall not exceed 8m as measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. Clause 5(3) of SEPP HSPD provides that where there is an inconsistency between the provisions of SEPP HSPD and any other environmental planning instrument, such as MLEP 2013, the provisions of SEPP HSPD are to prevail.

Further, clause 50 of SEPP HSPD provides that the consent authority must not refuse a seniors housing development comprising self-contained dwellings on the basis of building height if all buildings are 8m or less in height measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. The proposal reaches a maximum height of 8m as measured in accordance with the building height definition of SEPP HSPD and as such, the proposal cannot be refused in this regard.

See further discussion with regard to Clause 40 of SEPP HSPD.

### **4.4 Floor space ratio**

The proposed development has a gross floor area of 1192m<sup>2</sup> and a FSR of 0.59:1, inconsistent with the 0.45:1 maximum FSR development standard prescribed by this clause.

#### Are the provisions of MLEP 2013 inconsistent with the provisions of SEPP HSPD?

Clause 50(b) of SEPP HSPD prescribes that the consent authority must not refuse a development on the grounds of density and scale if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. Whilst the 0.5:1 FSR prescribed by clause 50(b) of SEPP HSPD is not a maximum FSR, the provisions are still inconsistent with clause 4.4 of MLEP 2013, as the consent authority could not refuse a development with a FSR of 0.50:1 or less, irrespective of the provisions of MLEP 2013. As above, clause 5(3) of SEPP HSPD provides that where there is an inconsistency between the provisions of SEPP HSPD and any other environmental planning instrument, including MLEP 2013, the provisions of SEPP HSPD are to prevail.

Whether or not a 'must not refuse' provision of an EPI overrules a prescribed development standard in a LEP is discussed in *Maham Group Pty Ltd v Blacktown City Council* [2019] NSWLEC 1168 and in *Koutsos & Anor v Manly Council* [2016] NSWLEC 1121, where the Court found that the 'must not refuse' provisions of SEPP ARH did result in inconsistency with the height limit of the relevant LEP, allowing the court to determine whether the variation to the standard is appropriate without the need for a written objection under clause 4.6 of the LEP. However, it is noted that in the case of Maham, the Commissioner also had the benefit of a clause 4.6 to rely upon, if the position was ultimately challenged.

In this instance, it is considered that clause 4.6 request is not required. This position is shared by the applicant, and no clause 4.6 request has been provided. Should the Panel ultimately disagree with this position, the lack of a clause 4.6 request may also be included as a reason for the refusal of the subject

application.

Is a clause 4.6 request to vary clause 50(b) of SEPP HSPD required?

As discussed in *Saha Builders Pty Ltd v Ku-ring-gai Council* [2019] NSWLEC 1497, a request under the provisions of clause 4.6 of MLEP 2013 to vary clause 50(b) of SEPP HSPD is not required, as follows:

*As the density and scale standard at cl 50(b) of SEPP Seniors is a standard that, if met, cannot be used to refuse development consent, it is not subject to the terms of cl 4.6(2) of LEP 2015 because the exceedance of the standard does not constitute the contravention of a development standard. By exceeding the FSR standard of 0.5:1 at cl 50(b) of SEPP Seniors, the applicant merely risks the respondent raising a contention in relation to the GFA proposed and a determination based on FSR. The standards under cl 50 are not provisions under which requirements are fixed as an upper limit in respect of any aspect of the development, but are requirements that merely fix a threshold for an aspect of the development below which consent cannot be refused. This is further demonstrated by the explanation in the note to cl 50, "The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent", although the note does not form part of the instrument (s 35(2)(c) of the Interpretation Act 1987).*

*I accept the applicant's submission that a written request to vary a development standard under cl 4.6 of LEP 2015 is not required for a FSR above the standard in cl 50(b) of SEPP Seniors.*

Is the proposed FSR nonetheless acceptable?

As the proposal exceeds the FSR prescribed by clause 50(b) of SEPP HSPD, the suitability of the bulk and density of the development is subject to merit assessment. The relevant objectives of the maximum FSR prescribed by clause 4.4 of MLEP 2014 are used as a guide in the merit assessment of the bulk and density of the development, as follows:

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

Comment: The application was referred to the DSAP and Council's Urban Designer, with each party raising concerns with regard to the bulk and scale of the development and the associated FSR non-compliance. Whilst the proposal was amended throughout the assessment process with reductions to the FSR calculation and refinement of the facade, Council's Urban Designer remains of the opinion that the bulk and scale of the development does not appropriately respond to the existing and desired streetscape character, with a lack of appropriate relief along both front facades to break down the width of the proposal, particularly the Ponsonby Parade facade. Overall, despite the incorporation of the transparent lobby that divides the southern building, the width of this relieving element (2.3m-3.0m) is insufficient, particularly when more than 50% of the width is obstructed by the solid lift core and further compromised by protruding eaves.

It is also questioned whether the placement of the large canopy tree forward of this relieving element helps or hinders the proposal, as when mature, the tree will completely screen any relieving properties afforded by the recessed transparent lobby and the building will appear as one continual structure when seen from Ponsonby Parade. A greater recess could facilitate landscaping between the structures (as opposed to in front of the recess), which would give the appearance of two buildings separated by landscaping, as opposed to one building softened by landscaping.

It is noted that the requirement to divide or break down medium density development to achieve

compatibility with a low density residential streetscape is addressed in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council [2003] NSWLEC 268* and *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, which prescribe the need to emulate or reflect the rhythm and voids of surrounding built form, with sections of buildings separated by generous breaks or landscaping.

- *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: As discussed with regards to clause 3.4.3 (Maintenance of Views) of MDCP 2013, the potential impacts upon views associated with the proposal are unresolved.

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

Comment: Whilst the scale of development and the subdivision pattern along Ross Street is more varied, the siting and massing of buildings along Ponsonby Parade is more uniform, with clear breaks between adjoining dwellings. As above, whilst the proposed facade treatment works towards this outcome, the spacing/recess in the centre of the front facade, with only 1.8m between the projecting eave elements, is not large enough to achieve the desired effect. This is highlighted in the Character Analysis Ponsonby Parade Plan (DA12, revision B) provided by the Applicant, particularly the south-west view, where the break between the built form is not visually discernible.

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

Comment: As above, the application has not demonstrated that an appropriate result is achieved with regard to view sharing, with unresolved adverse impacts upon properties up slope.

Whilst not a matter raised in the FSR objectives of MLEP 2013, concern is raised with regard to the scale of the proposed development upon the internal amenity of the site. With limited spatial separation between units, the proposal is heavily reliant upon screens which, when utilised, reduce the amount of direct sunlight received to areas of outdoor open space. As such, occupants of certain units would have to compromise on either privacy or sunlight when using their outdoor space. Furthermore, the scale of the upper building and the reduced setbacks between buildings result in overshadowing of the lower building for a considerable portion of the day in mid-winter, such that even north-facing areas of private open space do not receive compliant levels of solar access.

Overall, the bulk and scale of the proposal is not acceptable in the context of the subject site and the proposed development is recommended for refusal in this regard.

## **6.2 Earthworks**

The proposal is consistent with the objectives of Clause 6.2 (Earthworks) of MDCP 2013, as follows:

- a. the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- b. the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- c. the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. If approved, a condition could be included to require any fill to be of a suitable quality.

- d. the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. If approved, conditions can be included to limit impacts during excavation/construction.

- e. the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. If approved, a condition could be included to require any fill to be of a suitable quality.

- f. the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

- g. the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

- h. any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: If approved, conditions can be imposed to ensure that impacts arising from the development are minimised.

## **6.4 Stormwater management**

The consent authority can be satisfied that the proposed development is consistent with the matters prescribed by this clause, as follows:

- a. is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics

affecting on-site infiltration of water.

- b. includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*

Comment: On-site stormwater retention has been incorporated into the development.

- c. avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

## 6.8 Landslide risk

The application was supported by a detailed geotechnical assessment which provides a series of recommendations to ensure an acceptable level of risk. In consideration of the geotechnical report and with regard to the matters prescribed by clause 6.8(3) of MLEP 2013, the consent authority can be satisfied that the proposed development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that the development is designed, sited and will be managed to minimise the risk associated with the geotechnical hazard. As such, the consent authority can be satisfied of the matters prescribed by clause 6.8(4) of MLEP 2013.

## 6.12 Essential services

The consent authority can be satisfied that occupants of the proposed development will have access to all essential services, consistent with the provisions of clause 6.12 of MLEP 2013.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 2023m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings	9	200%	No
	Dwelling Size: 75m <sup>2</sup> - 95m <sup>2</sup>	84m <sup>2</sup> - 148m <sup>2</sup>	-	Yes
4.1.2.1 Wall Height	West (NW): 7.1m	6.2m - 7.5m	400m	No
	West (SW): 6.9m	5.1m - 6.2m	-	Yes
	East (NE): 7.0m	6.8m - 7.5m*	500mm	No
	East (SE): 7.1m	6.3m - 7.6m	500mm	No

4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.6m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6m	6.5m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West (NW): 2.37m	3.3m - 4.0m	-	Yes
	West (SW): 2.30m	3.7m - 4.0m		Yes
	East (NE): 2.33m	5.2m	-	Yes
	East (SE): 2.37m	3.1m - 4.0m	-	Yes
	Windows: 3m	>3.0m	-	Yes
	6m	6.5m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (1112.65m <sup>2</sup> )	45% 913m <sup>2</sup>	17.9% 199.65m <sup>2</sup>	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (319m <sup>2</sup> )	89% (816.8m <sup>2</sup> )	-	Yes
	3 native trees	13 trees	-	Yes
4.1.5.3 Private Open Space	12m <sup>2</sup> per dwelling	11m <sup>2</sup> - 49m <sup>2</sup>	1m <sup>2</sup>	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.6m or 14%	-	Yes
Schedule 3 Parking and Access	12.6 residential spaces	18 spaces	-	Yes
	3 visitor spaces	1 space	2 spaces	No

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

#### 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	Yes	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	No	No
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	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	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

### Detailed Assessment

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

Clause 3.1.1 of MDCP 2013 states the following:

*Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.*

As discussed in detail with regard to FSR, concern is raised in relation to the bulk and scale of the proposal, particularly as viewed from Ponsonby Parade. The proposed massing of the development is not considered to appropriately reflect the inter-relationship between buildings along Ponsonby Parade, with inadequate articulation to break down the horizontal nature of the Ponsonby Parade facade.

Whilst the spatial separation to neighbouring properties is appropriate, and far exceeds the minimum setbacks of MDCP 2013, the width of the proposal is not reflective of the scale of the predominant building form in the locality, and in this regard, the proposal is also considered to be inconsistent with the following provisions of this control:



- i. complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii. ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*

### **3.4.1 Sunlight Access and Overshadowing**

In relation to overshadowing of private open space of adjacent properties, clause 3.4.1.1 of MDCP 2013 prescribes that new development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties between 9am and 3pm in midwinter and that where there is no winter sunlight available to these areas of open space in midwinter, the calculations should relate to the equinox in March and September. In relation to sunlight to windows of living areas, clause 3.4.1.2 of MDCP 2013 prescribes that the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 4 hours from 9am to 3pm in midwinter, with no reduction permitted if these windows/glazed areas currently enjoy less than the minimum amount prescribed.

To undertake the assessment of these controls, one needs to compare the existing levels of solar access received to the resultant levels associated with the proposed development. This comparative assessment is not undertaken in a vacuum that only limits the consideration of solar access to that arising from development at the subject site, but also requires consideration of other nearby and adjoining development that may also overshadow the properties in question.

The shadow diagrams provided are limited to the shadows cast by the existing and proposed development at the subject site, and do not consider the shadows cast by other nearby or adjacent development. As such, Council cannot determine whether the overshadowing of adjoining properties is compliant or acceptable, with particular concern regarding the impact to 16 Ponsonby Parade that occurs at 9am, noting that this area is likely to be overshadowed by the building at 9 Ross Street from midday and by itself at 3pm.

Furthermore, as discussed with regard to solar access and SEPP HSPD, the shadow diagrams are not reflective of the proposal currently before Council, and the absence of shadows cast by adjoining development also questions the extent of solar access afforded to the dwellings proposed in this application. Amended shadow diagrams were specifically requested by Council during the assessment process and were not forthcoming.

Whilst the generous side setbacks to the adjoining properties are acknowledged, the proposal is non-compliant with the Wall Height control and considerably exceeds the FSR prescribed by MLEP 2013, and the 'cannot be refused' FSR prescribed by SEPP HSPD. Council cannot be satisfied that these non-compliances do not attribute to unreasonable impacts upon solar access currently enjoyed by adjoining properties, and as such, the application is recommended for refusal in this regard.

### **3.4.2 Privacy and Security**

Whilst the proposal has generally been designed to minimise impacts upon the privacy of adjoining properties, with the incorporation of screens and landscaping to mitigate overlooking, concerns remain with regard to two separate aspects of the development, as follows:

1. Overlooking of 10 Ponsonby Parade: Unit 08, being the eastern unit at the top floor of the northern building, comprises a 48m<sup>2</sup> terrace to the east of the internal floor space, oriented to the north, south and east. Whilst the terrace is bounded by a 1.5m wide planter box, no

information is provided with respect to the plantings proposed. The application appears to be relying upon the presence of an existing jacaranda tree located along the common boundary to mitigate overlooking of 10 Ponsonby Parade to the east. However, this deciduous tree does not provide screening all year round, and is an exempt species that can be removed at any time without consent from Council. Further, it appears that the application has ignored any potential impacts upon the health of the tree associated with excavation within 4m of the tree on this basis, as the tree is not considered in the Arborist Report provided to accompany the application. In consideration of views said to be maintained over this terrace, conditions cannot be imposed to require screens or plantings of the height required to restrict overlooking, as these would act to obstruct views from properties up slope.

2. Overlooking between Units: The spatial separation between the northern and southern buildings at the subject site is insufficient to afford appropriate levels of privacy for future occupants of the development. To address the reduced spatial separation proposed, the application has been amended to include operable screens and planter boxes to mitigate overlooking between properties. However, the efficacy of these measures is questioned in circumstances where:
  - a. roll down privacy screens proposed to the north of the terraces of the down slope (southern) units will limit solar access to the areas of private open space such that compliance with the minimum solar access requirements will not be achieved,
  - b. plantings proposed to the north of the terraces of the down slope (southern) units will limit solar access to the areas of private open space such that compliance with the minimum solar access requirements will not be achieved,
  - c. plantings proposed to the south of Unit 08 will reduce views available of the harbour from within this unit and properties up slope.

Overall, the proposed development remains unresolved with regards to conflicting amenity issues and adequate visual privacy between properties is not achieved.

### **3.4.3 Maintenance of Views**

Properties along Ross Street enjoy views of Middle Harbour and Middle Head in a south-easterly direction. The views are obtained over down slope properties, with those views currently enjoyed from Units 2, 5 and 7 at 14 Ross Street and the dwelling at 9 Ross Street partially gained over the subject site. As concerns were raised in relation to impacts upon views in the previous development application (the application was refused on this basis), the applicant was encouraged to erect height poles at lodgement to demonstrate the likely impact of the proposal upon views. The applicant did not erect height poles at lodgement, and as such, height poles were requested during the assessment process.

Upon review of the height poles, the applicant amended the proposal without request from Council, as the impact upon views enjoyed from dwellings at 14 Ross Street was considered to be fatal to the application. An additional height pole was subsequently erected to demonstrate the further amended proposal. The height pole certification is attached to this document.

The following assessment of the potential impact upon nearby properties has been undertaken with regard to the four-step View Sharing planning principle developed in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

#### **2/14 Ross Street**

##### Step One

Occupants of the dwelling at 2/14 Ross Street currently enjoy views of Middle Harbour and Middle

Head in a south-easterly direction. The views encompass Chinamans Beach, a portion of Balmoral Beach and Middle Head.

#### Step Two

The views are obtained across the side boundary from balconies on the eastern elevation of the dwelling in both a seated and standing position. The balconies are located adjacent to the primary living room and master bedroom. No other views are available to occupants of this dwelling.

#### Step Three

The impact of the development upon this view is demonstrated in the image attached, below. The upper floor of the proposed development will obstruct a portion of Spit Hill in the far right of the image, and landscaping may obstruct a the view to Chinamans Beach and the foreground water interface. Should the application be approved, conditions could be imposed to limit the maturity height of landscaping in the north-east corner of the site. Subject to such limitations, the impact upon the views currently enjoyed from 2/14 Ross Street is considered to be negligible.



**2/14 Ross St: View from balcony adjacent to living room**

#### Step Four

Despite contravention of wall height controls and FSR, the proposed impact upon views currently enjoyed from 2/14 Ross Street is not unreasonable.

### **5/14 Ross Street**

#### Step One

Occupants of the dwelling at 2/14 Ross Street currently enjoy views of Middle Harbour and Middle Head in a south-easterly direction. The views encompass Chinamans Beach, a portion of Balmoral



Beach and Middle Head.

### Step Two

The views are obtained over the front boundary from the front south-facing balcony and the living room/dining room windows on the southern elevation. Views are also obtained over the side boundary from a balcony on the eastern side of the dwelling. Both balconies are located adjacent to the primary living/dining room. No other views are available to occupants of this dwelling.

### Step Three

The impact of the development upon this view is demonstrated in the image attached, below. The timber height pole depicting the eastern elevation of the upper floor and eave is shown to the right of the water view. Based upon this height pole, the enclosed floor space of the upper floor of the development will have negligible impact upon this primary water view, but will result in the permanent obstruction of views to the right of the pole, which are currently heavily filtered by vegetation.



**5/14 Ross St: View from balcony adjacent to living room**

However, the proposal comprises a large terrace to the eastern side of the upper floor, in the area to the left of the timber height pole. As a height pole was not erected to demonstrate the impact of this area, the applicant provided a photomontage to demonstrate the likely impact, below.



**5/14 Ross St: View from balcony adjacent to living room (Montage)**

As evident in the photomontage, the proposed terrace will obstruct a portion of the water views currently available. This impact will be compounded by landscaping within the 1.5m wide planters proposed around the perimeter of the terrace, and by any future use or furnishings on the terrace, to a point where the entirety of the water view may be lost. The impact associated with the fixed built form is considered to be minor, however the impact associated with proposed plantings and the future use of the terrace is considered to be severe.

#### Step Four

The development as a whole considerably exceeds the floor space ratio prescribed by MLEP 2013 and the 'cannot be refused' FSR prescribed by SEPP HSPD. Whilst the terrace does not contribute to the FSR calculation, the terrace could be relocated elsewhere on site within an area of proposed floor space to significantly reduce the impact upon views currently enjoyed by 5/14 Ross Street. The conversion of the proposed terrace area to a non-trafficable roof would mitigate the potential impact and appease the concerns of the affected property owner. In light of the FSR exceedance, the impact upon views currently enjoyed by 5/14 Ross Street is considered unreasonable.

### **7/14 Ross Street**

#### Step One

Occupants of the dwelling at 5/14 Ross Street currently enjoy filtered views of Middle Harbour and Middle Head in a south-easterly direction.

#### Step Two

The views are obtained across the front boundary from the front south-facing balcony and the kitchen/dining room window on the southern elevation in a seated and standing position. The balcony is located adjacent to the primary living/dining room. Views of the North Sydney and Chatswood skylines are also available from the front south facing balcony.

#### Step Three

The impact of the development upon this view is demonstrated in the image attached, below. The timber height pole depicting the eastern elevation of the upper floor and eave is just evident to the



left of the pine tree in the centre of the image. Based upon this height pole, the enclosed floor space of the upper floor of the development will impact upon a heavily filtered portion of the view to the right of the pole, however the primary view corridor to the left will be preserved. As such, the resultant impact is considered to be minor.



**7/14 Ross St: View from kitchen/dining room window**

However, as discussed with regard to 5/14 Ross Street, the impact associated with the plantings proposed around the perimeter of the terrace and the future use of the terrace may further erode this view, potentially eliminating this view corridor in its entirety. This impact will be severe.

#### Step Four

Similarly to 5/14 Ross Street, the potential unknown extent of impacts upon the views currently enjoyed from 7/14 Ross Street are unreasonable.

### **9 Ross Street**

#### Step One

Occupants of the dwelling at 9 Ross Street currently enjoy views of Middle Harbour and Middle Head in a south-easterly direction.

#### Step Two

The views from 9 Ross Street are obtained from the dining room and balcony in the south-east corner of the upper floor over the common side boundary. The views are currently enjoyed from both a seated and standing position. Views of the North Sydney and Chatswood skylines are also available from the south-west facing windows of the upper floor living room.

### Step Three

The impact of the development upon the Middle Harbour view is demonstrated in the images, below. For ease of view, the height poles have been emphasised by a yellow dashed line. The height poles demonstrate that the majority of the view corridor is maintained in a standing position, with the obstruction of approximately half of the view corridor in a seated position.

Noting that *Tenacity* outlines that the expectation to retain views over side boundaries and from a seated position is often unrealistic, and as the views are largely maintained from a standing position, the impact is considered to be moderate.



**9 Ross St: View from balcony/dining room (standing)**





**9 Ross St: View from dining room (seated)**

It is noted that the clear glass balustrade seen in the images in this report is subject to conditions of consent requiring the use of frosted glazing. If this condition was to be complied with, the water view would be entirely obstructed and the proposed development would not be visible from the seated position.

#### Step Four

It is acknowledged that the overall development considerably exceeds the floor space ratio prescribed by MLEP 2013 and the 'cannot be refused' FSR prescribed by SEPP HSPD. However, the portion of the development attributing to the impact upon 9 Ross Street is sited with generous (4m) setbacks to the common side boundary, and the western elevation is sited well below the prescribed building height standard and wall height control. The impact is considered to be reasonable in these circumstances.

Overall, the application has not demonstrated that disruptions to views from adjacent development have been reasonably minimised, and view sharing between properties has not been established.

#### **4.1.1.1 Residential Density and Dwelling Size**

Clause 4.1.1.1 of MDCP 2013 prescribes the maximum residential density for land identified in Residential Density Areas on the Minimum Residential Density Map of MDCP 2013. The subject site is located within area D6, with a maximum density of 1 dwelling per 600m<sup>2</sup>, being 3.4 dwellings across the subject site. The proposed development is inconsistent with this density, however this is not surprising in circumstances such as this, where the proposed land use is not anticipated in the zone.

Clause 4.1.1.1 of MDCP 2013 also prescribes a series of minimum internal areas for dwellings, being



75m<sup>2</sup> for 2 bedroom, 2 bathroom dwellings and 95m<sup>2</sup> for 3 bedroom, 2 bathroom dwellings. The proposed development far exceeds these minimum requirements with 2 bedroom, 2 bathroom units ranging from 84m<sup>2</sup> to 113m<sup>2</sup> and 3 bedroom, 2 bathroom units ranging from 121m<sup>2</sup> to 148m<sup>2</sup>.

Whilst the proposal is not recommended for refusal in this regard, the extent of departure from the minimum dwelling size requirements is considered to highlight the potential for floor space reductions to address Council's concerns regarding bulk and scale, without detrimentally effecting the amenity of the units proposed.

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

Minor elements of the proposed development are inconsistent with the maximum Wall Height control prescribed by clause 4.1.2.1 of MDCP 2013. The elevations of the proposal are considered individually, as follows:

Western elevation of the northern building (NW): The height of the western elevation of the northern building ranges from 6.2m to 7.5m. Whilst the majority of the elevation is maintained below the 7.1m maximum wall height prescribed, the south-western corner of the upper building extends 400mm beyond the maximum prescribed. This portion of the building does not attribute to excessive bulk and scale, and is setback from both street frontages and the adjoining development to the west. However, at this time, the applicant has not demonstrated that acceptable levels of solar access are maintained to the adjoining dwelling at 16 Ross Street, or that reasonable levels of solar access are afforded to Unit 03, which are directly impacts by this portion of the development.

Western elevation of the southern building (SW): The height of the western elevation of the southern building ranges from 5.1m to 6.2m, and is maintained below the 6.9m maximum wall height prescribed. Furthermore, the setback to the western boundary far exceed the minimum side setback prescribed.

Eastern elevation of the northern building (SW): The height of the eastern elevation of the northern building reaches a maximum height of approximately 6.8m to 7.5m, with a minor encroachment of the 7.0m maximum wall height prescribed. The wall heights are approximated in relation to the eastern elevation of the northern building as, despite amendments to the upper floor of the northern building, an amended eastern elevation was not provided to support the application. Whilst an amended elevation is obviously required, the wall height is likely to be supportable, as the non-compliance relates to a portion of the building that is setback well from the eastern side boundary, and as the north-eastern corner of the upper floor (which is relevant to the view loss assessment) is maintained below the maximum prescribed.

Eastern elevation of the southern building (SE): The height of the eastern elevation of the southern building ranges between 6.3m and 7.6m, with a minor encroachment of the 7.1m maximum wall height prescribed. Whilst the encroachment occurs at the front south-eastern corner of the building, the non-compliant element is setback between 6.9m to 11.9m from the eastern side boundary and is softened by the corner balcony element.

Despite minor areas of non-compliance, the height of the development is consistent and compatible with surrounding built form and the desired character of the area. Furthermore, the minor encroachments do not attribute to impacts upon views from adjoining properties or the public domain. However, concern is raised in circumstances where the application has not adequately demonstrated the solar access impacts resulting from the non-compliant built form, and at this time, the consent authority cannot be satisfied that adequate solar access is provided to proposed areas of private open space or reasonably maintained to adjoining dwellings. As such, consistency with the objectives cannot be confirmed and the proposed variations cannot be supported.

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

See discussion with regard to clause 4.4 of MLEP 2014.

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

##### Front Setbacks

The subject site has dual frontages to both Ponsonby Parade and Ross Street. Whilst it is acknowledged that the properties fronting Ponsonby Parade immediately to the east and west of the subject site have setbacks greater than 6m, the proposed 6.5m minimum setback is consistent and compatible with the setback of other development along Ponsonby Parade, and the 6m minimum setback is considered to be reasonably applied. The dominant facade of the development is setback 7.5m from Ponsonby Parade, with only elements of articulation forward of this point, consistent with the provisions of this control. It is also noted that neither DSAP nor Council's Urban Designer have raised concerns with regard to the proximity of the proposal to either street frontage.

With the exception of ancillary entrance structures, which do not detract from consistency with the objectives of this control, the proposal is consistent with the minimum front setbacks prescribed.

##### Side Setbacks

The proposal meets and exceeds the minimum side setbacks prescribed by this control.

#### **4.1.5 Open Space and Landscaping**

The site is located within OS3 of the Residential Open Space Areas Map of MDCP 2013, and in accordance with the provisions of clause 4.1.5.1 of MDCP 2013, a minimum of 55% of the site area is to be total open space. The proposal is inconsistent with this requirement, with only 45% of the site meeting the definition of total open space. Despite the total open space shortfall, the proposal provides well in excess of the minimum landscaped area requirements prescribed by 4.1.5.2 of MDCP 2013, with 89% of the total open space area proposed as landscaping. Furthermore, the proposed landscaping solution is generally supported by Council's Landscape Officer.

In accordance with clause 50(c) of SEPP HSPD, development for the purposes of self-contained seniors housing dwellings cannot be refused on the grounds of landscaping if 30% of the site is to be landscaped. 45% of the total site area is landscaped area, as defined by SEPP HSPD, and as such, the proposal cannot be refused in this regard.

Note: The definition of 'landscaped area' differs between MLEP 2013 and SEPP HSPD, which is why the figures noted throughout this report may differ.

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

Schedule 3 of MDCP 2013 prescribes the following parking requirements in relation to the proposed development:

- 1 space per dwelling = 9 spaces, plus
- 0.2 spaces per 2 bedroom dwelling = 0.3 spaces, plus
- 0.5 spaces per 3 bedroom dwelling = 3.5 spaces.  
= 12.8 spaces (13 spaces rounded up), plus
- 0.25 visitor spaces per dwelling = 2.25 spaces (3 spaces rounded up)

With 18 residential spaces and 1 visitor space proposed, the proposed development is inconsistent with

the visitor parking requirement prescribed by clause 4.1.6 of MDCP 2013. However, the visitor parking shortfall is supported in circumstances where the residential requirement is satisfied and where ample on-street parking is available along both side of Ponsonby Parade.

Furthermore, in accordance with clause 50(h) of SEPP HSPD, the proposal must not be refused on the basis of parking if at least 0.5 spaces per bedroom is provided. The proposed development provides 0.76 spaces per bedroom, and as such, the proposal must not be refused with regard to parking.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$55,419 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,541,900.

## **ADEQUACY OF INFORMATION**

The application is lacking critical information required to assess the application, and a number of documents provided have been superseded and are no longer relevant to the application. This matters include:

- The Landscape Plans were not amended to reflect the further amended architectural plans, and in particular, do not include plantings to the perimeter of the upper floor planter boxes.
- The BASIX Certificate supplied at lodgement does not relate to the twice amended proposal now before Council.
- The Access Report was not updated to reflect the amended architectural plans.
- The Solar Access Diagrams are incomplete and were not updated to reflect the further amended architectural plans.
- The Eastern Elevation was not updated to reflect changes made to the eastern end of the upper floor of the northern building.
- Internal elevations were not provided (ie: the northern elevation of the southern building and the southern elevation of the northern building).

The absence or inadequacy of supporting documentation is discussed in *SHMH Properties Australia Pty Ltd v City of Sydney Council* [2018] NSWLEC 66, as follows:

*The absence or inadequacy of documents required by Sch 1, cl 2 and 2A of the EPA Regulation to accompany a development application does not necessarily make the application invalid, but it does make the development application incomplete and, in a particular case, the absence or inadequacy of the documents may be of such significance as to prevent the consent authority from performing its statutory duty under the EPA Act when determining the application (see Currey v Sutherland Shire*

*Council (2003) 129 LGERA 223; [2003] NSWCA 300 at [35]; Cranky Rock Road Action Group Inc v Cowra Shire Council (2006) 150 LGERA 81; [2006] NSWCA 339 at [73]-[78], [88] and McGovern v Ku-ring-gai Council (2008) 72 NSWLR 504; [2008] NSWCA 209 at [198]-[200]].*

The absence of information and the inconsistencies in the information presented to Council are considered to warrant the refusal of the subject application.

## **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

The application has been amended in an attempt to address concerns raised by Council and adjoining property owners. Whilst these amendments work towards a more appropriate outcome, the proposal is still unresolved, with a number of areas of inconsistency and a lack of relevant, up to date information.

Should the applicant be willing to continue to work with Council in response to the concerns raised in this report, a section 8.2 application may be lodged in response to the refusal of the subject application.

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 DA2021/0008 for the Demolition works and construction of a seniors living development over basement car parking on land at Lot 22 DP 7577,14 Ponsonby Parade, SEAFORTH, Lot 21 DP 7577,12 Ponsonby Parade, SEAFORTH, for the reasons outlined as follows:

1. The bulk and scale of the proposed development is excessive within the low density residential setting, and attributes to unacceptable impacts upon the public domain, the amenity of adjoining properties and the amenity of the dwellings proposed. In particular, the form and massing of the proposal is inconsistent with the design principle of clause 33 (Neighbourhood amenity and streetscape) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (SEPP HSPD)*, the Seniors Living Policy, the objectives of clause 4.4 (Floor Space Ratio) of *Manly Local Environmental Plan 2013 (MLEP 2013)* and the design requirements of clause 3.1.1 (Streetscape(Residential Areas)) of *Manly Development Control Plan 2013 (MDCP 2013)*.
2. The application does not address overshadowing of adjoining properties and inadequate solar access is achieved to the dwellings proposed on site, inconsistent with the provisions of clause 35 (Solar access and design for climate) of SEPP HSPD, the Seniors Living Policy and clause 3.4.1 (Sunlight Access and Overshadowing) of MDCP 2013.
3. The proposal fails to ensure adequate visual and acoustic privacy is maintained for adjoining properties and achieved between dwellings proposed on site, inconsistent with the provisions of clause 34 (Visual and acoustic privacy) of SEPP HSPD, the Seniors Living Policy and the requirements and objectives of clause 3.4.2 (Privacy and Security) of MDCP 2013.
4. The proposal will unreasonably obstruct views enjoyed by properties up slope of the development, resulting in inconsistency with the requirements and objectives of clause 3.4.3 (Maintenance of Views) of MDCP 2013.
5. The application is inconsistent with the provisions of clause 50 of the *Environmental Planning and Assessment Regulation*, in so far as the application is not supported by the information listed in Schedule 1 relevant to the amended proposal before Council.