

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2023/0617 |
|----------------------------|-------------|

|   |  |
|---|--|
| <b>Responsible Officer:</b>               | Steven Findlay   |
| <b>Land to be developed (Address):</b>    | Lot 6 DP 9585, 24 Angle Street BALGOWLAH NSW 2093<br>Lot 7 DP 9585, 22 Angle Street BALGOWLAH NSW 2093 |
| <b>Proposed Development:</b>              | Demolition works and construction of a Residential Flat Building                                       |
| <b>Zoning:</b>                            | Manly LEP2013 - Land zoned R1 General Residential  |
| <b>Development Permissible:</b>           | Yes  |
| <b>Existing Use Rights:</b>               | No   |
| <b>Consent Authority:</b>                 | Northern Beaches Council   |
| <b>Delegation Level:</b>                  | NBLPP  |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Owner:</b>                             | Amy Merrilee Lanza<br>Anne Assunta Sordo<br>Charlotte Therese Young                                    |
| <b>Applicant:</b>                         | Steve Gillespie  |

|                                  |  |
|----------------------------------|--|
| <b>Application Lodged:</b>       | 24/05/2023   |
| <b>Integrated Development:</b>   | No   |
| <b>Designated Development:</b>   | No   |
| <b>State Reporting Category:</b> | Refer to Development Application                               |
| <b>Notified:</b>                 | 29/11/2023 to 13/12/2023                                       |
| <b>Advertised:</b>               | 29/11/2023   |
| <b>Submissions Received:</b>     | 29   |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: 5.65%<br>4.4 Floor space ratio: 62.9% |
| <b>Recommendation:</b>           | Refusal  |

|                                 |                 |
|---------------------------------|-----------------|
| <b>Estimated Cost of Works:</b> | \$ 4,510,000.00 |
|---------------------------------|-----------------|

### EXECUTIVE SUMMARY

This application involves the construction of a two storey residential flat building, comprising six (6) apartments on a consolidated site (two lots).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the number of submissions received exceeding 10 (29 submissions) and due to the proposed variation to the development standard for floor space ratio (FSR) exceeding 10% (variation is 62.9%).

There were 29 submissions received in response to the public exhibition, and concerns raised in the 26 objections relate to character, built form, amenity (privacy, solar access, views), stormwater management, landscaping, traffic and parking, demolition and construction impacts. There were 3 submissions in support of the proposal.

Critical assessment issues include; the variations to the height of buildings and floor space ratio development standards, amenity, residential density, setbacks (front and rear), built form and character.

The Clause 4.6 variation request for the non-compliance with the height standard (5.65%) is not well founded and is not supported for the reasons detailed in this report.

The Clause 4.6 variation request for the non-compliance with the floor space ratio (62.9%) is not well founded, and is not supported for the reasons detailed in this report.

The failure to demonstrate well founded Clause 4.6 variations constitute critical and fatal elements in the assessment of the application.

It is noted that the proposal was amended by the applicant during the course of the assessment in an effort to address and overcome the issues raised in the *Request For Information* letter, including issues raised by the assessment officer, the internal referrals departments and the *Design and Sustainability Advisory Panel* (DSAP). These amendments resulted in a reduction in the extent of the FSR variation from 95.4% to 62.9%, which equates to a 136m<sup>2</sup> reduction in floorspace, and a reduction in the number of apartments from 8 to 6.

The applicant argues that the residual non-compliance with the FSR standard arises due to the consolidation of the two lots and the incorporation of areas in the middle of the consolidated site, which would otherwise be setback areas to the internal boundary if the two lots were developed separately. A detailed assessment of the variation is provided in this report, and concludes that the application has failed to demonstrate that it is unreasonable or unnecessary to comply with the development standard and that there are sufficient environmental planning grounds to vary the standard.

On balance, the proposal (as amended), has some design merit in the form of facade articulation, finishes and architectural treatments, and generally complies with the applicable height control (minor variation) and the storeys control (despite the basement being partially out of the ground). However, the proposal, despite the reductions in floorspace and apartment numbers and minor increases in setbacks and landscaping, is not sufficiently responsive to the prevailing character of the area, the desired future character of the area, the streetscape and surrounding residential amenity.

The proposal, as amended, is not supported on the basis that the proposal still has excessive bulk and scale, inadequate side setbacks and is out of character with the area.

For the reasons outlined above and explained in detail within this report, the application is recommended for refusal.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal involves the demolition of two dwelling houses and the construction of a residential flat building containing 6 apartments, as follows:

- Ground Floor Level : Three 3-bedroom apartments, and bin store room,

- First Floor Level : Two 3-bedroom apartments and one 2-bedroom apartment,
- Roof Level : Air-conditioning plant and solar panels,
- Basement Level : Parking for 11 cars (9 residential and 2 visitor), 12 bicycles, and storage,
- New driveway, and
- Landscaping works.

## **Amended Plans**

The above description of works is consistent with the amended plans submitted in response to Council's Request For Information (RFI) which raised concerns with the following:

- Building height
- Floor space ratio
- Residential density
- Wall height
- Number of storeys
- Setbacks (front, side and rear)
- Total open space
- Visual privacy
- Apartment mix
- Design and Sustainability Advisory Panel advice
- Landscape Officers issues
- Waste Officer issues

The amended plans involved a relatively substantial redesign, including a reduction in the number of units from 8 to 6, significant reduction in floorspace, reduction in bulk and scale, increased front, side and rear setbacks, improved visual privacy, increased total open space, and compliance with Council's waste requirements.

However, the extent to which the proposal has been reduced has been assessed as not being sufficient to fully overcome the concerns raised in the RFI, including the fundamental issues raised in the DSAP advice.

The amended plans were publicly notified in accordance with the Northern Beaches Community Participation Plan and re-referred to the relevant departments, where required. The results of the renotification did not significantly alter the community's concerns in relation to the proposed development.

## **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

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 - 1.7 Aims and Objectives of this Plan

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)

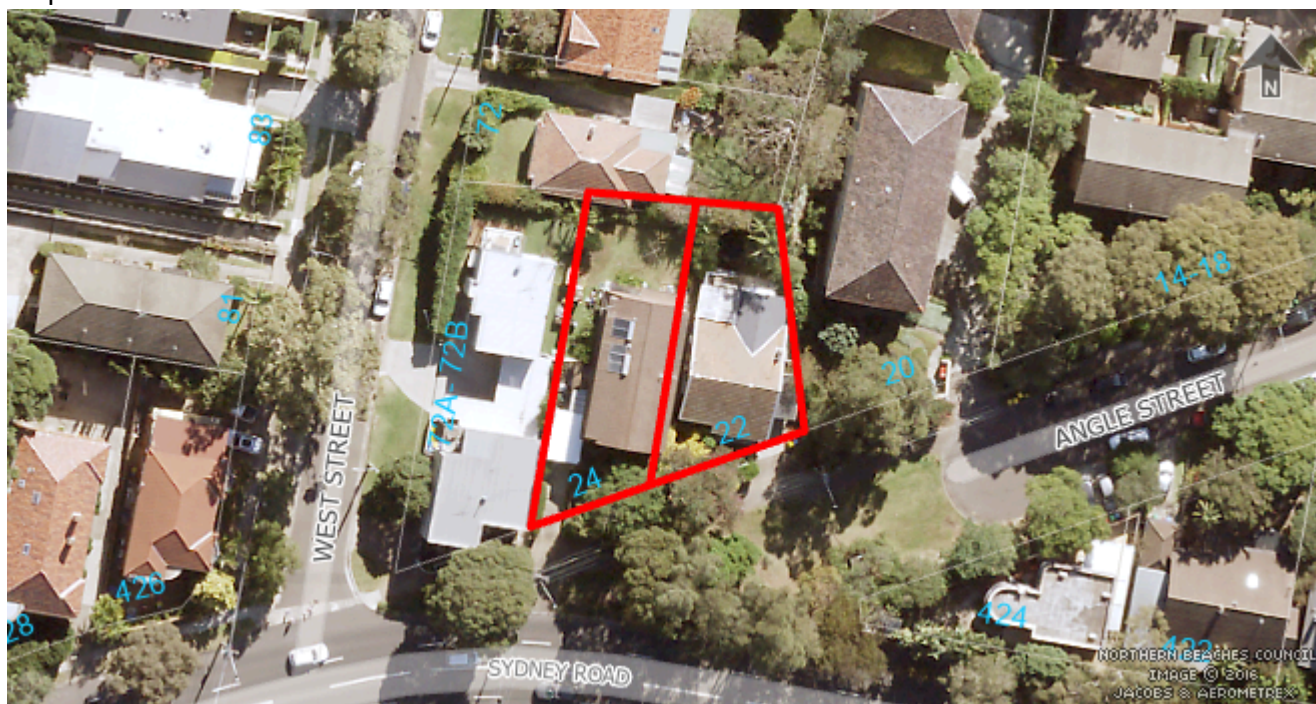
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 6 DP 9585 , 24 Angle Street BALGOWLAH NSW 2093<br>Lot 7 DP 9585 , 22 Angle Street BALGOWLAH NSW 2093  |
| <b>Detailed Site Description:</b> | <p>The subject site consists of two allotments located on the north-western side of Angle Street, Balgowlah.</p> <p>The site is irregular in shape with a frontage of 33.53m along Angle Street, with a maximum depth of 38.43m. The site has a surveyed area of 834.6m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates two detached dwelling houses (one on each lot), each with a single carport.</p> <p>The site slopes down approximately 2.5m from south (front) to north (rear), and contains two trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a variety of residential development types, including</p> |

dwelling houses to the north, townhouses to the west, residential flat buildings to the east and north-west.

Map:



## SITE HISTORY

### No Prelodgement Meeting

No Prelodgement/Pre-DA meeting was held with Council in relation to the proposed development, despite the significant levels of non-compliance with development standards and built form controls under the MLEP and MDCP. Hence, no preliminary advice from DSAP or Council planning staff could be proffered to inform an appropriate and suitable density, size and scale, and character of the proposed development, and reduce and satisfactorily address the fundamental issues associated with the proposal on the subject site, and in the context and setting of the site.

## 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 | There are no current draft environmental planning instruments.         |
| Section 4.15 (1) (a)(iii) – Provisions of any development                            | Manly Development Control Plan 2013 applies to this proposal.          |

| Section 4.15 Matters for Consideration   | Comments  |
|--|---|
| control plan   |   |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement   | None applicable.  |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)  | <p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via conditions of consent, if the application were to be approved.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height and bulk, setbacks, total open space, privacy, landscaping, and waste management. Requested information was provided in November and December 2023.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via conditions of consent, if the application were to be approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via conditions of consent, if the application were to be approved.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via conditions of consent, if the application were to be approved.</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><br/>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><br/>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></p>   |

| <b>Section 4.15 Matters for Consideration</b>  | <b>Comments</b>   |
|--|---|
|  | The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.  |
| Section 4.15 (1) (c) – the suitability of the site for the development                 | The site is considered unsuitable for the proposed development for the reasons detailed throughout this report. In summary, the size, density, bulk, scale and mass of the building is not suited to the site.  |
| 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. In summary, many of the concerns raised in the submissions are concurred with and should have determining weight.   |
| Section 4.15 (1) (e) – the public interest   | The application is recommended for refusal in the public interest, given the levels of non-compliance with the planning controls, unsatisfactory size, bulk and scale of the building, inappropriate character and built form, and having regard to the issues raised in the submissions made to the application. |

## **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 application has been publicly exhibited from 29/11/2023 to 13/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 29 submission/s from:

| <b>Name:</b>   | <b>Address:</b>                               |
|--|---|
| Daniel Yamashiro   | 1 / 20 Angle Street BALGOWLAH NSW 2093        |
| John Lesley Anderson   | 41 A Lodge Street BALGOWLAH NSW 2093          |
| Mr Peter Mathiesen   | 2 / 77 A Wanganella Street BALGOWLAH NSW 2093 |
| Mr Adam Neale Wheat<br>Michelle Emma L'Green<br>Blackwattle Planning | 72 West Street BALGOWLAH NSW 2093             |
| Mr Luke Ralph Westlake   | 6 / 20 Angle Street BALGOWLAH NSW 2093        |
| Mr Luke Christopher<br>Richmond                                      | 12 / 20 Angle Street BALGOWLAH NSW 2093       |
| Mr Tristan James Michael<br>Moore                                    | 1 / 72 B West Street BALGOWLAH NSW 2093       |
| Mr Bruce Seymour Cumming   | 12 / 14 Angle Street BALGOWLAH NSW 2093       |

| Name:  | Address:  |
|--|---|
| Ms Georgia Lorraine Brown                          | 14 / 14 Angle Street BALGOWLAH NSW 2093         |
| Mr Benjamin Roy Preston                            | 16 / 14 Angle Street BALGOWLAH NSW 2093         |
| Olivia Moylan                                      | 3 / 23 Fairlight Crescent FAIRLIGHT NSW 2094    |
| Ms Lucy May Morrison<br>Planning Progress          | 2 / 72 B West Street BALGOWLAH NSW 2093         |
| Jessica Mae Clancy                                 | 7 Angle Street BALGOWLAH NSW 2093               |
| Christopher John Mallett                           | 11 / 20 Angle Street BALGOWLAH NSW 2093         |
| Ms Judith Lorraine Lawler                          | 9 / 20 Angle Street BALGOWLAH NSW 2093          |
| Mr Christopher Alan Grayson<br>Claire Louise Simon | 4 / 33 Addison Road MANLY NSW 2095              |
| Ms Shelley Marsland                                | 35 Austral Avenue NORTH MANLY NSW 2100          |
| Mr Peter Andrew O'Brien                            | 2 / 29 East Esplanade MANLY NSW 2095            |
| Mr Anthony John Armstrong                          | 10/14-18 Angle Street BALGOWLAH NSW 2093        |
| Ms Alix Hopgood                                    | 20 Geneva Crescent LAKE ALBERT NSW 2650         |
| Mr Nicolas Oliver Kingsley<br>Yates                | 1 Krui Street FAIRLIGHT NSW 2094                |
| Mr Timothy Bruce Duggan                            | 8 / 24 East Esplanade MANLY NSW 2095            |
| Ms Yvonne McKinlay                                 | 1 / 72 A West Street BALGOWLAH NSW 2093         |
| Mrs Merilyn Margaret<br>Streeter                   | 7 Jellicoe Street BALGOWLAH HEIGHTS NSW 2093    |
| Mrs Samantha Mary Tonkin                           | 33 Alma Street CLONTARF NSW 2093                |
| Withheld   | BALGOWLAH NSW 2093                              |
| Mr Peter Allan L'Green                             | 1 Shore Brace AVALON BEACH NSW 2107             |
| Mr Matthew Albert Perkes                           | 10 Mossgiel Street FAIRLIGHT NSW 2094           |
| Mr Blake Ian Cradock                               | 2 / 29 Upper Clifford Avenue FAIRLIGHT NSW 2094 |

Twenty-nine (29) submissions were received in response to the notification, 6 in support and the remaining 23 raising objections.

The following issues were raised in the submissions:

- *View loss to Unit 1/20 Angle Street and 72B West Street.*
- *Visual and acoustic privacy loss to adjoining properties.*
- *Unreasonable overshadowing to adjoining properties to the east and west.*
- *Concern that the proposed development will result in unreasonable stormwater runoff and flood risk.*
- *The proposed stormwater management measures rely on an easement across 72 West Street to the north, but owners consent has not been provided for this easement.*
- *The proposal is of excessive bulk and scale, including breaches to the height of buildings and floor space ratio development standards.*
- *Inadequate total open space and landscaped area.*
- *The proposed apartments do not provide sufficient internal amenity.*
- *The proposed development is not compliant with the applicable requirements of the Apartment Design Guide.*



- *Vehicular access to the site relies on a damaged pedestrian pathway.*
- *The proposed development will result in traffic congestion, increased vehicular movements, and safety concerns with respect to vehicle and pedestrian conflict.*
- *The proposed development will impact upon street parking.*
- *The proposed development will be difficult to access for service vehicles.*
- *The proposed development is inconsistent with the surrounding character and the R1 General Residential zone.*
- *Concern about the geotechnical stability of the site with respect to excavation risks.*
- *Concern about construction impacts - noise, vibration and traffic.*
- *Unacceptable impact on the public open space (including tree removal), onsite vegetation, and wildlife.*
- *Misrepresentation of 72A & 72B West Street on the plans.*
- *Concern that the plans do not indicate the location of mechanical plant equipment like air conditioning units.*

The above issues are addressed as follows:

#### **Amenity - View Loss, Privacy (Visual and Acoustic), Overshadowing**

##### Comment:

The proposed development is not satisfactory in relation to sunlight and overshadowing, and privacy as discussed in the relevant section of this report.

#### **Stormwater Concerns/No easement**

##### Comment:

The amended plans involve a stormwater management system that does not rely on an easement over adjoining properties. The stormwater plans have been reviewed by Council's Development Engineering Section, and no concerns have been raised and conditions of consent provided.

#### **Built Form Concerns and Non-Compliance**

##### Comment:

The proposal is generally acceptable with respect to building height, despite involving a minor variation. The proposal complies with the total open space, landscaped open space, communal open space and deep soil area controls. However, the proposal is not satisfactory with respect to the significant variation to the floor space ratio development standard, and the built form controls including; side setback, front setback and rear setback.

#### **Apartment Amenity**

##### Comment:

The proposal demonstrates general compliance with the internal amenity requirements of the Apartment Design Guide (ADG). However, the proposal does not provide sufficient building separation to the eastern and western developments, where the ADG requires a minimum of 6.0m and the proposal involves 3.0m side setbacks.

#### **Traffic and Parking Concerns**

##### Comment:

The proposal has been reviewed by Council's Traffic Section who do not raise any issues with the amended scheme and have provided conditions.

#### **Character and Zoning Concerns**

##### Comment:

The proposed residential flat building is a permissible use in the R1 zone and is an anticipated form of development on this site. The surrounding locality comprises a mix of residential development types,

including dwelling-houses, townhouses, dual occupancies and residential flat buildings, and the proposed development is consistent in terms of its general housing typology, however, it is the size, bulk and scale, density and proportions that are out of character with the area.

### Excavation and Construction Impacts

#### Comment:

The application is accompanied by a geotechnical risk assessment prepared by a suitably qualified professional, demonstrating the demolition, excavation and construction works can be carried out and adequately protect adjoining buildings, private property and public land/infrastructure.

### Impact on Public and Private Open Space

#### Comment:

The landscape plans and arborist report have been reviewed by Council's Landscape Officer as being satisfactory and is supportive of the proposed tree removal and planting on public land.

### Documentation - Incorrect/Insufficient Plans

#### Comment:

The plans are adequate for the purposes of conducting a complete and proper assessment of the application.

## REFERRALS

| Internal Referral Body                   | Comments  |
|--|---|
| Design and Sustainability Advisory Panel | <p><b><i>Not Supported (Original DA Scheme)</i></b></p> <p>The Design and Sustainability Advisory Panel was not supportive of the proposal in its original form. The Panel recommended a redesign and a substantial reduction in floor area. The Panel's comments on the proposal are inserted as follows in <i>italics</i>. Additionally, commentary from the Assessment Officer is provided to outline how the amended plans (December, 2023) have addressed the Panel's concerns.</p> <p><b>Strategic Context / Urban Context: Surrounding Area Character</b></p> <p><i>The zoning of the area around the site is General Residential with a range of detached houses and older 2 and 3 storey flat buildings. The vehicular access to the site is along a narrow, winding vehicular path that currently serves 2 houses. The communal open space for an existing 3 storey block of flats to the east of the site is immediately east of the proposed building.</i></p> <p><b>Recommendations</b></p> <p><i>1. Minimise overshadowing of the communal open space for the existing 3 storey block of flats to the east of the site.</i></p> <p><u>Assessment Officer's Comment:</u></p> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>The amended plans involve a reduction in the size and scale of the development, including a reduction of the number of apartments from 8 to 6, increased front, side and rear setbacks, and a reduction in gross floor area by 136m<sup>2</sup>. This results in reduced overshadowing to the communal open space of the adjoining property to the east at 20 Angle Street. The communal open space at 20 Angle Street is approximately 50% self-shadowed in the morning and middle of the day, with no impact from the proposed development. The proposed development results in minor overshadowing in the afternoon. It should be noted that the communal open space in question is to the south of the site, hence being vulnerable to overshadowing.</p> <p><b>Scale, Built Form and Articulation</b></p> <p><i>The proposed building height is 9.18m at its highest point. The height plane control is 8.5m. The proposal exceeds the height limit by 0.68m. The proposed building does not comply with SEPP 65 Apartment Design Guide design criteria for setbacks from side and rear boundaries:</i></p> <ul style="list-style-type: none"> <li><i>a. The private open space balconies for apartments GO2 and GO3 are 3.5m from the rear boundary. The ADG design criteria for building separation is a minimum 6m setback from boundaries to balconies. The balconies are 1.8m above the ground. This height and setback from the boundary would impact the future development potential of the site to the north;</i></li> <li><i>b. The Bedroom 1 window in Apartment 102 and Bedroom 2 window in Apartment 101 are 3m from the western side boundary. The ADG design criteria for building separation is a minimum 6m setback from boundaries to habitable room windows;</i></li> <li><i>c. The balcony for Apartment 104 is 1.5m from the eastern side boundary. The ADG design criteria for building separation is a minimum 6m setback from boundaries to balconies.</i></li> </ul> <p><i>By not meeting the ADG building separations for residential development, this proposal impacts the future development potential of neighbouring sites.</i></p> <p><i>The permissible Floor Space Ratio under Cl. 4.4 of MLEP 2013 is 0.5:1. The proposed FSR is 0.95 : 1. The proposed FSR is a major contributor to the proposal not complying with the ADG side and rear setbacks.</i></p> <p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li><i>2. Comply with SEPP 65 ADG side and rear setback controls to maintain development potential equity for adjoining sites;</i></li> <li><i>3. Comply with the permissible FSR to achieve desirable built form outcomes;</i></li> <li><i>4. Comply with the building height limit to provide a desirable built form outcome.</i></li> </ul> <p><u>Assessment Officer's Comment:</u></p> |

| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <p>The amended plans involve side setbacks which are compliant with the MDCP, but remain non-compliant with the ADG. The rear setback remains non-compliant, despite the reduced form and reduced rear balconies under the amended scheme. The amended plans also retain the non-compliance with the front setback control under the MDCP. The amended scheme does not comply with the height of building development standard for the portion of the site subject to historical excavation (north-east corner).</p> <p><b>Access, Vehicular Movement and Car Parking</b></p> <p><i>Vehicular access presents a conflict with the public pathway. This needs to be considered and resolved as part of an improved treatment of the driveway and the public domain including specific resolution as either a shared way or a separation of vehicles and pedestrians. The basement car park projects 1.8m above ground level, creating a blank wall along the eastern and northern elevations at ground level. It also excessively raises the height of the rear balconies and the building height overall. A longer ramp would create the potential to reduce the height of the balconies and blank ground floor elevation.</i></p> <p><i>Recommendations</i></p> <p>5. As part of a site wide redesign consider the accessibility around the site to the landscape spaces.</p> <p>6. Reduce the height of the rear balconies and blank ground floor elevation.</p> <p><u>Assessment Officer's Comment:</u></p> <p>The amended plans show several specific points of pedestrian access to the landscaped open space, thereby increasing access. The amended plans reconfigure the northern and eastern basement elevations to provide better articulation and reduce the extent of blank walls.</p> <p><b>Landscape</b></p> <p><i>The landscape areas are too constrained to provide meaningful screening or amenity for residents or neighbours. There is insufficient space to provide significant trees within the site. The proposal does not meet the council requirements for provision of open space (55%) or the provision of communal open space (25%). The removal of trees in the public domain is a significant request. Demonstrating overall improvement to the public domain overall would be required to justify removal of public trees to facilitate private development. This could include the replacement of trees along with improvements to the public accessway and improved safety to the vehicular</i></p> |

| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <p><i>driveway / shared way. It is understood that the OSD tank has been relocated under the driveway. This is a beneficial amendment. The Panel noted that the calculation of open space is a little confusing as the second control is derived from the first. In other words the first must be met to satisfy the second. The proposal has 337sqm of open space not the required 459sqm. (ref DWG CD03) 35% (161sqm) of the 459sqm is required to be &gt;3m wide and landscaped. 138sqm is proposed. Irrespective of these numerical controls, the panel considers setback for adjoining properties to allow for screen planting and privacy to be essential, particularly given that the separation distances will be considerably less than ADG guidelines.</i></p> <p><i>Recommendations</i></p> <p><i>7. Comply with Council's requirements for the provision of open space and communal open space.</i></p> <p><i>8. Provide landscaped setbacks to adjoining properties.</i></p> <p><u>Assessment Officer's Comment:</u></p> <p>The amended scheme demonstrates greater communal open space, total open space and landscaped open space than the minimums required by the ADG and MDCP. The amended plans allow for greater retention and protection of street trees, which is to the satisfaction of Council's Landscape Officer. The amended plans relocate the onsite detention tank under the driveway.</p> <p><b>Amenity</b></p> <p><i>The private open space balconies for apartments GO2 and GO3 are 3.5m from the rear boundary. The balconies are 1.8m above the ground. This height and setback from the boundary would impact the privacy of the rear yard of the neighbour to the north through overlooking. The Bedroom 1 window in Apartment 102 and Bedroom 2 window in Apartment 101 are 3m from the western side boundary. An existing window in the apartment building to the west is diagonally opposite the Bedroom 1 window in Apartment 102, creating a loss of privacy for the neighbour. The balcony for Apartment 104 is 1.5m from the eastern side boundary. This impacts the privacy of the communal open space for the apartments to the east by overlooking. The private open space and living room of ground floor apartment G01 are approximately 0.9m below the ground level of the public space to the south of the site. The living room windows and doors are set back 3m from the front boundary and the private open space is within the front setback. The potential exists for a pedestrian to look down into living room windows and private open space, creating a loss of privacy for the occupants of that apartment.</i></p> <p><i>Recommendations</i></p> <p><i>9. Comply with the ADG design criteria for building separation of</i></p> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p><i>minimum 6m setback from boundaries to balconies and windows to habitable rooms;</i></p> <p><i>10. Create a greater front setback and/or raise the floor level of apartment G01 and the front fence to resolve privacy issue.</i></p> <p><u>Assessing Officer's Comment:</u></p> <p>The amended plans demonstrate greater setbacks to the rear and side boundaries, and reduced extent of balconies to the rear boundary. Unit G01 has been reconfigured to allow for greater privacy to its living areas. However, the degree to which improvements have been made to the side and rear setbacks is inadequate and the non-compliances will form a reason for refusal of the application.</p> <p><b>Façade Treatment/Aesthetics</b></p> <p><i>A range of materials and colours create visually articulated facades. The first-floor balcony of Apartment 104 is excessively high from the ground and visually prominent in the streetscape and in relation to the neighbours communal open space, due to its form and colour.</i></p> <p><i>Recommendations</i></p> <p><i>11. Set the balcony of Apartment 104 further from the boundary and reduce its visual prominence through a change in form and colour.</i></p> <p><u>Assessment Officer's Comment:</u></p> <p>The balcony for Apartment 104 (now Apt 103, given the reduction in apartments from 8 to 6) has been set an additional 800mm away from the front boundary, and a greater variation to building form and colour has been provided at this point of the development to assist with visual prominence.</p> <p><b>Sustainability</b></p> <p><i>Apartments 101 and 104 have relatively little solar access to living areas. This could be enhanced through the introduction of clerestory windows above the living areas.</i></p> <p><i>Recommendations</i></p> <p><i>12. Introduce clerestory windows above the living areas of Apartments 101 and 104;</i></p> <p><i>13. Change to an all Electric energy supply – induction cooktops and heat pump hot water</i></p> <p><i>14. Increase the amount of solar panels on the roof to provide and potentially connect to some of the individual units</i></p> |

| Internal Referral Body                             | Comments  |
|--|---|
|  | <p>15. Consider the use of green roofs (in combination with PV)</p> <p>16. Provide some EV charging to parking spaces</p> <p><u>Assessment Officer's Comment:</u></p> <p>The amended plans reconfigure the proposal from 8 units to 6, and unit 103 is now in the place of 104. Both units 101 and 103 achieve compliant solar access through this redesign. The amended development is supported by an updated BASIX Certificate demonstrating it exceeds the minimum energy efficiency targets.</p>   |
| Building Assessment - Fire and Disability upgrades | <p><b>Supported, subject to conditions of consent</b></p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of recommended conditions.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>  |
| Landscape Officer                                  | <p><b>Supported, subject to conditions of consent</b></p> <p>The development application is assessed by Council's Landscape Referral against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (a) (b) and (c), including Schedule 1, Principle 5: Landscape,</li> <li>• the associated Apartment Design Guide (ADG), including the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and</li> <li>• Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to): 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable.</li> </ul> <p>Amended Landscape Plans and an amended Arboricultural Impact Assessment are submitted in response to the initial Landscape Referral.</p> <p>It is noted that open space and total landscape areas are increased in response to the concerns raised previously, and the additional landscape areas are capable of increasing areas to support planting opportunities and achieve the outcomes of the landscape controls to satisfy ADG control 4O Landscape Design, and Manly DCP 2013 (MDCP) controls 3.3.1 Landscaping Design, and 4.1.5 Open Space and Landscaping - 4.1.5.2 (c) Minimum Tree Plantings.</p> |

| Internal Referral Body         | Comments  |
|--------------------------------|---|
|                                | <p>The amended Stormwater Plans have relocated the OSD system from within the landscape area to under the driveway and thus the landscape controls are able to be achieved.</p> <p>Subject to conditions of consent, Landscape Referral raise no objections with regard to the landscape outcomes.</p>  |
| NECC (Development Engineering) | <p><b><i>Supported, subject to conditions of consent</i></b></p> <p>The proposed development requires on-site detention which is shown on amended plans. Amended engineering plans have been provided which show stormwater disposal to Angle Street. This is supported. Roads Act approval will be required for works on Councils road reserve. I have no objections to the proposal.</p>  |
| Traffic Engineer               | <p><b><i>Supported, subject to conditions of consent</i></b></p> <p><u>Updated Comments (23 November 2023):</u></p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>Plans (Master Set), Project No. 22214 , Revision A – designed by WOLSKI.COPPIN ARCHITECTURE, dated 15/11/2023, and</li> <li>Updated Transport and Parking Impact Assessment report – Version Final C, (Ref 22134), prepared by Transport Strategies, dated November 2023.</li> </ul> <p>The amendments include the following:</p> <ul style="list-style-type: none"> <li>new schedule of units and mix (1 two-bedroom apartment and 5 three-bedroom apartments);</li> <li>the reconfiguration of the basement parking layout; the number of parking spaces on-site has been decreased from 15 (in the original plan) to 11 spaces (current plan); and</li> <li>12 bicycle spaces have been provided for residents in the form of two-tier bicycle racks within the secured basement carpark.</li> </ul> <p>Traffic team notes:</p> <ul style="list-style-type: none"> <li>The parking requirements for the development comprising 6 apartments (made up of 1x two-bedroom apartments and 5 x three-bedroom apartments) are nine (9) residential parking spaces, two (2) visitor parking</li> </ul> |



| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>spaces. In response, the development proposes a total of 11 car parking spaces. However, the parking spaces have not been labelled as visitor/residential parking spaces. The plan should be accompanied by labelled parking spaces. This will be conditioned.</p> <ul style="list-style-type: none"> <li>• The dimensions of the internal parking area have been included in the amended architectural plans.</li> <li>• The design of the accessible parking space should be in accordance with the Australian Standard AS2890.6:2009 Parking Facilities-Off Street Parking for People with Disability. Bollards shall be provided for the disabled shared area as shown in Figure 2.2 of the Australian Standard AS2890.6:2009 Parking Facilities-Off Street Parking for People with Disability. Disabled parking space on the Architectural Plans is provided with a clear width of 2.4m and located adjacent to a shared area of 2.4m. However, one of the accessible shared areas is shared with the carpark circulation roadway. This should be confirmed with the accessibility consultant prior to the issue of any Occupation Certificate.</li> <li>• It is noted that the height between the floor and the overhead obstructions on the driveway ramp is 2.2m. However, the vertical clearance assessment on the driveway ramp has not been included in the amended Traffic report. This assessment should be undertaken using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to demonstrate that there is adequate overhead clearance and that show any scraping and bottoming does not occur. This will be conditioned.</li> </ul> <p>The traffic team has no objection to the proposal in principle, and it can be supported subject to conditions.</p> <p><u>Original Comments (26 September 2023):</u></p> <p>The proposed development is for the demolition of the existing structures and construction of a 2-storey residential apartment building comprising 8 residential apartments (1 x two-bedroom, 7 x three-bedroom apartments) and a single-level basement carpark for 15 vehicles (14 residential and 2 visitor spaces). Vehicle access is provided at Angle Street.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>• Plans (Master Set), Project No. 22214 – designed by WOLSKI.COPPIN ARCHITECTURE, dated 05/05/2023,</li> </ul> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <ul style="list-style-type: none"> <li>• Transport and Parking Impact Assessment report – Version Final A, (Ref 22134), prepared by Transport Strategies, and</li> <li>• The <i>Statement of Environment Effects</i> prepared by BBF Town Planners dated May 2023.</li> </ul> <p>Parking requirement and design:</p> <ul style="list-style-type: none"> <li>• <i>Manly DCP</i> applies to the subject site. According to the DCP, in LEP Residential Zones, the parking rate is as follows: <ul style="list-style-type: none"> <li>o 1 resident parking space for each dwelling (irrespective of the number of bedrooms), plus</li> <li>o 0.2 resident parking spaces for each 2-bedroom dwelling, plus</li> <li>o 0.5 resident parking space for each 3 (or more) bedroom dwelling, plus</li> <li>o 0.25 visitor parking space for each dwelling (irrespective of the number of bedrooms).</li> <li>o The calculation of resident parking and visitor parking is to be individually rounded up to the next whole number.</li> </ul> </li> <li>• Application of the Manly DCP car parking rates to the proposed development would result in 12 residential parking spaces and 2 visitor parking spaces. Parking in excess of DCP is proposed (by 1 space), to which there is no objection in this location.</li> <li>• Accessible parking spaces (2 spaces) are proposed in excess of the requirements of the DCP (Section 3.6.3.2) and will improve the equitability of access to the premises for persons with a disability.</li> <li>• The Manly DCP 2013 requires the provision of one (1) bicycle stand for every three (3) car parking spaces. The proposed plans detail the provision of seven (7) bicycle parking spaces, satisfying Council's DCP requirements and catering for alternate travel mode options.</li> <li>• The basement carpark layout and car spaces appear to be compliant with Australian Standards AS2890.1:2004 Off-Street Parking requirements. However, parking aisle width and bicycle parking spaces have not been dimensioned and although scaled dimensions suggest they are adequate, this needs to be confirmed on dimensioned plans.</li> <li>• The design of the accessible parking spaces appears to be compliant with the Australian Standard AS2890.6:2009 Parking Facilities-Off Street Parking for People with Disability. A bollard shall be provided on the plans for the disabled shared area as</li> </ul> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>shown in Figure 2.2 of the Australian Standard AS2890.6:2009.</p> <ul style="list-style-type: none"> <li>• The driveway at the property line is measured to be approximately 3.8 metres wide, reducing to about 3.6 meters wide inside the property (on the ramp) and reducing further to 3 meters at the roller shutter door location. It will be conditioned that dimensioned plans be submitted for the parking area including the bicycle parking spaces dimensions, parking aisle width and access driveway width to confirm that parking bays and the driveway are appropriately sized.</li> <li>• The ramp and the carpark circulation roadway are single-width and there will be no capacity for the opposing vehicles to pass. To overcome this and to manage the carpark circulation roadway, it is noted that signal systems and convex mirrors are included in the plans.</li> <li>• It is noted that the proposed development will delete the existing 24 Angle Street driveway on Sydney Road. The redundant driveway will need to be removed and reinstated as turf and kerb and gutter.</li> <li>• In Appendix B of the traffic report, swept path plots for access to and from the development have been satisfactorily shown by B99 vehicles entering/exiting the site from Angle Street and then entering/exiting the carpark ramp.</li> <li>• The B85 vehicle turning plots accessing each car parking space have also shown in Appendix B of the traffic report. Some of these movements seem to require the driver to stop and turn on spot and some movements require the driver to undertake 4 and 5-point turns and while this is acceptable under Appendix B4.8 of AS/NZS 2890.1, it demonstrates that access is constrained and a degree of inconvenience for drivers will exist.</li> <li>• As reported in the Traffic report, Garbage collection for the proposed development is expected to be undertaken by Council's waste contractor with bins to be stored on-site and brought out to the kerbside on collection days.</li> <li>• The driveway and ramp gradients appear satisfactory however a vertical clearance assessment on the driveway ramp should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to demonstrate that there is adequate overhead clearance and that show any scraping and bottoming does not occur. This will be conditioned.</li> <li>• It is noted that a pedestrian sightline triangle of 2.0 metres by 2.5 metres, in accordance with AS2890.1:2004</li> </ul> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>are provided at the vehicular access for pedestrian visibility for exiting vehicles.</p> <ul style="list-style-type: none"> <li>A queuing assessment was included in the traffic report based on the anticipated peak traffic volumes for the development. The analysis confirmed that the 98th percentile inbound queue expected at the access was less than 1 vehicle based on an average service time of 60 seconds per vehicle. The calculated chance of a conflict/queue of the development was 0.14%. Therefore, the likelihood of vehicular conflict in the driveway is considered negligible.</li> </ul> <p>Traffic generation:</p> <ul style="list-style-type: none"> <li>The proposal will generate minimal traffic during peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance.</li> </ul>  |
| Waste Officer          | <p><b><i>Supported, subject to conditions of consent</i></b></p> <p><u>Updated Comments (19 January 2024):</u><br/>Supported - subject to conditions.</p> <p><u>Previous Comments (4 December 2023):</u><br/>Unsupported.<br/>Additional information required.<br/>Please provide the internal dimensions of the proposed bin room.<br/>Please note the following.</p> <ul style="list-style-type: none"> <li>- The internal width dimension of the bin room must be a minimum of 2.5 metres.</li> <li>- The internal ceiling clearance must be a minimum of 2.1 metres.</li> <li>- The foot print of each bin is 600mm wide and 750mm deep.</li> <li>- Please show location, width and swing direction of any doors and gates used by service staff to access the bin room (doors must open outwards and away from the direction of travel).</li> <li>- Doors and gates must remain unlocked on service days.</li> </ul> <p>Please note that the proposed location and street access for service staff of the bin room is acceptable to Council.</p> <p>Waste Management Assessment<br/>Unsupported.</p> <p>The proposed waste management facilities do not meet Council requirements.<br/>Specifically:<br/><u>Basement Bin Storage Room</u></p> |

| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <ul style="list-style-type: none"> <li>• This room is not large enough to contain the required number of bins. The room is required to hold 9 x 240 litre bins. Each bin is 600mm wide &amp; 750mm deep.</li> <li>• The minimum aisle width between the bins and the wall is 1 metre.</li> <li>• The access door to this room opens inwards obstructing access to some of the bins. The door must open outwards.</li> </ul> <p><u>Street Level Bin Holding Bay</u></p> <ul style="list-style-type: none"> <li>• Clarification is required on this area proposed for bin storage. Conflicting information has been provided. Drawing DA02 shows the bin enclosure. Drawings LS_1 &amp; PP1 shows the area to be vegetated with an access gate.</li> <li>• There is a stormwater grate shown in the middle of the proposed bin storage area on the stormwater drawings. (The proposed bin storage area is also shown to be a vegetated area on the stormwater drawings). This is unacceptable. All bin storage areas must drain to the sewer.</li> <li>• There is a stormwater grate located on the driveway adjacent to the proposed bin storage area. This grate must be banded to ensure any rainwater, washwater or other materials escaping from the bin enclosure cannot enter the stormwater system.</li> <li>• Clarification required on how the floor of the bin holding bay relates to the gradients of the driveway. Approximately half way along the proposed bin holding bay the driveway gradient changes from 1:20 to 1:5.7. The floor of the bin storage bay needs to be flat with no steps up or down.</li> <li>• Access to the bins requires service staff to walk upon the vehicular driveway. This is unacceptable. A separate path 1200mm wide is required between the bin holding bay and the front property boundary.</li> <li>• The holding will be required to accommodate 9 x 240 litre bins.</li> </ul> <p><u>Transfer of Bins Between Basement Binroom and Street Level Holding Bay</u></p> <p>The transfer of bins requires use of the vehicular driveway. This is unacceptable. There must be no conflict between vehicles and pedestrians ( in this instance wheeling bins) on the driveway.</p> <p><u>Additional Information</u></p> <p>Council will be providing a "wheel out/wheel in" service for the bins at this property. The owners/occupants must not place bins out on public land for collection.</p> |

| External Referral Body                                    | Comments   |
|---|--|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | 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 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 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 65 - Design Quality of Residential Apartment Development

*State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development* ('SEPP 65') was repealed on 14 December 2023 by the *State Environmental Planning Policy (Housing) 2021* ('Housing SEPP'). Schedule 7A Savings and Transitional Provisions of the Housing SEPP provides that the policy does not apply to a development application made, but not yet determined, on or before the commencement date and that the provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply.

The subject development application was lodged on 24 May 2023, being prior to the date of the new Housing SEPP and repeal of SEPP 65. As such, an assessment under SEPP 65 and the Apartment Design Guide has been carried out as follows.

Clause 4 of SEPP 65 stipulates that:

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

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

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

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

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

As previously outlined the proposed development is for the erection of a three storey residential flat 'housing' development plus basement car parking for the provisions of six self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

## **DESIGN REVIEW PANEL**

Northern Beaches Council has an appointed *Design and Sustainability Advisory Panel* (DSAP). Refer to the DSAP referral comments section within this report.

## **DESIGN QUALITY PRINCIPLES**

### **Principle 1: Context and Neighbourhood Character**

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

#### Comment:

The proposal is inconsistent with this principle. The prevailing character in this street block and sector is one of buildings with varying typologies, which are relatively narrow in width and presentation to the street and adjoining properties, thus creating a strong sense of detached-style forms with substantial physical-visual breaks, rather than wide and monolithic type buildings, as embodied in the proposed development.

### **Principle 2: Built Form and Scale**

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

Comment:

The proposal is inconsistent with this principle. The scale, bulk and mass of the proposed built form is not reflective of the existing character, which is predominantly buildings with smaller footprints, narrower widths and streetscape presentations, detached-style forms and generous physical breaks between buildings.

### **Principle 3: Density**

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

Comment:

The proposal is inconsistent with this principle. See discussion on the Clause 4.6 variation to the floor space ratio under MLEP 2013.

### **Principle 4: Sustainability**

*Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.*

Comment:

The proposal is consistent with this principle, as demonstrated in the following ADG assessment.

### **Principle 5: Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.*

Comment:

The proposal is consistent with this principle, as demonstrated in the following ADG assessment.

### **Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*



*Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.*

Comment:

The proposal is inconsistent with this principle. The proposal will have an adverse impact on the privacy and visual amenity of adjoining properties to the north and west.

**Principle 7: Safety**

*Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.*

Comment:

The proposal is consistent with this principle, as demonstrated in the following ADG assessment.

**Principle 8: Housing Diversity and Social Interaction**

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.*

Comment:

The proposal is consistent with this principle, as demonstrated in the following ADG assessment.

**Principle 9: Aesthetics**

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.*

*The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

Comment:

The proposal is inconsistent with this principle. As detailed throughout this report, the bulk and scale and mass of the building when viewed from the street (south) and rear (north) is unsatisfactory, requiring greater extents of physical breaks, articulation and modulation.

**APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the Apartment Design Guide (ADG) as required by SEPP 65.

| Development Control                     | Criteria / Guideline  | Comments   |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
|---|---|--|--------------------|---------------------------------|-----------------------------|---|----|---|----|--|----------------------------------|----|--|---|
| <b>Part 3 Siting the Development</b>    |   |  |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| <b>Site Analysis</b>                    | Does the development relate well to its context and is it sited appropriately?  | <b>Inconsistent</b><br>The proposed development does not suitably address the subject site and its context.  |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| <b>Orientation</b>                      | Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?   | <b>Inconsistent</b><br>The proposed development is inconsistent with developments in the streetscape and does not allow for adequate solar access to adjacent sites.   |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| <b>Public Domain Interface</b>          | Does the development transition well between the private and public domain without compromising safety and security?<br><br>Is the amenity of the public domain retained and enhanced?  | <b>Inconsistent</b><br>The proposed development has a front (southern) elevation that is excessively wide and is not reflective of the prevailing public domain.   |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| <b>Communal and Public Open Space</b>   | Appropriate communal open space is to be provided as follows:<br><br><ol style="list-style-type: none"> <li>Communal open space has a minimum area equal to 25% of the site</li> <li>Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>  | <b>Consistent</b><br>The proposed development provides 243.6m <sup>2</sup> of communal open space, equating to 29.2% of the site. The principal usable part of the communal open space (being the portion to the north at the rear) achieves compliant solar access. |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| <b>Deep Soil Zones</b>                  | Deep soil zones are to meet the following minimum requirements:<br><br><table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td>7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td><td></td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td><td></td></tr> </tbody> </table> | Site area  | Minimum dimensions | Deep soil zone (% of site area) | Less than 650m <sup>2</sup> | - | 7% | 650m <sup>2</sup> – 1,500m <sup>2</sup> | 3m |  | Greater than 1,500m <sup>2</sup> | 6m |  | <b>Consistent</b><br>The proposed development provides 168.3m <sup>2</sup> of deep soil area with a minimum dimension of 3m, equating to 20.2% of the site. |
| Site area                               | Minimum dimensions  | Deep soil zone (% of site area)  |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| Less than 650m <sup>2</sup>             | -   | 7%   |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| 650m <sup>2</sup> – 1,500m <sup>2</sup> | 3m  |  |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |
| Greater than 1,500m <sup>2</sup>        | 6m  |  |                    |                                 |                             |   |    |   |    |  |                                  |    |  |   |

|   | <table> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td><td></td></tr> </table>   | Greater than 1,500m <sup>2</sup> with significant existing tree cover   | 6m                            |                     |                       |    |    |                         |    |      |                       |     |    |   |
|---|--|---|-------------------------------|---------------------|-----------------------|----|----|-------------------------|----|------|-----------------------|-----|----|---|
| Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m   |   |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |
| <b>Visual Privacy</b>   | <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> | Building height   | Habitable rooms and balconies | Non-habitable rooms | Up to 12m (4 storeys) | 6m | 3m | Up to 25m (5-8 storeys) | 9m | 4.5m | Over 25m (9+ storeys) | 12m | 6m | <p><b>Inconsistent</b></p> <p>The proposed development does not achieve the minimum 6.0m setback prescribed by this objective to the eastern and western side boundaries. The proposed development does not provide adequate building separation to 72A and 72B West Street to the west, and 20 Angle Street to the east. This is included as a recommended reason for refusal.</p> |
| Building height   | Habitable rooms and balconies  | Non-habitable rooms   |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |
| Up to 12m (4 storeys)   | 6m   | 3m  |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |
| Up to 25m (5-8 storeys)   | 9m   | 4.5m  |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |
| Over 25m (9+ storeys)   | 12m  | 6m  |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |
| <b>Pedestrian Access and entries</b>                                  | <p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>   | <p><b>Consistent</b></p> <p>The proposed development provides clear pedestrian entry via Angle Street .</p>   |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |
| <b>Vehicle Access</b>   | <p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>   | <p><b>Consistent</b></p> <p>The proposal provides clear vehicular access, separate from the pedestrian entry. Vehicular and pedestrian access points are suitably located and designed.</p>                       |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |
| <b>Bicycle and Car Parking</b>  | <p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4</li> </ul>  | <p><b>Not Applicable</b></p> <p>This clause is not applicable, as the subject site is not located within 80 metres of a railway station or light rail stop in the Sydney Metropolitan Area and is not on land</p> |                               |                     |                       |    |    |                         |    |      |                       |     |    |   |

|  |   |  |
|--|---|--|
|  | <p>Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p> | <p>zoned (or within 400 metres of land zoned) E2 or MU1 (being equivalent of B3 Commercial Core, B4 Mixed Use).</p> <p>In this case, the parking requirement under the MDCP 2013 applies and is complied with, as follows:</p> <p><u>Residential:</u><br/> 1 space per unit = 6 spaces<br/> 0.2 spaces per 2-bedroom unit: <math>1 \times 0.2 = 0.2</math> spaces<br/> 0.5 spaces per 3-bedroom unit: <math>5 \times 0.5 = 2.5</math> spaces<br/> Total residential spaces required = 9<br/> Total residential spaces provided = 9</p> <p><u>Visitor:</u><br/> 0.25 spaces per unit: <math>6 \times 0.25 = 1.5</math> spaces (2 spaces)<br/> Total visitor spaces provided = 2</p> |
|--|---|--|

#### Part 4 Designing the Building

##### Amenity

|                                  |  |   |
|----------------------------------|--|---|
| <b>Solar and Daylight Access</b> | <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul> | <p><b>Consistent</b><br/> All six apartments receive a minimum of 2 hours of direct sunlight between 9am and 3pm at midwinter</p> |
|                                  | <ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>   | <p><b>Consistent</b><br/> All six apartments receive some direct sunlight between 9am and 3pm at midwinter.</p>                   |
| <b>Natural Ventilation</b>       | <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p>   | <p><b>Consistent</b><br/> All apartments are cross-ventilated.</p>  |

|                                  | <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li></ul>   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
|----------------------------------|--|------------------------|-----------------------|-----------------|------------------|---------------|------------------|-------------------------|--|--------------|---|--|--|--|
|                                  | <ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>   | <b>Not Applicable</b>  |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| <b>Ceiling Heights</b>           | <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor<br/><br/>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> | Minimum ceiling height |                       | Habitable rooms | 2.7m             | Non-habitable | 2.4m             | For 2 storey apartments | 2.7m for main living area floor<br><br>2.4m for second floor, where its area does not exceed 50% of the apartment area | Attic spaces | 1.8m at edge of room with a 30 degree minimum ceiling slope | If located in mixed used areas   | 3.3m for ground and first floor to promote future flexibility of use | <b>Consistent</b><br>The proposed development includes floor to ceiling heights of minimum 2.9m at each residential level. |
| Minimum ceiling height           |  |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| Habitable rooms                  | 2.7m   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| Non-habitable                    | 2.4m   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| For 2 storey apartments          | 2.7m for main living area floor<br><br>2.4m for second floor, where its area does not exceed 50% of the apartment area   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| Attic spaces                     | 1.8m at edge of room with a 30 degree minimum ceiling slope  |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| If located in mixed used areas   | 3.3m for ground and first floor to promote future flexibility of use   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| <b>Apartment Size and Layout</b> | <p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms</p>   | Apartment type         | Minimum internal area | Studio          | 35m <sup>2</sup> | 1 bedroom     | 50m <sup>2</sup> | 2 bedroom               | 70m <sup>2</sup>   | 3 bedroom    | 90m <sup>2</sup>  | <b>Consistent</b><br>All units within the development are of compliant size. |  |  |
| Apartment type                   | Minimum internal area  |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| Studio                           | 35m <sup>2</sup>   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| 1 bedroom                        | 50m <sup>2</sup>   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| 2 bedroom                        | 70m <sup>2</sup>   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |
| 3 bedroom                        | 90m <sup>2</sup>   |                        |                       |                 |                  |               |                  |                         |  |              |   |  |  |  |

|                                  | increase the minimum internal area by 12m <sup>2</sup> each.   |  |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|----------------------------------|--|--|---------------|---------------|-------------------|-----------------|---|----------------------|-----------------|----|----------------------|------------------|----|-----------------------|------------------|------|--|
|                                  | Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.   | <b>Consistent</b><br>Each habitable room has access to a window of sufficient dimensions.  |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | Habitable room depths are limited to a maximum of 2.5 x the ceiling height.  | <b>Consistent</b><br>Habitable rooms include depths of less than 6.8m, except where in relation to open plan living, dining and kitchen areas. |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.   | <b>Consistent</b><br>The maximum habitable room depth for an open plan layout is 8m.   |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).   | <b>Consistent</b><br>All bedrooms achieve minimum areas.   |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.   | <b>Consistent</b><br>All bedrooms achieve minimum dimensions.  |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul>   | <b>Consistent</b><br>All living/dining rooms achieve the minimum dimensions.   |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts  | <b>Consistent</b><br>All units achieve the minimum dimensions.   |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
| Private Open Space and Balconies | All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> | Dwelling Type  | Minimum Area  | Minimum Depth | Studio apartments | 4m <sup>2</sup> | - | 1 bedroom apartments | 8m <sup>2</sup> | 2m | 2 bedroom apartments | 10m <sup>2</sup> | 2m | 3+ bedroom apartments | 12m <sup>2</sup> | 2.4m | <b>Consistent</b><br>All units achieve the minimum balcony areas and dimensions. |
|                                  | Dwelling Type  | Minimum Area   | Minimum Depth |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | Studio apartments  | 4m <sup>2</sup>  | -             |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
| 1 bedroom apartments             | 8m <sup>2</sup>  | 2m   |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
| 2 bedroom apartments             | 10m <sup>2</sup>   | 2m   |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
| 3+ bedroom apartments            | 12m <sup>2</sup>   | 2.4m   |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | The minimum balcony depth to be counted as contributing to the balcony area is 1m  |  |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |
|                                  | For apartments at ground level or on a podium or similar structure, a private open space is provided   | <b>Consistent</b><br>All ground floor units achieve the minimum  |               |               |                   |                 |   |                      |                 |    |                      |                  |    |                       |                  |      |  |

|   | instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.   | balcony areas and dimensions.   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
|---|--|---|---------------------|-------------------|-----------------|----------------------|-----------------|----------------------|-----------------|-----------------------|------------------|--|
| Common Circulation and Spaces   | The maximum number of apartments off a circulation core on a single level is eight.  | <b>Consistent</b><br>The proposed development includes one circulation core servicing three units on each level.                        |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
|   | For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.  | <b>Not Applicable</b>   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| Storage   | In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table> | Dwelling Type   | Storage size volume | Studio apartments | 4m <sup>2</sup> | 1 bedroom apartments | 6m <sup>2</sup> | 2 bedroom apartments | 8m <sup>2</sup> | 3+ bedroom apartments | 10m <sup>2</sup> | <b>Consistent</b><br>The proposed development demonstrates adequate storage for each unit. |
|   | Dwelling Type  | Storage size volume   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| Studio apartments   | 4m <sup>2</sup>  |   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| 1 bedroom apartments  | 6m <sup>2</sup>  |   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| 2 bedroom apartments  | 8m <sup>2</sup>  |   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| 3+ bedroom apartments   | 10m <sup>2</sup>   |   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| At least 50% of the required storage is to be located within the apartment. |  |   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| Acoustic Privacy  | Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.  | <b>Consistent</b><br>The proposed development is suitably designed with respect to the relationship between noise sources and bedrooms. |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| Noise and Pollution   | Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.  | <b>Consistent</b><br>The proposed development is laid out and designed to mitigate noise disruption from external sources.              |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| Configuration   |  |   |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| Apartment Mix   | Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.   | <b>Consistent</b><br>The proposed development includes one 2-bedroom unit and five 3-bedroom units.                                     |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |
| Ground Floor Apartments   | Do the ground floor apartments deliver amenity and safety for their residents?   | <b>Consistent</b><br>The three ground floor units are designed with suitable amenity and security.                                      |                     |                   |                 |                      |                 |                      |                 |                       |                  |  |

| <b>Facades</b>                | Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.  | <b>Inconsistent</b><br>The building facade to the street and rear is excessive in its unbroken width, which is greater than the predominant character and is inconsistent with the existing character of the streetscape. |            |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |                           |                 |       |                           |  |
|-------------------------------|---|---|------------|---------------------------|------------|-----------|-------------|---|-------------------|---------|-------------------------|--------------|---|------------------|---------|-----------------------|-------------|---------------------------|-----------------|-------|---------------------------|--|
| <b>Roof Design</b>            | Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.<br>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.   | <b>Consistent</b><br>The roof contains centralised plant and solar panels.  |            |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |                           |                 |       |                           |  |
| <b>Landscape Design</b>       | Was a landscape plan submitted and does it respond well to the existing site conditions and context.  | <b>Consistent</b><br>The supporting landscape plan details suitable landscaping and vegetation that is consistent with the landscape character of existing and approved developments in the vicinity.                     |            |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |                           |                 |       |                           |  |
| <b>Planting on Structures</b> | <div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr></table> | Plant type  | Definition | Soil Volume               | Soil Depth | Soil Area | Large Trees | 12-18m high, up to 16m crown spread at maturity | 150m <sup>3</sup> | 1,200mm | 10m x 10m or equivalent | Medium Trees | 8-12m high, up to 8m crown spread at maturity | 35m <sup>3</sup> | 1,000mm | 6m x 6m or equivalent | Small trees | 6-8m high, up to 4m crown | 9m <sup>3</sup> | 800mm | 3.5m x 3.5m or equivalent | <b>Inconsistent</b><br>The proposed elevated terraces and balconies at the rear of the building are inadequate in that they do not incorporate planters to address privacy and bulk and scale. |
| Plant type                    | Definition  | Soil Volume   | Soil Depth | Soil Area                 |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |                           |                 |       |                           |  |
| Large Trees                   | 12-18m high, up to 16m crown spread at maturity   | 150m <sup>3</sup>   | 1,200mm    | 10m x 10m or equivalent   |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |                           |                 |       |                           |  |
| Medium Trees                  | 8-12m high, up to 8m crown spread at maturity   | 35m <sup>3</sup>  | 1,000mm    | 6m x 6m or equivalent     |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |                           |                 |       |                           |  |
| Small trees                   | 6-8m high, up to 4m crown   | 9m <sup>3</sup>   | 800mm      | 3.5m x 3.5m or equivalent |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |                           |                 |       |                           |  |



|  |  |  |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
|--|--|--|--------------------|--|--|--|--------|--|--|-----------|--|--------------|--|--|-----------|--|------|--|--|-------|--|--|
|  | <table><tr><td></td><td>spread at maturity</td><td></td><td></td><td></td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table> |  | spread at maturity |  |  |  | Shrubs |  |  | 500-600mm |  | Ground Cover |  |  | 300-450mm |  | Turf |  |  | 200mm |  |  |
|  | spread at maturity   |  |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| Shrubs                                   |  |  | 500-600mm          |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| Ground Cover                             |  |  | 300-450mm          |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| Turf                                     |  |  | 200mm              |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Universal Design</b>                  | Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features  | <b>Consistent</b><br>The proposed development includes two adaptable units (G01 and G04), equating to 33.33% of the six units. |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Adaptable Reuse</b>                   | New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.  | <b>Not Applicable</b>  |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Mixed Use</b>                         | Can the development be accessed through public transport and does it positively contribute to the public domain?<br><br>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.  | <b>Not Applicable</b>  |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Awnings and Signage</b>               | Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.<br><br>Signage must respond to the existing streetscape character and context.                | <b>Not Applicable</b>  |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Performance</b>                       |  |  |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Energy Efficiency</b>                 | Have the requirements in the BASIX certificate been shown in the submitted plans?  | <b>Consistent</b><br>The proposed development is supported by a suitable BASIX Certificate.                                    |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Water Management and Conservation</b> | Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?   | <b>Consistent</b><br>The proposed development is supported by suitable water management plans.                                 |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |
| <b>Waste Management</b>                  | Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?   | <b>Consistent</b><br>The proposed development is supported by a suitable waste management plan and bin storage area.           |                    |  |  |  |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |  |

|                             |   |   |
|-----------------------------|---|---|
| <b>Building Maintenance</b> | Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building? | <b>Consistent</b><br>The proposed development is designed in such a manner that will ensure the longevity and sustainability of the building. |
|-----------------------------|---|---|

## STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

*(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:*

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

**Note.** *The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.*

### Comment:

The parking rate specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments does not apply in this case, as the site is not within 800m of a railway station or light rail stop and is not zoned or within 400m of land zoned B3 Commercial Core, B4 Mixed Use. The parking rate within the MDCP 2013 has been applied. The proposed internal areas for each apartment exceed the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide. The proposed ceiling heights exceed the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. The application is not being refused in relation to these matters.

*(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:*

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

*(3) To remove doubt:*

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.*

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

The above detailed assessment demonstrates that inadequate regard has been given to a number of design quality principles and the objectives of the Apartment Design Guide.

**CONCLUSION:**

The proposed development is inconsistent with a number of requirements of SEPP 65 and the ADG. This is included as a reason for refusal of the application.

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

A BASIX certificate has been submitted with the application (see Certificate No. 1368815M\_02 dated 2 November 2023). The BASIX Certificate indicates that the development will achieve the following:

| Commitment      | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water           | 40              | 47       |
| Thermal Comfort | Pass            | Pass     |
| Energy          | 50              | 58       |

A condition can be applied requiring compliance with the commitments indicated in the BASIX Certificate, if the application were to be approved.

**SEPP (Transport and Infrastructure) 2021**

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which can be applied, if the application were to be approved.

**SEPP (Resilience and Hazards) 2021**

## **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## **Manly Local Environmental Plan 2013**

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

## **Principal Development Standards**

| <b>Standard</b>     | <b>Requirement</b>           | <b>Proposed</b>               | <b>% Variation</b> | <b>Complies</b> |
|---------------------|------------------------------|-------------------------------|--------------------|-----------------|
| Height of Buildings | 8.5m                         | 8.98m                         | 5.65%              | <b>No</b>       |
| Floor Space Ratio   | 0.5:1<br>417.3m <sup>2</sup> | 0.81:1<br>679.6m <sup>2</sup> | 62.9%              | <b>No</b>       |

## **Compliance Assessment**

| <b>Clause</b>                                      | <b>Compliance with Requirements</b> |
|--|-------------------------------------|
| 2.7 Demolition requires development consent        | Yes                                 |
| 4.3 Height of buildings                            | No                                  |
| 4.4 Floor space ratio                              | No                                  |
| 4.5 Calculation of floor space ratio and site area | Yes                                 |
| 4.6 Exceptions to development standards            | No                                  |
| 6.2 Earthworks                                     | Yes                                 |
| 6.4 Stormwater management                          | Yes                                 |
| 6.8 Landslide risk                                 | Yes                                 |
| 6.12 Essential services                            | Yes                                 |

## **Detailed Assessment**

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

#### **1. HEIGHT OF BUILDINGS**

### **Description of Non-compliance**

|                      |                     |
|----------------------|---------------------|
| Development standard | Height of Buildings |
| Requirement          | 8.5m                |

|                                     |       |
|-------------------------------------|-------|
| Proposed                            | 8.98m |
| Percentage variation to requirement | 5.65% |

### **Assessment of Request to Vary a Development Standard**

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

### **Clause 4.6 Exceptions to Development Standards**

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

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

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

#### **Comment:**

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

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

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*  
*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

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

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

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

### **Clause 4.6 (4)(a)(i) (Justification) Assessment**

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved. Therefore, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The Applicant's written request argues, in part:

*"Ground 1 - Contextually responsive building design*

*Despite non-compliance with the 8.5m building height development standard, the proposed development is consistent and compatible with the height of both immediately adjoining buildings at 20*

*Angle Street and 72B West Street, as demonstrated at Figure 3, 4 and 5. Furthermore, the proposed development results in a reduction to the overall maximum height of a building at the site compared to that which currently exists, as demonstrated by Figures 6 and 7.*

*Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by other existing development within the visual catchment of the site, consistent with Objective 1.3(c) of the EP&A Act.*

*The proposed development has been sensitively designed to respond to both the location of the site and also the form and massing of adjoining development. The building is of high design quality with the variation facilitating a height that provides for contextual built form compatibility, consistent with Objective 1.3(g) of the Act.*

#### *Ground 2 – Existing Excavation*

*The proposed height breach is a direct consequence of existing excavation at the rear of the existing dwelling at 22 Angle Street. As demonstrated on the Height Plane Diagram at Figure 8, the proposed development is maintained below the 8.5m height plane when measured to existing ground levels along the perimeter of the building and when excluding the area of existing excavation.*

*Consistent with the findings of Commissioner O'Neill in Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.*

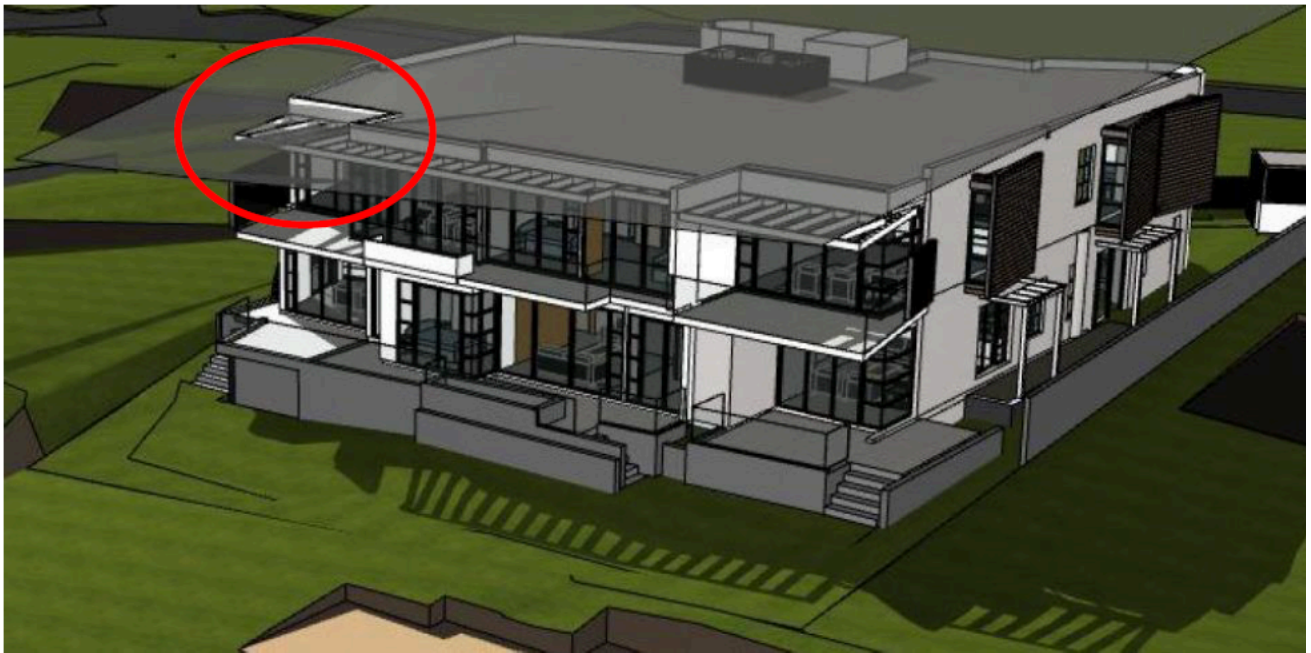
#### *Ground 3 – Minor nature of breach & lack of impact*

*The extent of the breach is 480mm or 5.6% of the maximum height standard and is limited to the north-eastern corner of the upper floor. The extent of the proposed non-compliance is appropriately described both quantitatively and qualitatively as minor.*

*The non-compliant elements of the proposed development do not result in any unreasonable impacts upon the amenity of adjoining sites or the wider public domain.*

*Consistent with the findings of Commissioner Walsh in Eather v Randwick City Council [2021] NSWLEC 1075 and Commissioner Grey in Petrovic v Randwick City Council [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.*

*Overall, there are sufficient environmental planning grounds to justify contravening the development standard."*



**Figure 1 - Applicants depiction of Height Non-compliance**

#### **Assessment Officer's Comments**

The above justification for the breach to the height of buildings development standard is not agreed with.

Overall, the proposal does not comply with a number of built form controls, development standards, and is contrary to the existing and desired future character of the area, exhibiting excessive size, mass, density, bulk and scale and is not an appropriate and suitable form of development on the site and in the context and setting.

On the basis that the proposal is assessed as being inconsistent with the objectives of the height of buildings development standard as discussed below, and is inconsistent with the Objects of the EPA Act, 1979 [namely (c) and (g)], the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard for building height as required by Clause 4.6 (3)(b).

Council is not satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment**

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

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

#### **Comment:**

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the height of buildings development standard and the



objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

## **Objectives of Development Standard**

The objectives of Clause 4.3 Height of Buildings are addressed as follows:

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

Comment:

The proposal incorporates a flat roof design, which assists in reducing overall bulk, scale and visual dominance. The proposal appears from the frontage as one and a half storeys in height, as the site slopes away from the street. The proposal results in a reasonable increase in height on the eastern lot of the subject site (22 Angle Street), from one to two storeys, plus basement. On the western lot of the subject site (24 Angle Street), the proposal results in a reduction in height, as shown above. The resultant built form is consistent with surrounding developments, and is responsive to the topography of the site. As above, the proposed development would be considered compliant with the building height development standard, when calculated from natural ground level, rather than excavated ground level.

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

Comment:

The proposed development is not of a suitable bulk and scale as discussed in the following section addressing the variation to the FSR development standard.

*(c) to minimise disruption to the following—*

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

Comment:

The proposed development is designed and sited so as not to unreasonably disrupt views to or from public or private spaces, as detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP.

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

Comment:

The proposed development is not acceptable with respect to solar access for the reasons detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP.

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

Comment:

Not applicable.

## **Objectives of the Zone**

*To provide for the housing needs of the community.*

Comment:

The proposed development is consistent with this objective as it provides additional housing to meet the needs of the community.

*To provide for a variety of housing types and densities.*

Comment:

The proposed development is consistent with this objective as it provides for a medium density outcome for the site that assists with providing a variety of housing types and densities

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

Comment:

Not applicable.

**Conclusion:**

The submitted Clause 4.6 variation request in relation to building height is considered to be well founded having regard to the circumstances of the development.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment**

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the proposal with the height of buildings standard and the Objects of the EPA Act, 1979, the concurrence of the Secretary for the variation to the height of buildings development standard **cannot** be assumed by the Local Planning Panel.

**2. FLOOR SPACE RATIO**

**Description of Non-compliance**

| Development standard                | Floor Space Ratio             |
|-------------------------------------|-------------------------------|
| Requirement                         | 0.5:1 (417.3m <sup>2</sup> )  |
| Proposed                            | 0.81:1 (679.6m <sup>2</sup> ) |
| Percentage variation to requirement | 62.9%                         |

**Assessment of Request to Vary a Development Standard**

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

**Clause 4.6 Exceptions to Development Standards**

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

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

*excluded from the operation of this clause.*

Comment:

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

**Clause 4.6 (4)(a)(i) (Justification) Assessment**

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

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

Comment:

The Applicant's written request has **not** adequately demonstrated that the objectives of the floor space ratio development standard are achieved. As such, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.

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

Comment:

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

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd*

*v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’*

Section 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The Applicant's written request argues, in part:

*"The proposed residential flat building is situated across two lots on the low side of Angle Street. By proposing the development across two lots, the proposal gains the benefit of the floor space through the middle of the site, within the existing setback area that would otherwise be required if the lots were to be developed independently.*

*Consistent with the findings of Commissioner Tuor in the matter of Moskovich v Waverly Council (2016) NSWLEC 1015, the site’s sloping topography, size and its context which includes existing buildings of similar height and bulk than the proposal as well as the amalgamation of two allotments result in a large amount of the floor area being within a setback area between buildings that would be required if the site remained as two allotments, and developed separately.*

*Accordingly, although there is an exceedance of the numerical FSR control a large amount of this floor area is located where it does not add to bulk or result in impacts greater than that from a complying development located on each of the subject sites. The floor area is contained within a bulk and form of development which complies with the height control (other than the north-eastern corner of roof form located over existing excavation) and is appropriate to its context with acceptable impacts. The bulk and scale of the proposal as reflected by FSR is compatible with the bulk and scale established by development within the sites visual catchment. The ability to achieve such outcome across the steeply sloping consolidated allotment is as an environmental planning ground.*

*The apparent size of the proposed development will be compatible with the existing streetscape of Angle Street and Sydney Road which features a number of buildings of significantly greater bulk and scale. The building is of exceptional design quality with the variation facilitating a floor space that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.*

*Approval of the FSR variation will facilitate the development of the site in the manner sought which includes a mix of 2 and 3 bedroom single floor plate apartments representing the variety of housing types and densities sought by the objectives of the R1 General Residential zone.*

*Overall, there are sufficient environmental planning grounds to justify contravening the development standard."*

### **Assessment Officer's Comment**

The above justification is not concurred with. The proposed development is found to be of excessive size, bulk and scale, which is attributable to the non-compliant front setbacks, side setbacks and building separations and is symptomatic of an excessive FSR and an overdevelopment of the site.

Specifically, the applicants main argument is in relation to the "filling-in" of the middle portion of the consolidated site, being those areas which would normally be side setback/building separation areas under the scenario where each of the two lots was developed separately. However, as there are issues arising from the "filling-in" of these areas of the site, to the extent proposed under this application, in relation to bulk and scale and character, the width of building/elevations and impacts on visual amenity and solar access, and non-complaint front and rear setbacks, the planning outcome on merit is not satisfactory, and the argument fails.

Having regard to the above, the Applicant's written request has **not** adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard for floor space ratio as required by Clause 4.6(3)(b).

Therefore, Council is **not** satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment**

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

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

#### **Comment:**

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the floor space ratio development standard and the objectives of the R1 General Residential zone.

An assessment against these objectives is provided below.

### **Objectives of Development Standard**

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

#### **Comment:**

The proposed development has an excessive bulk and scale and is inconsistent with the existing and desired streetscape character in Angle Street and Sydney Road. In this regard, the streetscape is predominantly one characterised by buildings with relatively narrow width and presentation to the street. Specifically, buildings within this street block and other street blocks where a 0.5:1 FSR applies,

have building widths of 12m to 15m. The adjoining building to the west (72B West Street) comprises two buildings, each having a width of 12-13m wide to Sydney Road and West Street. The adjoining RFB comprises two buildings to the east (20 Angle Street), the street front building having a width of 12m to Angle Street. The RFB at 14-18 Angle Street comprises 5 buildings, with the building modules fronting Angle Street having a width of 18m. The proposed development has a width of 25m as it presents to Angle Street/Sydney Road, which is excessive and should incorporate a substantial physical break in the built form, which would result in a reduced FSR.

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

Comment:

The proposed development does not obscure important landscape and townscape features.

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

Comment:

The proposed development does not provide for a suitable visual relationship to the existing character and landscape of the area. This is attributed to its inadequate front setbacks, side setbacks and building separations to adjoining buildings.

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

Comment:

The proposed development will adversely impact upon adjoining land (visual amenity and solar access), the streetscape and character of the area.

*(e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

Not applicable.

## **Objectives of the Zone**

*To provide for the housing needs of the community.*

Comment:

The proposed development is consistent with this objective as it provides additional housing to meet the needs of the community.

*To provide for a variety of housing types and densities.*

Comment:

The proposed development is consistent with this objective as it provides for a medium density outcome for the site that assists with providing a variety of housing types and densities

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

Comment:

Not applicable.

## **Conclusion**

The submitted Clause 4.6 variation request is **not** considered to be well founded having regard to the circumstances of the development. It is therefore considered inappropriate to apply flexibility in the application of the floor space ratio development standard. The proposal is not found to meet the

Objects contained in Section 1.3 of the Environmental Planning and Assessment Act 1979. Consequently, the development is not considered to be in the public interest.

#### **Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment**

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the proposal with the objectives of the floor space ratio development standard and the objects of the EPA Act, 1979, the concurrence of the Director-General for the variation to the standard **cannot** be assumed.

#### **6.2 Earthworks**

The objectives of Clause 6.2 Earthworks require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (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. A condition can be applied requiring any fill to be of a suitable quality, if the application were to be approved.

- (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. Conditions can be applied to limit impacts during excavation/construction, if the application were to be approved

- (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. A condition can be applied requiring any fill to be of a suitable quality, if the application were to be approved.

*(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:

Conditions can be applied to minimise the impacts of the development, if the application were to be approved.

#### **6.4 Stormwater management**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

*(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 detention 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 objectives of this clause are to ensure that development on land susceptible to landslide—

*(a) matches the underlying geotechnical conditions of the land, and*

*(b) is restricted on unsuitable land, and*

*(c) does not endanger life or property.*



In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by architectural plans, stormwater plans, and a geotechnical report, which demonstrate the proposal is acceptable with respect to the above matters. The proposed development has also been reviewed by Council's Development Engineer, who has raised no objection to the proposal, subject to conditions of consent, which can be applied, if the application were to be approved.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the 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—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Given the above, the proposed development is demonstrated to be designed, sited and managed to avoid landslide risk and significant adverse impact on the subject site and surrounding land.

## **6.12 Essential services**

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

## **Manly Development Control Plan**

### Built Form Controls

| <b>Built Form Controls - Site Area:<br/>834.6m<sup>2</sup></b>                                | <b>Requirement</b>  | <b>Proposed</b>  | <b>%<br/>Variation</b> | <b>Complies</b>        |
|---|---|--|------------------------|------------------------|
| 4.1.1.1 Residential Density and Dwelling Size   | Density: 1 dwelling per 300m <sup>2</sup> site  | 6 dwellings on 834.6m <sup>2</sup> site (1 per 140.6m <sup>2</sup> ) | 53.1%                  | <b>No</b>              |
|   | Dwelling Size:<br>2-bed: 75m <sup>2</sup><br>3-bed: 95m <sup>2</sup>  | All compliant  | -                      | Yes                    |
| 4.1.2.1 Wall Height (based on 1:15 gradient)  | 6.9m  | E: 7.7m  | 11.6%                  | <b>No</b>              |
|   |   | W: 6.8m  | -                      | Yes                    |
| 4.1.2.2 Number of Storeys   | 2 Storeys   | 3 storeys  | 50%                    | <b>No</b>              |
| 4.1.2.3 Roof Height   | Parapet Height: 600mm   | 300mm  | -                      | Yes                    |
| 4.1.4.1 Street Front Setbacks   | 6.0m  | Basement: 3.5m   | 41.7%                  | <b>No</b>              |
|   |   | Ground:<br>Bin Room:<br>600mm<br>Building: 3.4m                      | 90%<br>43.3%           | <b>No</b><br><b>No</b> |
|   |   | First: 3.1m  | 48.3%                  | <b>No</b>              |
| 4.1.4.2 Side Setbacks (based on wall height)  | East: 2.56m   | 2.8m*  | -                      | Yes                    |
|   | West: 2.26m   | 3.0m*  | -                      | Yes                    |
|   | Windows: 3.0m   | E: 3.0m  | -                      | Yes                    |
|   |   | W: 3.0m  | -                      | Yes                    |
| 4.1.4.4 Rear Setbacks   | 8.0m  | Basement: 6.0m   | 25%                    | <b>No</b>              |
|   |   | Ground: 4.7m   | 41.25%                 | <b>No</b>              |
|   |   | First: 6.0m  | 25%                    | <b>No</b>              |
| 4.1.5.1 Minimum Residential Total Open Space Requirements<br>Residential Open Space Area: OS3 | Total Open Space:<br>55% of Site Area<br>(459.03m <sup>2</sup> )  | 56.4% (470.7m <sup>2</sup> )   | -                      | Yes                    |
|   | Above Ground:<br>40% of TOS<br>(188.3m <sup>2</sup> )   | 22.9% (107.9m <sup>2</sup> )   | -                      | Yes                    |
| 4.1.5.2 Landscaped Area   | Landscaped Area:<br>35% of TOS<br>(164.75m <sup>2</sup> )   | 62.55%<br>(294.4m <sup>2</sup> )                                     | -                      | Yes                    |
|   | 4 Native Trees  | >4   | -                      | Yes                    |
| 4.1.5.3 Private Open Space  | 12m <sup>2</sup> per dwelling   | >18m <sup>2</sup>  | -                      | Yes                    |
| Schedule 3 Parking and Access   | Residential:<br>1 space per dwelling,<br>plus<br>0.2 spaces per 2-bed<br>unit, plus<br>0.5 spaces per 3-bed | 9 spaces   | -                      | Yes                    |

|  |   |          |   |     |
|--|---|----------|---|-----|
|  | unit<br>(9 spaces)                                  |          |   |     |
|  | Visitors: 0.25 spaces<br>per dwelling<br>(2 spaces) | 2 spaces | - | Yes |

\* The eastern and western side walls include 'pop-out' sections that have lesser setbacks than those detailed above, though these elements are compliant with their respective side setbacks based on their building heights. The eastern balcony to Unit 103 is a maximum of 5.4m in height, which would require a setback of 1.8m, but is only 1.2m from the eastern side setback. This is addressed as compliant in the section of this report relating to Clause 4.1.4 of the MDCP, given the allowance for certain encroachments built into the control.

#### Compliance Assessment

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 1.7 Aims and Objectives of this Plan   | No                           | No                          |
| 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   | Yes                          | Yes                         |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes                          | Yes                         |
| 3.5.1 Solar Access   | No                           | No                          |
| 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 Residential Development Controls   | Yes                          | Yes                         |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision  | No                           | No                          |
| 4.1.1.1 Residential Density and Dwelling Size  | No                           | Yes                         |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)                     | No                           | Yes                         |
| 4.1.3 Floor Space Ratio (FSR)  | No                           | No                          |
| 4.1.4 Setbacks (front, side and rear) and Building Separation  | No                           | No                          |

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 4.1.5 Open Space and Landscaping   | Yes                          | Yes                         |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | Yes                          | 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

#### 1.7 Aims and Objectives of this Plan

The general Aims of the MDCP are addressed as follows:

- a) ***Ensure that development contributes to the quality of the natural and built environment***  
Comment: The proposal is inconsistent with this aim. In this regard, the excessive size of the proposed development will not positively contribute to the built environment in this area.
- b) ***Encourage development that contributes to the quality of our streetscapes and the character of the area***  
Comment: The proposal is inconsistent with this aim. In this regard, the proposed development is not in character with the area and will not positively contribute to the streetscape.
- c) ***Ensure that development is economically, socially and environmentally sustainable and that the principles of ecologically sustainable development to be taken into consideration in all Development Assessment (DA) applications.***  
Comment: The proposal is consistent with this aim.
- d) ***Ensure future development has consideration for the needs of all members of the community***  
Comment: The proposal is consistent with this aim.
- e) ***Ensure development positively responds to the qualities of the site and its context***  
Comment: The proposal is inconsistent with this aim. In this regard, the proposed development is of a size, scale and density and is contrary to the prevailing local context.
- f) ***Ensure development positively responds to the heritage and character of the surrounding area***  
Comment: The proposal is inconsistent with this aim. In this regard, the proposed development is not in character with the predominant built form of development on surrounding and nearby streets in this street block.

#### 3.4.1 Sunlight Access and Overshadowing

Submissions to the public exhibition raised concerns that the proposed development will result in unreasonable overshadowing of adjoining properties. This control requires that, on the winter solstice (21 June):

1. *New development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice, and*
2. *The level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm, and*
3. *No reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

The submitted shadow diagrams and sun angle plans demonstrate that the proposed development does not have any overshadowing impact on the private open space areas or living room windows to the units at 20 Angle Street to the east of the subject site. The communal open space at 20 Angle Street is approximately 50% self-shadowed in the morning and middle of the day, with no impact from the proposed development. A minor increase in overshadowing arises from the proposed development in the afternoon.

To the west of the subject site, are four townhouse units at 72A and 72B West Street. The windows and private open spaces of these units are as follows:

**72A West Street:**

- Unit 1 (ground level) has three windows on the eastern elevation facing the subject site. The northernmost window is to a bedroom, the central window is to a stairwell, and the room use associated with the southernmost window is unknown.
- Unit 1 has private open space to the south, which is demonstrated to be overshadowed throughout the day in mid-winter by the unit itself and the existing dwelling house on the subject site. This is anticipated to remain unchanged.
- Unit 2 (upper level) also has two windows on the eastern elevation facing the subject site. The northernmost window is to a stairwell, and the southernmost is to a living room.
- Unit 2 has a balcony that constitutes private open space, which is unaffected by the proposed development as it is to the north-west away from the subject site.

**72B West Street:**

- The eastern elevation of these units facing the subject site does not include windows to living areas, rather a kitchen and bathroom.
- The private open space of these units is located to the north of the site, and remains unaffected by the proposed development.

As demonstrated by the submitted sun angle plans, it is not possible (regardless of the proposed development) for the eastern windows of 72A & 72B West Street to receive four hours of solar access between 9am and 3pm in midwinter in accordance with the control, as the sun angle no longer aligns with the relevant windows by midday and there are only 3 hours between 9am and midday.

Importantly, the control requires no reduction in solar access as the result of development, as detailed above. The sun angle plans demonstrate that the proposed development does not impact on the existing solar access to the living room of Unit 2. Given the room use associated with the southernmost window on the eastern elevation of Unit 1, 72A West Street is unknown, it is assessed as a living room for conservative caution, despite it not appearing as such, being highlight in form. The proposed development will overshadow this window until approximately 9:30am during midwinter, totaling 30 minutes, which does not comply with the control.

The non-compliance with this control will form a reason for refusal.

### 3.4.2 Privacy and Security

Submissions to the public exhibition of the application raised concerns about the impact of the proposed development on the visual and acoustic privacy of adjoining properties.

The underlying objectives of the control are addressed as follows:

*Objective 1) To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

#### Comment:

The subject site is surrounded by the following residential developments:

- Four (4) townhouses to the west of the subject site at 72A & 72B West Street.
- Twelve (12) apartments across two buildings to the east of the subject site at 20 Angle Street.
- Detached single-storey dwelling house to the north of the site at 72 West Street.

The impact on privacy (acoustic and visual) of each property is addressed as follows:

**72A & 72B West Street:** The townhouse units on this property contain windows to bedrooms, bathrooms kitchens, living rooms, and stairwells on their eastern elevations facing the subject site. The proposed development offsets windows on its western elevation accordingly, or orientates them to the front and rear via pop-out architectural features, so as not to allow for direct viewing. At the first floor level of the proposed development, proposed Unit 101 includes a balcony to the north-western corner, which has potential to overlook the private open space of 72B West Street. A condition can be applied requiring extension of the proposed privacy screening on this balcony for its full western elevation, to a height of 1.65m above finished floor level, if the application were to be approved. This would be adequate in maintaining reasonable privacy to the site to the west.

**20 Angle Street:** The units at this site are offset from the proposed development, being set further to the north. The living rooms and private open spaces of the units at 20 Angle Street are on the eastern elevation of the buildings, being the opposite side to the proposed development. Windows on the western elevation of 20 Angle Street facing the subject site are for laundries, kitchens and bedrooms. The point of the proposed development that could have resulted in the most unreasonable overlooking to these windows (the northern balcony of proposed Unit 102 at the first floor) is treated with privacy screening to prevent direct viewing. Windows at the first floor level along the eastern elevation of the proposed development adjoining 20 Angle Street (where overlooking could also occur) are also treated with screening. Reasonable privacy is achieved for 20 Angle Street.

**72 West Street:** The proposed development includes a minimum 6.0m setback to rear balconies, and a minimum 8.0m (compliant) setback for the internal living spaces. This does not comply with the MDCP, but does comply with the requirements of the Apartment Design Guide with respect to building separation and visual privacy.

In the context of the subject site to 72 West Street, having elevated balconies within the 8.0m rear setback will result in unsatisfactory overlooking of the dwelling at 72 West Street, and no planter boxes or devices are proposed to avoid/mitigate the overlooking.

Noise sources for the proposed development are logically located so as to protect the acoustic privacy of adjoining properties. For example, the balconies of the proposed development are set to the north (rear), where they are furthest away from adjoining neighbours. The proposed driveway is set in the south-eastern corner of the site, adjoining the front open space area of 20 Angle Street, so as not to disturb internal spaces of adjoining dwellings. The main areas of communal open space for the proposed development are to the north (rear) and south (front), which is commonplace and anticipated.

*Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

Comment:

The proposal should provide enhanced privacy protection for the adjoining property to the north at 72 West Street. This could be in the form of planter boxes or solid balustrades or other such devices to avoid or mitigate such direct overlooking.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

The proposed development includes windows, balconies and a courtyard to the street frontage, thereby allowing for casual surveillance and awareness of neighbourhood security.

### **3.4.3 Maintenance of Views**

Objections from Unit 1/20 Angle Street and 72A & 72B West Street referred to loss of view to the sky. The underlying objectives of this control are addressed as follows:

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

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment:

The proposed development interrupts view to the sky only, which is not considered to be an unreasonable view impact. No views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings are impacted by the proposed development.

The proposed development is not an example of accumulated view loss creep, and is demonstrably reasonable in its context, as detailed throughout this report.

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

The proposed development includes six (6) dwellings on the 834.6m<sup>2</sup> site, equating to a density of 1 dwelling per 140.6m<sup>2</sup>, where 1 dwelling per 300m<sup>2</sup> is allowable.

The underlying objectives of the control are addressed as follows:

*Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

The subject site is zoned R1 General Residential, which allows for a wide variety of residential development types, including residential flat buildings (RFB), such as that proposed, but also townhouses, dual occupancies, attached dwellings, semi-detached dwellings and multi-dwelling housing. The density control stipulated under the DCP control would only allow for two dwellings based on the site area, which equates to a dual occupancy, semi-detached dwellings or two single dwelling houses. Strict compliance with this control thereby prevents the reasonable development potential of the site for the permissible purpose of a residential flat building.

It is noted that the site is surrounded by residential developments of a higher density than the control allows, including:

- 72A and 72B West Street (immediately to the west of the subject site) contains four units on a 555m<sup>2</sup> site, equating to 1 dwelling per 139m<sup>2</sup>
- 20 Angle Street (immediately to the east of the subject site) contains twelve units on a 1,903m<sup>2</sup> site, equating to 1 dwelling per 158.5m<sup>2</sup>
- 14-18 Angle Street (immediately to the east of 20 Angle Street) contains seventeen units on a 2,530m<sup>2</sup> site, equating to 1 dwelling per 148m<sup>2</sup>

For accuracy of the above, the site areas have been calculated using their registered strata plans.

Each of the above properties is subject to the same density control of 1 dwelling per 300m<sup>2</sup>. It should be noted that the subject site is in close vicinity to an area with a higher density to the north-west (western side of West Street), where a control of 1 dwelling per 150m<sup>2</sup> applies. Nevertheless, the proposed development is not in keeping with the density of the locality/sector that it sits within.

*Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

Comment:

The proposed development is satisfactory with respect to impacts on existing vegetation. The proposed development is not located in the vicinity of a waterway or riparian land. The proposed development does not respond sufficiently to the topography of the site in that it does not step on the site with the slope, is super-elevated at the rear of the site (where the basement extends above ground), but is generally compliant with the height of building development standard (with the exception being to the portion of the site subject to historical excavation).

*Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The proposed development consists of an increase of four dwellings on the site of 2-bedroom and 3-bedroom configuration to support the housing needs of the locality. The proposed apartments are compliant with the requirements of *State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development* and the Apartment Design Guide, which detail the design requirements to ensure suitable amenity.



*Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The proposed development is inconsistent with the general built form of nearby and surrounding development in the Angle Street, West Street and Sydney Road streetscapes. The surrounding area is characterised by a variety of residential development types, including dwelling houses, townhouses, and residential flat buildings and the bulk, scale and density of the proposal is excessive and out of character.

*Objective 5) To maximise the use of existing infrastructure.*

Comment:

The proposed development is well-placed with respect to future use of public transport on Sydney Road and other services.

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

The proposed development includes a breach to the height of buildings development standard, the maximum wall height, and the maximum number of storeys. In the absence of its own objectives, this clause relies on the objectives of Clause 4.3 Height of Buildings.

The proposed development is consistent with these objectives with respect to the minor non-compliance, as detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

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

The proposed development involves a substantial numerical non-compliance (63%) with the maximum floor space ratio development standard set by Clause 4.4 Floor Space Ratio of the MLEP 2013. The proposed development is not acceptable in this regard, as detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013, which forms a reason for refusal of the application.

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

The proposed development is compliant with the side setback requirements set by this DCP control. The balcony to Unit 103 is set 1.2m from the eastern side boundary, where a setback of 1.8m would be required, based on its height of 5.4m. However, Clause 4.1.4.2(b) provides that projections into the side setback may be accepted for unenclosed balconies and roof eaves where there will be no adverse impact on adjoining properties, including loss of privacy. The balcony of Unit 103 is set to the front of the subject site, and the open space of 20 Angle Street to the east, which is wholly visible from the public domain. The balcony is set 12m from the nearest residential window at 20 Angle Street, so is not unreasonable with respect to privacy and is accepted as compliant with the control.

The proposed development includes encroachments into the front and rear setbacks, as follows:

- The front setback area includes encroachments for the purpose of the apartment building (minimum setback of 3.1m) and the bin room (minimum setback of 600mm).
- The rear setback area includes encroachments for the purpose of balconies and terraces (and nominal portions of the units themselves) at the ground and first floors.

With respect to the rear setback, a minimum of 8.0m is required. Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space, which is the case for this development.

It is however noted that the development complies with the minimum 6.0m rear setback requirement under 2F Building Separation of the Apartment Design Guide.

With respect to the front setback, developments must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity, a minimum 6.0m front setback generally applies. The proposed development presents unreasonable building width, mass and bulk to the Angle Street streetscape, which is attributable in part to the proposed non-compliant front setback.

The front and rear setback non-compliances are included as a recommended reason for refusal.

## **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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$45,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,510,000.

## **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 2021;
- 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
- Consistent 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

### **Building Height**

Council is **not** satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

### **Floor Space Ratio**

Council is **not** satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

### **PLANNING CONCLUSION**

This application is referred to the Northern Beaches Local Planning Panel (NBLPP) based on the number of submissions exceeding 10 (26 received in objection) and due to the proposed variation to the development standard for floor space ratio exceeding 10% (being 62.9%).

The concerns raised in the 26 objections have been addressed through the detailed assessment in this report, and many are concurred with and should have determining weight.

The most fundamental non-compliance inherent in this application is the variation to the floor space ratio development standard of 62.9% (which is down from the original 95% when the DA was lodged), and for the reasons discussed in the Clause 4.6 variation section of this report, this extent of variation is grossly excessive and is not considered to be well-founded and is not supported. In this regard, the application has failed to demonstrate that it is unreasonable or unnecessary to comply with the development standards, that there are sufficient environmental planning grounds to vary the floor space ratio standard, and the proposal will result in a built form that is unacceptable in its size, mass, and bulk and scale, and is out of character with the existing and desired future character of this part of Balgowlah.

Furthermore, the proposed variation to the building height development standard, albeit a relatively minor variation (5.65%) and due mainly to historical excavation of the site, is not well-founded and is not supported, as it is inconsistent with the objectives of the development standard and the Objects of the EPA, Act, 1979, and in this regard the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the height standard.

The other critical design and planning issues are discussed in detail throughout this report and are also fatal to the overall merits of the proposal.

The applicant sought to address the original list of concerns outlined in the RFI issued by Council, however, despite the reductions and improvements made to the proposal, they are not sufficient to overcome the fundamental concerns, and hence those concerns remain valid and determinative.

The proposal is therefore recommended for refusal.

## **REASON FOR DETERMINATION**

The proposed variation to the height of buildings development standard is not well-founded.

The proposed variation to the floor space ratio development standard is not well-founded.

Notwithstanding the amendments made to the application during the course of assessment, the proposed development is still considered to be an overdevelopment of the site.

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 DA2023/0617 for the Demolition works and construction of a Residential Flat Building on land at Lot 6 DP 9585,24 Angle Street, BALGOWLAH, Lot 7 DP 9585,22 Angle Street, BALGOWLAH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development, including the design quality principles and criteria under the Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013. The proposed development is of excessive size, mass, bulk and scale, and is out of character with the area.

The proposal is supported by a written request to vary the floor space ratio development standard in accordance with Clause 4.6 of the MLEP 2013. The written request is not well-founded as it does not satisfactorily demonstrate:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because it does not achieve consistency with the objectives of the development standard contained within Clause 4.4 of the MLEP 2013, and
- That there are sufficient environmental planning grounds to justify contravening the development standard because the provided justification is insufficient and disagreed with.

The proposal is also supported by a written request to vary the height of buildings development standard in accordance with Clause 4.6 of the MLEP 2013. The written request is not well-founded as it does not satisfactorily demonstrate:

- That the proposal is consistent with the objectives of the development standard within Clause 4.3 of the MLEP 2013 and the Objects of the EPA, Act, 1979, and that there are sufficient environmental planning grounds to justify contravening the development standard.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 1.7 Aims and Objectives of this Plan under the Manly Development Control Plan 2013.
5. 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 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan 2013, as it results in additional

overshadowing to Unit 1, 72A West Street, Balgowlah and 20 Angle Street, Balgowlah.

6. 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 4.1.3 Floor Space Ratio (FSR) of the Manly Development Control Plan 2013. The proposed development is of excessive size, bulk and scale, and is out of character with the area, which is attributable to the substantial variation to the floor space ratio development standard.
7. 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 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan 2013. The proposed development does not comply with the front and rear setback controls, which results in unreasonable building bulk in the Angle Street/Sydney Road streetscape and when viewed from the adjoining property to the rear (72 West Street).
8. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest, given the significant level of non-compliance with the floor space ratio development standard under the Manly Local Environmental Plan 2013, inconsistencies with SEPP 65 and the Apartment Design Guide, non-compliances with the built form controls under the Manly Development Control Plan 2013 and the extent to which the proposal is inconsistent with the existing and desired future character of the locality.