

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/2263
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<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 2 DP 829523, 2 A Golf Parade MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to an existing building for use as a residential dwelling house
<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>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Manly Central Pty Ltd
<b>Applicant:</b>	The Trustee For Manly Central Unit Trust

<b>Application Lodged:</b>	04/01/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	11/01/2023 to 25/01/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 36.7%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 975,260.00
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing building for use as a residential dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the development exceeding the floor space ratio development standard by more than 10%. The floor space ratio of the proposed development has been calculated at 0.82:1 (229m<sup>2</sup>), which represents a variation of 36.7% to the prescribed 0.6:1 floor space ratio.

The clause 4.6 variation request regarding the non-compliance with FSR development standard arises from the existing building having a non-compliant FSR, which is 50% above compliance with the LEP. The proposal significantly decreases the extent of FSR non-compliance to 36.7% and does not

unreasonably increase the bulk or scale of the building or lead to adverse amenity impacts upon adjacent properties or the public domain.

Two submissions were received during the notification period that raised objection with matters relating to the side setback of the new building additions and the siting of the driveway crossover impacting the availability of on street parking spaces.

Critical assessment issues include non-compliance with the floor space ratio development standard, side setbacks, total open space and the siting of the parking spaces.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for alterations and additions to an existing commercial building and change of use to a residential dwelling house. The proposal includes partial demolition of existing structures, an extension at the front of the building, internal layout changes and residential fit-out, front fence and landscaping.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.1.10 Fencing

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 829523 , 2 A Golf Parade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Golf Parade.</p> <p>The site is irregular in shape with a frontage of 9.667m along Golf Parade and a maximum depth of 40.481m. The site has a surveyed area of 279.6m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates a two-storey commercial building.</p> <p>The site is generally flat and without any significant landscape features.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by low and medium density residential buildings to the south and west and commercial land uses to the north and east.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for commercial purposes for an extended period of time.

## 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 control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions 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 have been addressed via a condition of consent.</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 clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</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 has been addressed via a condition of consent.</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 has been addressed via a condition of consent.</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 has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are</p>

Section 4.15 Matters for Consideration	Comments
and social and economic impacts in the locality	<p>addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/01/2023 to 25/01/2023 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 2 submission/s from:

Name:	Address:
Mr Timothy John Evans	4 Golf Parade MANLY NSW 2095
Ms Sarah Louise Paine	2 Golf Parade MANLY NSW 2095

The following issues were raised in the submissions:

- Side setbacks
- Air conditioning noise
- Impact upon on-street parking

The above issues are addressed as follows:

- **Side setbacks**

*The submissions raised concerns that the new building additions are not sufficiently setback from the side boundaries.*

Comment:

The side setbacks of the proposed development are considered acceptable and are not expected to result in any adverse built form or amenity impact upon adjacent properties. Appropriate levels of privacy and solar access is maintained to adjacent properties. The narrow width of the site limits the ability for new development to comply with the side setback control requirement.

- **Air conditioning noise**

*The submissions raised concerns regarding the siting of the proposed outdoor air conditioning unit and potential noise impacts upon adjacent properties.*

Comment:

Council's development controls do not specify where outdoor air conditioning units can be sited. A condition is recommended to ensure noise from the air conditioning unit does not exceed 5dBA above background levels from the nearest property boundary.

- **Impact upon on-street parking**

*The submissions raised concerns that the siting of the proposed driveway crossover will reduce the amount of available on-street parking.*

Comment:

The siting of the proposed driveway crossover is not considered to unreasonably impact upon the availability of on-street parking. A condition is recommended to taper the width of the crossover from 4.5m from the boundary to 3.5m at the kerb. The relocation of the proposed hardstand parking area is not recommended due to the provision of landscaping along the eastern boundary. This landscaped area provides an appropriate distribution of landscaped area within the front setback area.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<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 the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as</p>

Internal Referral Body	Comments
	this however may be determined at Construction Certificate Stage.
Environmental Health (Contaminated Lands)	<p><b>General Comments</b></p> <p>A detailed site investigation has been undertaken by Harwood Environmental Consults which revealed the site is suitable for residential use with no remedial action required</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings</li> </ul> <p>The site is currently all hard surface and the proposed works will dramatically improve the landscaped area and amenity, which is supported. The landscape proposal is generally supported and all on slab landscaping shall meet Council's minimum soil depth requirements.</p>
NECC (Development Engineering)	<p>The subject site meets the OSD exemption and connection of stormwater to the kerb is acceptable. The proposed driveway relocation and widening is acceptable subject to conditions limiting the width to ensure off-street parking is maintained.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</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 (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1325820S\_02, dated 09/12/2022). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0008274060-02, dated 09/12/2022).

The BASIX Certificate indicates that the development will achieve the following:

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	52

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

### **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.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**



The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

### **Division 3 Coastal environment area**

#### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.

#### Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

#### Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

### **Division 5 General**

#### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

All relevant provisions of applicable certified coastal management program have been considered as part of the assessment of the application.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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.

In response to the above requirements of Chapter 4, the applicant has submitted a Detailed Environmental Site Investigation dated 01/12/2022 and prepared by Harwood Environmental Consultants (HEC). In its conclusion, the investigation states:

*The results of soil sampling indicated that the site soils are likely to be suitable for residential use with accessible soils, with no requirement for remediation. One detection of PAHs (benzo(a)pyrene) at levels above the applicable criteria for this site use are considered to be representative of a heterogeneous sample containing bitumen from the drilling, rather than a contamination hotspot.*

*The groundwater investigation determined that copper and zinc were present in groundwater beneath the site in concentrations above the applied groundwater criteria. HEC consider that given the long history of residential use of the surrounding area and the very marginal exceedances detected, that there is not likely to be a meaningful risk to ecological receptors.*

*The following limitations are inherent in this conclusion:*

*Asbestos has not been identified in site soils, and no asbestos has been identified visually on site surfaces. Soil sampling was completed using soil borings rather than larger test pits as the site was operational at the time of investigation. The potential exists that asbestos may exist undetected in uncontrolled FILL soils underlying the site, however based on the age of the building (extant prior to the earliest photographs in 1943) and the fact that the slab appears to have been intact from this time until the present day, HEC consider it unlikely that asbestos is present in soils beneath the slab. Any future redevelopment of the site should however be accompanied by an Unexpected Finds Protocol detailing the measures to be taken in the event of detection of asbestos during site works.*

*HEC therefore recommends that the site is likely to be suitable for the proposed residential land use with no further investigation or remediation required.*

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?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.83m	N/A	Yes
Floor Space Ratio:	0.6:1 (167.5m <sup>2</sup> )	0.82:1 (229m <sup>2</sup> )	36.7%	No

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
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

#### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (167.5m <sup>2</sup> )
Proposed:	0.82:1 (229m <sup>2</sup> )
Percentage variation to requirement:	36.7%

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

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra*

*Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

**Clause 4.6 Exceptions to development standards:**

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

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

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

**Comment:**

Clause 4.4 - Floor space ratio development standard 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 cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

**Comment:**

The Applicant's written request has demonstrated that the objectives of the development standard are

achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *The proposed departure to the standard comes in the context of the adaptive re-use of a nonconforming, prohibited use and the removal of the non-conforming use from the residential zone;*
- *The proposed development results in a reduction to FSR [0.9:1 down to 0.82:1];*
- *FSR is often used as a numeric indication of the bulk and scale of a building. In light of the proposal being for alterations and additions to an existing building (in accordance with Part 4.4.2 of Manly DCP 2013), and on the assumption that the site/development is the subject of existing*

*use rights, in our opinion, then upon consideration of the second planning principle in Fodor Investments v Hornsby Shire Council [2005] 71 ... the bulk and scale (by following the logic of FSR being related to bulk and scale) is considered to be acceptable. In this case however, we do not consider the proposal to be "out of scale".*

- *The departure to the FSR standard will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties.*

Council generally concurs with the applicant's justification to vary the floor space ratio development standard. The proposed development results in a decreased FSR from 0.9:1 to 0.82:1. The proposal appropriately promotes good design and amenity of the built environment through the adaptive re-use of an existing commercial building within a residential zone. The additions to the front of the building are expected to provide a greater relation to the residential character of the locality while demonstrating a height, bulk and scale that limits unreasonable amenity impacts upon adjacent properties and the public domain.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

#### **Comment:**

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

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

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

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

Comment:

The proposed development is not considered to unreasonably increase the bulk and scale of the existing buildings. The extension to the front is considered to improve the visual quality of the building and provide a greater level of visual interest when viewed from the street.

*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 is in keeping with the existing building scale and addresses the public domain more sympathetically than the existing building. The streetscape character of the locality is not expected to be unreasonably impacted.

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

Comment:

The proposed development improves the visual relationship of the building between existing development and the public domain. The proposed building additions and landscaped elements in the front setback area are expected to improve the site's residential character.

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

Comment:

The proposed development is considered to reasonably respond to the spatial constraints of the site to ensure adverse environmental impacts to adjoining land and the public domain are limited.

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

Comment:

Not applicable.

## **Zone objectives**

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development changes the non-conforming commercial land use to a residential land use and adds to the housing stock of the locality.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development provides additional low density housing to the locality.

It is considered that the development satisfies this objective.

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

Comment:

The proposed change is land use from commercial to residential will not impact the needs of residents.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular 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 consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

**Manly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 279.2m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 105m <sup>2</sup>	229m <sup>2</sup>	N/A	Yes
4.1.2.1 Wall Height	E: 6.5m (based on nil gradient)	6.5m	N/A	Yes
	W: 6.5m (based on nil gradient)	6.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
	Pitch: maximum 35	18 degrees	N/A	Yes



	degrees			
4.1.4.1 Street Front Setbacks	Prevailing building line	6.7m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.15m (based on wall height)	Nil	100%	No
	W: 2.15m (based on wall height)	0.9m	58.1%	No
4.1.4.4 Rear Setbacks	8m	5.2m	35%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (153.6m <sup>2</sup> )	25% (69.8m <sup>2</sup> )	54.6% (83.8m <sup>2</sup> )	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (24.4m <sup>2</sup> )	73.1% (51m <sup>2</sup> )	N/A	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup>	>18m <sup>2</sup>	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.1m	5.6%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
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)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	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	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

### Detailed Assessment

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

##### Description of non-compliance

##### *3.1.1.2 Front Fences and Gates*

The control requires the following for front fences and gates:

- a) Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) Gates must not encroach on public land when opening or closing.*

The proposed development incorporates a 1.5m high fence along the front boundary.

##### *3.1.1.4 Garages, Carports and Hardstand Areas*

The control requires garages, carports and hardstand areas be designed and sited in a manner that does not to dominate the street frontage. Exceptions may be considered where parking structures are a positive element of the streetscape.

The proposed development incorporates a hardstand parking area that is to be sited within the front setback area.

##### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

*Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.*

Comment:

The proposed fence is not expected to cause unreasonable visual impact to the streetscape. The fence incorporates open elements at the pedestrian and vehicle gates. The height of the fence is not considered to result in unreasonable visual dominance within the streetscape. The fence will provide for some screening of vehicles parked upon the hardstand areas in the front setback.

*Objective 2) To ensure development generally viewed from the street complements the identified streetscape.*

Comment:

The design of the proposed fence is considered to positively complement the streetscape.

*Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

Comment:

Landscaping and vegetation is proposed within the front setback area to provide for an attractive streetscape. The hardstand parking area is to utilise permeable paving to soften the built form of the structure and incorporate more landscaping treatments in the front setback area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposed development has a floor space ratio of 0.82:1 (229m<sup>2</sup>), which represents a variation of 36.7% to the prescribed 0.6:1 (167.5m<sup>2</sup>) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

Description of non-compliance

##### *4.1.4.2 Side setbacks and secondary street frontages*

Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

The proposed front building extension has a wall height of 6.5m and is setback 0.9m from the western boundary and a nil setback to the eastern boundary, representing a variation of 58.1% and 100%, respectively.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

Comment:

The proposed development is consistent with the bulk and scale of the existing building and surrounding development. No adverse impact to adjacent properties or the streetscape is expected.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The western adjacent building has a nil setback to the common boundary with no windows and a parking area is located adjacent to the eastern boundary. The proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

*Objective 3) To promote flexibility in the siting of buildings.*

Comment:

The proposed development is considered to be appropriately sited and integrates well into the existing building.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides sufficient deep soil areas and planting on the site.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

##### Description of non-compliance

##### *4.1.5.1 Minimum Residential Total Open Space Requirements*

The site is located in the OS3 area, which requires a minimum 55% of site area (153.6m<sup>2</sup>) to be classified as Total Open Space (TOS).

The proposed development incorporates of 25% site area (69.8m<sup>2</sup>) as TOS, representing a variation of 54.6% (83.8m<sup>2</sup>).

The proposed development demonstrates compliance with the landscape area requirements.

##### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

##### Comment:

The proposed development does not result in the removal of any significant or native vegetation.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

##### Comment:

The site is compliant in terms of landscaped area.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

##### Comment:

The proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

##### Comment:

The proposed landscaped area is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

Comment:

The proposal will not lead to a spread of weeds.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

##### *4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas*

The control requires the design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.

The proposed development includes two hardstand parking spaces in the front setback area of the dwelling.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

Comment:

The proposed development provides sufficient onsite parking spaces.

*Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

Comment:

The provision of two onsite parking spaces will reduce the demand for on street parking by occupants of the dwelling.

*Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

Comment:

Despite being in the front setback area, the hardstand parking spaces are not expected to unreasonably impact upon the visual quality of the streetscape. The spaces are designed to integrate into the landscaping of the front setback area by providing permeable paving. Safe and efficient vehicle access to the site is provided by the parking spaces.

*Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

Comment:

Limits landform alteration is required to facilitate the proposed hardstand parking spaces.

*Objective 5) To ensure the width and number of footpath crossings is minimised.*

Comment:

No change to existing.

*Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:

As discussed, the proposed hardstand parking spaces appropriately integrate into the landscaping and limit the amount of impervious surface on the site.

*Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.10 Fencing**

The proposal involves a 1.5m high front fence.

Despite the fence not strictly complying with the numerical control of 1m, the proposal is acceptable for

the following reasons:

- The fence is generally consistent with the height of nearby fences along the street.
- The fence has partially transparent portions to ensure built form does not dominate.
- The fence will not cause any unreasonable amenity impact (such as impact on view or overshadowing).

## **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 \$9,753 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,260.

## **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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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



Council is satisfied that:

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

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

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

## **PLANNING CONCLUSION**

This proposal, for alterations and additions to an existing building for use as a residential dwelling house has been referred to the Development Determination Panel (DDP) due to the development exceeding the floor space ratio development standard by more than 10%.

The concerns raised in the objections have been considered. No alteration to the proposal is recommended in relation to the concerns raised.

The critical assessment issues include non-compliance with the floor space ratio development standard, side setbacks, total open space and the siting of the parking spaces.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

## **RECOMMENDATION**

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

Accordingly Council as the consent authority grant Development Consent to DA2022/2263 for Alterations and additions to an existing building for use as a residential dwelling house on land at Lot 2 DP 829523, 2 A Golf Parade, MANLY, subject to the conditions printed below:

## **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
21055 A-DA-003 Rev 01	07/12/2022	CHROFI
21055 A-DA-004 Rev 01	07/12/2022	CHROFI
21055 A-DA-005 Rev 01	07/12/2022	CHROFI
21055 A-DA-101 Rev 01	07/12/2022	CHROFI
21055 A-DA-102 Rev 01	07/12/2022	CHROFI
21055 A-DA-103 Rev 01	07/12/2022	CHROFI
21055 A-DA-201 Rev 01	07/12/2022	CHROFI
21055 A-DA-301 Rev 01	07/12/2022	CHROFI

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
22257 C03.01 Rev B	25/10/2022	Wallace Infrastructure Design
22257 C03.02 Rev B	25/10/2022	Wallace Infrastructure Design
22257 C04.01 Rev B	25/10/2022	Wallace Infrastructure Design
22257 C05.01 Rev B	25/10/2022	Wallace Infrastructure Design

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. 1325820S_02	09/12/2022	Gradwell Consulting
NatHERS Certificate No. 0008274060-02	09/12/2022	Gradwell Consulting

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
220702 L102 Rev D	22/11/2022	Outdoor Establishments
220702 L103 Rev D	22/11/2022	Outdoor Establishments
220702 L104 Rev D	22/11/2022	Outdoor Establishments
220702 L201 Rev D	22/11/2022	Outdoor Establishments
220702 L202 Rev D	22/11/2022	Outdoor Establishments

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<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	22/12/2022	Chris Athas

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**2. Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	17/01/2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**3. Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

**4. Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

## 5. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent

unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;  
  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,752.60 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$975,260.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

## **7. Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

### **8. On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping: 300mm for groundcovers and climbers; and 600mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Golf Parade.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

10. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

11. **Fire Separation of External Walls**

The external walls of the proposed Class 1a single dwelling where less than 900mm from an allotment boundary and any openings within these walls is required to comply with Part 3.7.2.2 of the Building Code of Australia –‘Construction of external walls’. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

12. **Natural Light and Ventilation**

Natural Light and Ventilation is to be provided to the proposed single dwelling in accordance with Parts 3.8.4 and 3.8.5 of the Building Code of Australia.

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

Reason: To ensure adequate provision is made for building occupant health and amenity

13. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with



Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

14. **Compliance with Standards**

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

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

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

15. **Sydney Water "Tap In"**

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

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

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

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

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

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

16. **Protection of Existing Street Trees**

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

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

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

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

Reason: Street tree protection.

17. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- ix) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

18. **Road Reserve**

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

Reason: Public safety.

19. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002

- (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

20. **Survey Certificate**

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

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

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

21. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

22. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide at the kerb and 4.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing Normal Profile and the driveway levels application approval. The new layback is to be constructed to ensure a vehicle can park between the new layback and the existing layback to 199-205 Pittwater Road. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

23. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

24. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan's (drawing L102, L103, L104 by Outdoor Establishments dated 22/11/22), and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all native trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 2.5 metres from buildings, and at least 800mm from common boundaries, and located either within garden bed or within a prepared bed within lawn.

Prior to the issue of any Occupation Certificate details from a landscape architect or landscape designer shall be submitted to the Principal Certifier certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

25. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

26. **Waste Management Confirmation**

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

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

**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

27. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

28. **Air Conditioning Unit Noise**

The outdoor air conditioning unit shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.