

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/2409
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<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 1 SP 31425, 1 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425, 5 / 9 Eustace Street MANLY NSW 2095 Lot CP SP 31425, 9 Eustace Street MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to 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>	Gary Paul McInnes Daniel Robert Morris Geraldine Woo Proprietors of Strata Plan 31425
<b>Applicant:</b>	Cradle Design

<b>Application Lodged:</b>	09/12/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	14/12/2021 to 19/01/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 24.6%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 369,876.00
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### EXECUTIVE SUMMARY

The application is for alterations and additions to a residential flat building (RFB) which mainly relates to Unit 2 and Unit 7 within the building. The proposal is referred to the Northern Beaches Local Planning Panel as the new work increases the existing variation to the floor space ratio (FSR) that currently exceeds 10% of the FSR development standard pursuant to Manly Local Environmental Plan (LEP) 2013. The existing FSR non-compliance for the RFB is 18.2% and is proposed to be increased to 24.6% (0.93:1), being above the 0.75:1 requirement.

The principle assessment issues for the proposal relate to the Apartment Design Guide (ADG) and design considerations relating to the building alterations that affect the FSR. In this regard, the additional floor area is mainly associated with part enclosure of an large upper terrace area for a rumpus and bathroom. The main structure of the flat building in terms of wall lines and setbacks, including its maximum overall height will remain unchanged. The new floor space to be added is 14.4sqm for Unit 1 (ground level) and 19.3sqm for Unit 5 (beside the rooftop stair access). The additional floor areas are suitably positioned to the existing built form and do not create unreasonable amenity impacts. Therefore, the Clause 4.6 variation is supported

The proposal is considered to be reasonable in the circumstances whereby the split level design of the existing building and integrated design of the new work will not create unreasonable amenity impacts for adjacent land. All internal referrals support the proposal subject to conditions, including building (fire) code requirements. No outstanding issues are raised pursuant to the notification and submission issues raised regarding privacy amenity, views, overshadowing, bulk, FSR and noise impacts. These matters have been considered in context of the design and are considered to be satisfactory having regard to the Manly Development Control Plan (DCP) and Manly LEP.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks approval for alterations and additions to a residential flat building and in particular relate to "Unit 1" and "Unit 5" within the building. Details of the works involve:

Part demolition, site preparation and ancillary site works.

### **UNIT 1 Level 2 RL6.23**

- Extending existing kitchen/ living area towards south boundary including building up of boundary wall to achieve fire separation.
- Connection of existing north and east terrace areas
- Internal modifications to kitchen, living/ dining area and new study.
- Installation of a 1.5m high sliding gate to the Unit 1 entrance stair at the front boundary
- No changes to strata areas or car parking are proposed as part of this application.
- Additional Unit 1 floor area of the additions 14.4sqm

### **UNIT 5 Level 4 RL11.6**

- Adding an enclosed room area around the stair entry (upper terrace) located on the roof area to include a rumpus and bathroom.
- Removal of one window to the kitchen, replaced with brickwork to match existing (remaining southern glazing to remain)
- Internal alterations to bedrooms.
- No changes to strata areas or car parking are proposed as part of this application.
- Roof RL14.11 (existing higher roof element associated with Unit 8 is RL15.65)
- Additional Unit 5 floor area of the additions 19.3sqm

## 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 - 3.4.1 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 - 4.1.3 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

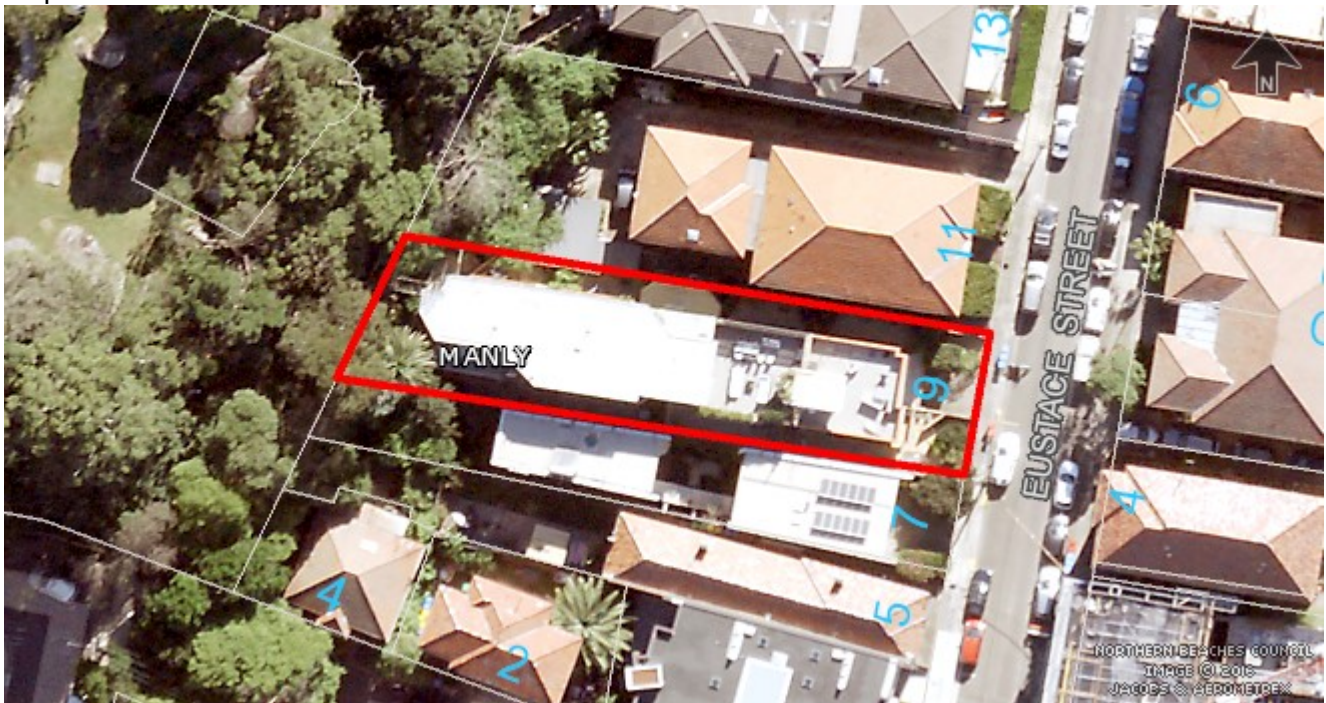
## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 SP 31425 , 1 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425 , 5 / 9 Eustace Street MANLY NSW 2095 Lot CP SP 31425 , 9 Eustace Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site is on the western side of Eustace Street between West Esplanade and Sydney Road. The surveyed site area is 697.4 square metres (sqm) for the land area and the site contains a Strata Title apartment building containing 8 Units. The subject development work for this application is associated with Units No.1 and No.5 that are located on Level 2 and Level 4 respectively.</p> <p>The site falls from west to east. The existing strata apartments sit above a basement car park and steps up from Eustace Street to a public reserve behind.</p> <p>The surrounding neighbourhood is a mix of multi-residential apartments and mixed use development of varying heights, generally from 3 to 5 storeys.</p>

Manly wharf and foreshore are within 100 metres (m) south of the property, Manly oval to the north and Manly CBD to the east. The west boundary is council reserve hillside land with pathway connections to Rowe Street and Tower Street. No.9 Eustace has a back-gate access from the public footpath.

Vehicular and pedestrian access is currently via Eustace with the existing driveway running perpendicular to Eustace Street. The main pedestrian entry is located on the front boundary.

Map:



## SITE HISTORY

**Development Application No.DA3814/90** for alterations and additions to a residential flat building was approved by Council on 24 May 1990.

**Development Application No.DA0039/2012** for alterations and additions to a residential flat building (Unit 3) was approved by Council on 13 April 2012.

**Development Application No.DA0241/2016** for alterations and additions to a residential flat building (Unit 7) was approved by Council on 28 September 2016.

## 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	See discussion on “Environmental Planning Instruments” in this

Section 4.15 Matters for Consideration	Comments
of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in this case to address fire engineering solutions required for the building separation and new work. The information is of routine assessment matter and does not require re-notification in accordance with the Community Participation Plan.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of</p>

Section 4.15 Matters for Consideration	Comments
	<p>Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
<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>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. Considerations made during the assessment include overshadowing, construction activity, privacy, acoustic amenity, drainage, height and building design, landscaping, views and ADG requirements as applicable.</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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development, subject to conditions</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## 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 14/12/2021 to 19/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Samuel John Paris	5 / 11 Eustace Street MANLY NSW 2095
Mrs Barbara Ann Bray	8 / 9 Eustace Street MANLY NSW 2095
Miss Vida Claire Jenkins	7 Eustace Street MANLY NSW 2095

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

1. Solar Impact
2. View impact
3. FSR
4. Privacy

The matters raised within the submissions are addressed as follows:

- *1. Concern that the proposed additions may cause reduce direct sunlight for the solar panels installed on No.7 Eustace Street*

Comment:

This issue has been considered in accordance with *Clause 3.4.1 Sunlight Access* and *Clause 3.1.4.2* (including specific 6 hour provision of solar access to PV cells) as well as also regard to *Part 3.5.2* of the *Manly DCP*. While mid winter is a period when photovoltaic cells may be operating at lowest output efficiency (including consideration of winter weather conditions) the solar diagrams No.DA508 to DA510 drawn by Cradle Architecture, dated 12.2.2021 demonstrate that the change to overshadowing is marginal and across the majority of the day on 21 June overshadowing will not be significantly increased across the roof area expanse of the adjacent land. The position of the solar cells and overshadowing will affect a minor section of the solar panels, only between 12pm and 3pm and is a transitioning shadow. Solar access will be maintained across the majority of the solar panel area in that the shadow transition during the day does not last longer than 1 hour in a single panel section (unit PV cell), and the shadow affects only one edge of the closest cell bank. Given the maximum building height is 11m, with the proposed additions at a compliant height and the adjacent building roof having the solar cells (old squash court building / converted) at No. 7 Eustace Street is 6.2m high the solar impact on the solar cells is acceptable on merit.

In summary, direct solar access will not be unreasonably affected to adjacent land and this issue does not warrant refusal of the development application.

- *2. Concern that the additional building bulk will impact the view outlook from No.11 Eustace Street including landscape features / outlook toward the west and along Eustace Street.*

Comment:

The additions to the roof terrace will surround an existing brick staircase shelter to create an extension to the available internal living space within Unit 5. For views, the new additions have been assessed in detail under *Clause 3.4.3 Maintenance of Views* within this report. In summary the view impact is an urban outlook and the scale, height and bulk of the additions are not considered unreasonable in terms of the floor space changes and view amenity impact across the side boundary area. This issue does not warrant refusal of the application.

- *3. Concern that the proposal does not comply with floor space ratio and the height creates a sense of enclosure for adjacent land and a loss of amenity.*

Comment:

This issue has been considered in detail under *Clause 4.6 Exceptions to development Standards* within this report. In summary, the changes to building height is limited to the roof top additions but the overall maximum height of the building is unchanged. The roof additions have also been considered in detail under *Clause 4.4.2 First Floor and Roof Additions* within this report. The changes to the flat building are limited to private courtyard / terrace space and a detailed assessment has been made pursuant to SEPP 65. In conclusion, the generally amenity impacts are not unreasonable in the context of the applicable development controls and pattern of surrounding development. This issue does not warrant refusal of the application.

- 4. Concern that there will be a loss of privacy toward No.11 Eustace Street with high light windows and alterations to the building.

Comment:

This issue has been considered in detail under the heading *3.4.2 Privacy and Security* within this report. At the upper level the new roof additions of the rumpus include highlight window sills that are well above normal sill height and the small internal rumpus space would not create unreasonable overlooking privacy issues as the main windows open toward the street. The owner has discussed this issue with Council and agrees to specify (by condition) that the side rumpus window be translucent fixed glass. Other areas of the building remain consistent with existing / established privacy. This issue does not warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments			
Building Assessment - Fire and Disability upgrades	<p><b>Supported with conditions.</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>			
Parks, reserves, beaches, foreshore	<p><b>Supported without conditions.</b></p> <p>The development application is for alterations and additions to an existing apartment building. The development site adjoins Tower Hill Park that is located upslope of the property.</p> <p>Parks, Reserves and Foreshores raise no concerns.</p>			
Strategic and Place Planning (Heritage Officer)	<p><b>Supported without conditions.</b></p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>The proposal has been referred to Heritage as the subject site adjoins a heritage item and in the vicinity of a heritage item:</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site adjoins a heritage item and in the vicinity of a heritage item:
HERITAGE COMMENTS				
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Internal Referral Body	Comments		
	<b>Item I1237 - Reserve Park</b> - Tower Reserve, Tower Hill		
	<b>Item I253 - Uniting Church</b> - 4 West Promenade		
	Details of heritage items affected		
	Details of the items as contained within the Manly heritage inventory is as follows:		
	<b>Item I1237 - Reserve Park</b>		
	<u>Statement of significance:</u>		
	Land used for early viewing point over Manly. Location of Camera obscura. Part of natural landscape together with Fig plantings.		
	<u>Physical description:</u>		
	Elevated land with extensive sandstone rock outcrop with some indigenous plants retained and 1880's plantings of Port Jackson Figs (Ficus Rubiginosa). Historically significant viewing point, natural rocks and cultural plantings.		
	<b>Item I253 - Uniting Church</b>		
<u>Statement of significance:</u>			
Prominent part of a unified group of 1920s and 1930s buildings (3-8 West Promenade), the church is a significant landmark building forming a significant backdrop to Gilbert Park.			
<u>Physical description:</u>			
A dark brick Inter-War Romanesque style church with 3 entry doors with arched leadlight fanlights, a 4 storey spire with arched leadlight windows and arched vents, a copper dome and copper finial. Side windows are also arched and either stained glass or leadlight. Internally, the church ceiling is panelled, decorative, and has a central vault. The timber floor is raked towards the pulpit. The two storey church hall at the rear continues the Inter War Romanesque style. The whole building is an integrated whole, built at the one time.			
Other relevant heritage listings			
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	N/A		

Internal Referral Body	Comments
	<div></div> <div></div> <div></div> <div>Consideration of Application</div> <div> <p>The proposal seeks consent for alterations and additions to an existing flat building to extend the ground level unit towards the south boundary. The proposal involves some internal alterations, an extension to the kitchen and living area and construction of a sliding gate with stairs to the unit entrance at the front boundary and no changes to strata areas or carparking are proposed.</p> <p>Given the minor nature of the proposed works and the physical separation between the heritage items and the subject property, the proposal is considered to not impact upon the significance of the heritage items.</p> <p>Therefore, no objections are raised to the proposal on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? No  Has a Heritage Impact Statement been provided? No</p> </div>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No reply or comments has been received from <i>Ausgrid</i> within the statutory assessment period.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

## **SEPP 65 - Design Quality of Residential Apartment Development**

The development is required to comply with SEPP 65, and the associated Apartment Design Guide (ADG) provides additional details and guidance for applying the nine design quality principles outlined in SEPP.

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

As previously outlined within this report Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted for the modification.

Clause 28 of SEPP requires that in determining a development application for consent to carry out development to which SEPP 65 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 ADG.

## **DESIGN & SUSTAINABILITY ADVISORY REVIEW PANEL**

The development application relates to minor elements and internal components that do not warrant referral to the DSAP.

## **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 site is located within the Manly Town Centre as defined by the Manly Local Environmental Plan 2013.

Contextually, the site is within the historic core of the established urban area of Manly. The site is surrounded by apartment buildings to the east, west and south along Eustace Street. Only a few single dwelling houses remain in the street or close to the site.

The alterations and additions are considered to be appropriate to this context as it makes only subtle

changes to a selected elements of the building internal areas that are mostly not visible to the public domain. The overall appearance of the building is substantially the same with building construction dating from the 1970-80's style in a yellow brick and concrete form. The street contains a range of older historic apartment buildings as well as some new contemporary shop top housing. The owners of the Strata Scheme are in progress of a separate development application for general Strata upgrade works.

Accordingly, it is considered that alterations and additions proposed satisfy this principle.

## **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 alterations seek to improve the livability of Unit 1 and Unit 5 with minor changes to the terrace / private open space areas.

The proportions, transitions, materials and main aspects of the built form are maintained. The facades of the building retain a similar overall appearance as approved and do not adversely impact adjacent land or access to the building basement. The overall floor space is increased marginally from 88:1 which is the existing approved variation. This is proposed to change to 0.93:1 FSR and has been considered in detail under the provisions of Manly LEP, Manly DCP and clause 4.6 of the LEP.

Accordingly, it is considered that alterations and additions proposed satisfy this principle.

## **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 existing residential building provides medium density urban housing and comprises eight (8) apartments on a site area of 697.4sqm, with around 618.2sqm gross floor area. The additional Unit 1 and Unit 5 apartment area added will take the total area to 651.9sqm. The density of the development is considered sustainable within the existing availability of infrastructure, public transport, community facilities, and environmental qualities of the site.

Accordingly, it is considered that the modified proposal satisfies this principle.

## **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 proposed works include demolition of all structures currently on the site and excavation works to accommodate the new development.

An updated BASIX certificate (see Certificate No.A433084 and A434527) for the residential component of the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets. Waste and bin management facilities remain consistent with the approved building design.

Accordingly, it is considered that the modified proposal satisfies this principle.

### **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, coordinating 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 modified proposal maintains the approved landscape scheme which responds to the streetscape through the provision of a landscaped podium edge facing Eustace Street and landscaping of the site at the rear of the existing building. The existing Unit 1 apartment has generous courtyards positioned to flow from primary living spaces and take advantage of available solar access along the side setbacks. Unit 1 terraces are currently all hard surfaces with some potted plants and a built-in planter to the western end of the northern courtyard. The existing Unit 5 apartment has a generous level 4 open rooftop terrace and takes advantage of orientation and limited outlook. Unit 5 upper terrace is currently all hard surfaces with some potted plants. Additional potted planting is proposed along with the extension area that enable plants to be exchanged or relocated to suit weather / climate or use of the terrace area.

Accordingly, it is considered that the proposal satisfies this principle.

### **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 modified development provides a high level of amenity both internally and externally.

Given the challenge of the shape of the site / older style building format and its location, the application

does not adversely impact the approved room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space is appropriate for the age of the building and the occupancy.

Accordingly, it is considered that the modified proposal satisfies this principle.

### **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 modified design satisfies the principles of CPTED and includes 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, with suitable weather protection.

Generally, the development provides secure access which is separated from vehicular access points.

Accordingly, it is considered that the proposal satisfies this principle.

### **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 provision of a mix of apartment sizes in this location is considered reasonable due to the site's close proximity to Manly CBD and being within walking distance to the beach and public amenities and facilities in the local area. The building contains a mixture of apartments and the proposed work seek to modernise two of the apartments within the building.

Accordingly, it is considered that the modified proposal satisfies this principle.

### **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

All materials selected will be durable and hard wearing so the development does not prematurely age. This will enhance the long-term image of the building with its careful composition of building elements, textures, materials, colours, internal design, and structure contributing positively to the building character. Aesthetically the alterations and additions will assist to improve the building and the internal livability since the styling and appearance / design of the building substantially pre-dates the ADG and SEPP 65.

Accordingly, it is considered that the proposal satisfies this principle.

## **APARTMENT DESIGN GUIDE**

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

<b>Development Control</b>	<b>Criteria / Guideline</b>	<b>Comments</b>
<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>Consistent</b>  A Site Analysis Plan has been submitted with the application.  The modification application also includes the following reports to inform the assessment of the application: <ul style="list-style-type: none"><li>• SEPP 65 Design Statement;</li><li>• Basix Certificate; and</li><li>• Statement of Environmental Effects.</li></ul>
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Consistent</b>  The modification maintains its streetscape appearance as approved and optimises solar access within the development and to neighbouring properties for reasonable design outcomes.
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	<b>Consistent</b>  The development is considered to provide a satisfactory transition between the private and public domains without compromising safety and security.
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows:	<b>Consistent</b>  Given the site area of 697.4sqm,

	<ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. 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 9am and 3pm on 21 June (mid winter)</li> </ol>	<p>the development is required to provide 174sqm communal open space.</p> <p>The development was constructed well before the gazzettal of SEPP 65. Therefore the site has a limited area (60sqm) of communal open space which will remain unchanged at the rear. The application does not seek to alter the existing communal open space areas which is principally steep land within the rear setback to an adjacent reserve.</p> <p>The solar access to the communal open space at the rear of the site (west) remains unchanged.</p>												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <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 rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table> <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> <li>• the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres);</li> <li>• there is 100% site coverage or non-residential uses at ground floor level.</li> </ul> <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater</p>	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	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Consistent</b></p> <p>Given the site area of 697.4sqm, the development is required to provide a 7% (49sqm) deep soil zone within a minimum dimension of 6.0m.</p> <p>The development achieves this at the rear of the site with dimensions of 10m to 3m width. This area is unaffected by the proposed additions.</p> <p>The development achieves acceptable stormwater management.</p>
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													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													



	management should be achieved and alternative forms of planting provided such as on structure.																								
<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>On Merit</b></p> <p>The habitable rooms and balconies in the development are arranged along the side and front of the building.</p> <p>Given that the habitable rooms facing private open space overall the approved configuration below is maintained.</p> <table><tr><th>Height</th><th>Unit</th><th>Rooms</th><th>Balconies</th></tr><tr><td rowspan="2">12m Req' 6m</td><td>1</td><td>0.9m to 3m</td><td>Ground level terrace 0.0m</td></tr><tr><td>5</td><td>3m</td><td>3m</td></tr></table> <p><b>Note:</b> Distances are to the side boundary.</p> <p>No change proposed to separation distances for the remainder of the building</p>	Height	Unit	Rooms	Balconies	12m Req' 6m	1	0.9m to 3m	Ground level terrace 0.0m	5	3m	3m
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																							
Height	Unit	Rooms	Balconies																						
12m Req' 6m	1	0.9m to 3m	Ground level terrace 0.0m																						
	5	3m	3m																						
<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 development provides access in context with the age of the building which is a legible building entry and defines the private property from the public domain. Minor change for access to Unit 1 is satisfactory.</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>No change</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 Mixed Use or equivalent in a nominated</li></ul>	<p><b>Consistent</b></p> <p>No change proposed.</p>																							

	<p>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><u>Bicycle parking</u></p> <p>The ADG does not include any numerical requirement for the provision of bicycle parking.</p>
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#### Part 4 Designing the Building

##### Amenity

<b>Solar and Daylight Access</b>	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: <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>	<b>Consistent</b>  The development provides a compliant number of apartments which receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter. The additions will maintain solar access within the building.			
	<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>	<b>Consistent</b>  No change to the approved regime			
<b>Natural Ventilation</b>	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: <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>	<b>Consistent</b>  The development provides adequate number of apartments which are naturally cross ventilated. No change to the approved regime for the modification.			
	<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>Consistent</b>  The overall depth of cross-through apartments do not exceed 18m. No change.			
<b>Ceiling Heights</b>	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	<b>Inconsistent - Acceptable on merit</b>			
	<table><tr><td colspan="2"><b>Minimum ceiling height</b></td></tr><tr><td></td><td></td></tr></table>	<b>Minimum ceiling height</b>			
<b>Minimum ceiling height</b>					

	<table><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 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>	Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 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	<ul style="list-style-type: none"><li>Habitable Rooms: 2.4m to 2.2m</li><li>Non-Habitable Rooms: 2.4 to 2.2m</li></ul> <p>Ceiling heights are restricted by the existing floor and roof structures.</p>
Habitable rooms	2.7m											
Non-habitable	2.4m											
For 2 storey apartments	2.7m for main living area floor 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											
Apartment Size and Layout	<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 increase the minimum internal area by 12m<sup>2</sup> each.</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>	<p><b>Consistent</b></p> <p>The development retains the following apartment sizes:</p> <ul style="list-style-type: none"><li>Unit 1 - 1 Bedroom: 63m<sup>2</sup>.</li><li>Unit 4 - 3 Bedroom:111sqm</li></ul> <p>(See architectural plans for comparison and minor change subject to construction phase and Strata allocation required)</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>											
	<p>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.</p>	<p><b>Consistent</b></p> <p>The alterations and additions include windows that maintain a total minimum glass area of not less than 10% of the floor area of the room. No change for the modification.</p>										
	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p><b>Consistent</b></p>										
	<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p><b>Satisfactory. No change</b></p> <p>The development includes habitable room depths of between 7.6m and 6.6m with no change proposed as per the existing approved regime below:</p>										

		(See architectural plans for comparison and minor change subject to construction phase and Strata allocation)																								
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	<b>Satisfactory. No change</b>  The non-compliant units are existing minor variations as approved previously: <table><tr><th>Unit</th><th>Room Area</th></tr><tr><td>402</td><td>9m<sup>2</sup></td></tr><tr><td>502</td><td>9.5m<sup>2</sup></td></tr></table>  Existing minor variations as approved previously..	Unit	Room Area	402	9m <sup>2</sup>	502	9.5m <sup>2</sup>																		
Unit	Room Area																									
402	9m <sup>2</sup>																									
502	9.5m <sup>2</sup>																									
	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> No change to bedrooms.																								
	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>  Unit 1 and 5 maintain widths of greater than 4m. No change.																								
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	<b>Consistent</b>  Unit 1 and 5 maintain widths greater than 4.0m.																								
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>Satisfactory. No change</b>  The development provides the following private open space and balcony sizes: <table><tr><th>Type</th><th>Area</th><th>Depth</th></tr><tr><td>1 Bedroom</td><td>8m<sup>2</sup> to 19m<sup>2</sup></td><td>2m</td></tr><tr><td>3 Bedroom</td><td>18m<sup>2</sup> to 67m<sup>2</sup></td><td>2m to 2.4m</td></tr></table>	Type	Area	Depth	1 Bedroom	8m <sup>2</sup> to 19m <sup>2</sup>	2m	3 Bedroom	18m <sup>2</sup> to 67m <sup>2</sup>	2m to 2.4m
	Dwelling Type	Minimum Area	Minimum Depth																							
	Studio apartments	4m <sup>2</sup>	-																							
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3 Bedroom	18m <sup>2</sup> to 67m <sup>2</sup>	2m to 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 instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	<b>Satisfactory. No change</b>  The building contain 8 apartments.  Unit 1 will still have a total of 58.7sqm of outdoor terrace space including 15.5sqm of principal private open																								

		space with minimum dimensions of 3m in any direction. Unit 5 will still have 32sqm of outdoor terrace space with minimum dimensions in excess of 3m.										
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where Design Criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>Achieving the design criteria for the number of apartments off a circulation core may not be possible. Where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated, including:</p> <ul style="list-style-type: none"><li>• sunlight and natural cross ventilation in apartments.</li><li>• access to ample daylight and natural ventilation in common circulation spaces.</li><li>• common areas for seating and gathering.</li><li>• generous corridors with greater than minimum ceiling heights.</li><li>• other innovative design solutions that provide high levels of amenity.</li></ul>	Satisfactory. No significant change										
	<p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>		Not applicable									
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <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> <p>At least 50% of the required storage is to be located within the apartment.</p>	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>	On merit  No change proposed. No additional bedrooms.
	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>											
Acoustic Privacy	<p>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</p>	Consistent  All garage doors, driveways, service areas, plant rooms,										

	least 3m away from bedrooms.	building services, mechanical equipment, private open spaces and circulation areas are suitable for the building. Generally the status of existing acoustic privacy remains consistent.
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<b>Consistent</b>  The development is designed to minimise acoustic impact from neighbouring development and the local road network as well as minimising noise transmission to neighbouring land uses.
<b>Configuration</b>		
<b>Apartment Mix</b>	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> No change to the current apartment mix.
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>Not applicable</b>
<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>Consistent</b>  The proposed building maintains its progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions that are generally balanced and reflective of the internal layout and structure. Colours are selected to match the existing brickwork.
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. 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>  The development retains a flat roof form which is considered to be consistent with development in the local area and proximity to Manly Town Centre. The roof top areas were constructed for private use terraces in a split level arrangement across the floor plate of the building.
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Consistent</b>  The deep soil landscape areas are unchanged.
<b>Planting on</b>	When planting on structures the following are	<b>Consistent</b>

Structures	recommended as minimum standards for a range of plant sizes:				The development retains the main areas of existing planters area will some minor change at the front for pathway connection across the front of Unit 1.	
	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 spread at maturity	9m <sup>3</sup>	800mm		3.5m x 3.5m or equivalent
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features.				Consistent	
	The seven core design elements in the <i>LHA Silver Level</i> are:  <div><div>1.</div><div>A safe continuous and step free path of travel from the street entrance and / or parking area to a dwelling entrance that is level.</div></div> <div><div>2.</div><div>At least one, level (step-free) entrance into the dwelling.</div></div> <div><div>3.</div><div>Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces.</div></div> <div><div>4.</div><div>A toilet on the ground (or entry) level that provides easy access.</div></div> <div><div>5.</div><div>A bathroom that contains a hobless shower recess.</div></div> <div><div>6.</div><div>Reinforced walls around the toilet, shower and bath to support the safe installation of</div></div>					

	<p>grabrails at a later date.</p> <p>7. Stairways are designed to reduce the likelihood of injury and also enable future adaptation.</p>	
<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>	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p><b>Consistent</b></p> <p>The development has accessibility to regular public transport routes at Manly wharf transport hub.</p>
<b>Awnings and Signage</b>	<p>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.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<b>Not applicable</b>
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<p><b>Consistent</b></p> <p>The BASIX Certificate submitted with the application will achieve a target pass for both Units.</p>
<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?	<p><b>Consistent</b></p> <p>The alterations and additions maintain consistency with the water disposal measures and the impact of the development on any stormwater disposal.</p>
<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?	<p><b>Consistent</b></p> <p>The change to the building maintain consistency with Waste Management and do not change the existing collection and storage of waste and recycling.</p>
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<p><b>Consistent</b></p> <p>The modification does not alter the overall approved scheme for schedule of materials and finishes which ensures the longevity and sustainability of the building.</p>

## 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 development satisfies the requirements of Clause 30(1)(a), (b) and (c).

(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) sub-clause (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 sub-clause (2), and
- (b) the design criteria specified in sub-clause (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

It is considered 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.

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

A BASIX certificate has been submitted with the application (see Certificate No.A433084 dated 1.10.2021 and A434527 dated 13.10.2021).

The BASIX Certificates indicate that the development will achieve the following for both certificates associated with Unit 1 and unit 5:

Commitment	Required Target	Proposed
Water	40	Achievable
Thermal Comfort	Pass	Achievable
Energy	50	Achievable

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

## SEPP (Infrastructure) 2007

### Ausgrid

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

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

### Comment:

The proposal was referred to *Ausgrid* as the works relate to alterations and additions to a residential flat building. No increase in dwelling density is proposed and objections are raised to the proposal from *Ausgrid*.

### Other Infrastructure Service Authorities

Referral to the Transport for NSW (TfNSW) is not required for the proposal and no further referral issues are required pursuant to the SEPP. Sydney Water assets (sewer, water etc) are managed separately through Sydney Water's own administrative procedures.

## 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

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Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11.0m	8.5m New roof element 9.1m Existing upper roof elements	N/A	Yes
Floor Space Ratio (Site area 697.4)	FSR:0.75:1 (523 sqm)	FSR: 0.93:1 (651.9sqm)	24.6% (increased from 18.2% variation - 618.2sqm))	No*

See merit consideration under the heading "Clause 4.6" within this report.

#### Compliance Assessment

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

#### Detailed Assessment

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

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.75:1 (523.1sqm)
Proposed:	0.93:1 (651.9sqm)
Percentage variation to requirement:	24.6%

Note: The new floor space to be added is 14.4sqm for Unit 1 (ground level - west side) and 19.3sqm for Unit 5 (either side of the rooftop stair access structure).

##### 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 (attached to this report as an Appendix 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 existing FSR of the existing building being over the current zoned FSR. The proposal for additional FSR has negligible impact on neighbours, streetscape of the locality.*
- *The proposed Unit 1 & 5 additions will not take away any views of the foreshore, ocean or harbour from any neighbours.*
- *The proposed Unit 1 & 5 additions comply with front, rear and wall height and building height controls.*
- *The additional FSR for Unit 1, 9 Eustace Street would allow better use of the very large terrace*

*area in all weather conditions, while providing greater privacy for the owners and neighbouring properties. The area of terrace proposed to be in-filled is in shadow for a majority of the year due to the bulk and scale of 9 Eustace Street and neighbouring properties. The additional FSR for Unit 5 would allow better use of the exposed roof deck in all weather conditions, while providing greater privacy for the owners and neighbouring properties (in particular Unit 8 and 11 Eustace Street).*

- *Unit 1 will still have a total of 58.7m<sup>2</sup> of outdoor terrace space including 15.5m<sup>2</sup> of principal private open space with minimum dimensions of 3m in any direction. Unit 5 will still have 32m<sup>2</sup> of outdoor terrace space with minimum dimensions in excess of 3m.*
- *In light of the scale of surrounding buildings and the limited impact of the design on the surrounding buildings, the development standard is unreasonable, unnecessary in this case.*
- *The development does not impact any important Landscape and townscape features.*
- *Other similar developments on Eustace Street have similar FSR densities of 0.94/1 or above."*

Comment:

Overall the total FSR does not result in setbacks that are inconsistent with that of surrounding land and does not result in any breach to the height control. The generally amenity of the streetscape will not be impacted by the non-compliant FSR in that the surrounding pattern of development contains many higher and larger scale buildings. The changes to the building provide improved livability to the subject Units and do not affect the whole of the building in terms of extensive structural changes. The additions have been designed to integrate with the existing built form including colours and distribution of building bulk. The changes do not raise significant amenity concerns with regard to the ADG and Manly DCP.

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 E3 Environmental Management zone (now known as C3). 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:

Elements of landscaping are to be retained along the front boundary wall and additional landscaping within the site will be provided as per the original building layout. The proposed façade changes are integrated in a sympathetic manner to the building style and setback from the streetscape. The bulk and scale of proposed design is in keeping with the neighbouring properties.

*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 FSR does not diminish any harbour views or reduce overall landscaping on the site. The proposed additions do not dominate the subject site in that a similar appearance of the height, setback and bulk is maintained and will allow for landscaping elements to be retained. The site does not have public views through the site to the water from street level. The development results in a minor increase in the total gross floor area of 33.7sqm (added) which makes better use of under-utilised private open space / terrace areas.

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

#### Comment:

The new addition to Unit 1 is not readily visible from the street level. The new addition to unit 5 on the top floor is set-back to limit the impact of its visibility to the streetscape. The building work is consistent with the pattern and character of the existing yellow-brick flat building that is of a style dating from the 1970-80 period.

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

#### Comment:

The FSR variation will not be responsible for any unreasonable loss of privacy, loss of water views or amenity since the building works involves ancillary changes to only 2 Units and elements of carparking, private open space and landscaping elements remain consistent with the overall Stata Scheme. Details of solar access and natural light consideration have been made in direct consideration under the Manly DCP in terms of private land and the public domain and are satisfactory.

*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:

This objective is not applicable to the apartment building as the land is not in a business zone.

## **Zone objectives**

The underlying objectives of the zone are:

### The underlying objectives of the R1 General Residential zone

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

Comment:

The change to FSR is consistent with this clause and improves the livability of two Units within the complex by internal design changes and rational use of under utilised private terrace areas. Modernisation of the subject Units is therefore consistent with this objective and only impacts part of the private terrace areas without any unreasonable impacts on adjacent land.

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

Comment:

The variation to the control does not affect this objective as the use of the site for 8 residential apartments remains.

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

Comment:

The building is not a mixed use development and no other uses are proposed as part of this application.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the zone and the objectives of the development standard.

## **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.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 697.4 sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 150 sqm	8 on site (No change)	72% (Existing)	No (As approved)
	Dwelling Size: 1 bedroom dwelling: 50sqm 2 bedroom dwelling: 70sqm 3 bedroom dwelling: 90sqm	Unit 1 - 68 sqm Unit 5 - 145 sqm	N/A	Yes
4.1.2.1 Wall Height	North side: 10m (based on gradient 1 in 5)	8.8m North wall	N/A	Yes
	South side: 9.5m (based on gradient 1 in 8)	9.0m South wall	N/A	Yes
4.1.2.2 Number of Storeys	3 + basement (Area L)	3 + basement	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.2m	N/A	Yes
	Parapet Height: 0.6m	0.45m	N/A	Yes
	Pitch: maximum 35 degrees	2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback. at 6.0m Unit 1. Upper level additions 10.5m setback.	N/A	Yes (As approved)
4.1.4.2 Side Setbacks and Secondary Street Frontages	3m (based on wall height)	3m	N/A	Yes
	Windows: 3m	0.9m Unit 1 3.0m Unit 5	N/A	No* Yes
4.1.4.4 Rear Setbacks	8m	3.7 to 6.8m	53%	No

		(Existing)	(No change)	(As approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area 348sqm	53% 371sqm	N/A	Yes
	Open space above ground 30% of total open space	32% 119sqm	N/A	No*
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	20% 69sqm	N/A	No*
	3 native trees	0 trees (existing established)	N/A (No change)	No (As approved)
4.1.5.3 Private Open Space	12sqm per dwelling	Unit 1: 15.5 sqm Unit 5: 55.0 sqm	N/A N/A	Yes 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	4.2m	N/A	Yes
Schedule 3 Parking and Access	1 per Unit 0.2 per 2-bed Unit 0.5 per 3-bed Unit 0.25 per Unit Visitor parking	No change 12 space + 2 visitor spaces	N/A (No change)	Yes (As approved)

\* See detailed merit assessment within this report.

#### 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
3.4 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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	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
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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

### Detailed Assessment

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

Relevant requirements and objectives, pursuant to *Clause 3.4.1 Sunlight Access and Overshadowing* (including sub sections), are considered as follows:

##### Merit Assessment Comments:

- Shadow diagrams have been provided for the 21 June to demonstrate the change to overshadowing from the roof level additions associated with Unit 5. The new built area and remaining terrace of Unit 1 will receive sunlight in the mornings and (sometimes) the mid-afternoon as per the existing situation. The proposed additions to Unit 5 (Level 4) will have no unreasonable impact to the private open space of neighbouring properties (7 or 11 Eustace Street) or other apartments within the 9 Eustace Street complex itself. The proposed addition to Unit 1 (ground floor) will have no shadowing impact to the neighbouring properties or other apartments for adjoining apartments within the complex or neighbouring land.
- The new built area and terrace of Unit 5 will receive adequate sunlight through the day with skylights and high-level northerly windows providing solar access and natural light. The overshadowing of solar panels on No.7 Eustace Street is marginal and is limited to a minor

proportion of the solar panels with shadow transition only commencing after 12 midday along the edge of one panel section. Pursuant to Section 3.4.1.3 *Overshadowing Solar Collector Systems* a minimum of 6 hours solar access be retained to solar collectors on neighbouring properties. This has been achieved across the majority of the solar panel area in that the shadow transition during the day does not last longer than 1 hour in a single panel section (unit PV cell), and the shadow affects only one edge of the closest cell bank.



Image: Southern side of terrace at location of additions to roof area. Note solar panel on adjacent roof.

- No change to the existing apartments within the subject building will occur in association with the proposed changes. The new enclosed areas will receive the minimum 2 hours direct sunlight between 9am and 3pm at mid-winter. Change to solar access toward side windows along 11 Eustace Street is minor and does not create unreasonable loss of light due to the narrow width of the rumpus additions.



Image: Area to be enclosed for roof additions (rumpus and bathroom) for Unit 5 terrace on either side of stair access.

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 section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### 3.4.2 Privacy and Security

Relevant requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows for the modification:

#### Merit Assessment Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement of windows to give appropriate privacy.
- The building separation, fencing, and landscaping assist to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment. At the upper level however currently the whole open terrace has direct line of sight into various rooms of No.11 Eustace Street and vice versa. This will be significantly improved by the new built area, while still maintaining an outdoor terrace of 32sqm. The proposed Unit 5 design will minimise noise transmission between apartments and neighbouring properties (particularly No.11 Eustace Street). The proposed new rumpus has appropriate side walls and high side window sills to maintain privacy to Unit 5 and along the side setback.
- The alterations and additions have been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual). Improved privacy for the unit 1 owners will be achieved in that currently the south east terrace can be viewed from various units at No.9 Eustace Street. This will be improved by the new enclosed room area, while still maintaining an outdoor terrace of 28.7. sqm. Windows at ground floor are suitably screened by fencing and therefore a 0.9m setback is acceptable.
- Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedroom areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted. The flat building remains consistent with the approved context within the surrounding environment and relationship to adjacent buildings.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### 3.4.3 Maintenance of Views

Relevant view considerations and objectives pursuant to *Clause 3.4.3 Maintenance of Views*, are addressed as follows:

#### Merit Assessment Comments:

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

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

Comment:

The views affected include a broad outlook over the roof areas toward Manly Esplanade (westerly direction) from No.11 Eustace Street across No.9 Eustace Street. A view of water or coastline interface and the harbour area is not readily discernable across the line of the roof additions. A site inspection has been conducted to inspect the views from No.11 Eustace Street from appropriate Units to observe the extent of available views. The view from the rear Unit No.8 has also been considered and is an outlook only over the roof area toward the CBD with no adverse amenity impact.

It is possible to see down the alignment of Eustace Street to the harbour from the front side windows within No.11 Eustace Street however this view is narrow corridor and is not impacted by the proposal.

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

Comment:

The associated view is an urban outlook from No.11 Eustace Street for window along the central and rear area.

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

Comment:

While there is a view along the street alignment of Eustace Street at the front of the site and from adjacent sites the alterations and additions associated with Unit 5 do not affect water views. The impact is regarded as an urban outlook across a side boundary and roof areas and toward the side elevation of No.54 to 58 West Esplanade and the Norfolk Pine Trees along West Esplanade of Manly Harbour.

At the upper level where the additions to Unit 5 are proposed the angle of the street alignment, density of adjacent development between the harbour area result in a negligible view impact.

On balance, considering the whole of the outlook available, alternative view lines, pattern of surrounding development, district outlook and the existing roof profile in comparison to the proposed new roof, the

view loss is qualitatively considered to be negligible with respect to the low profile rooftop area and works generally.

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

Comment:

An assessment of the proposal with the planning controls has been made and in summary the alterations and additions do not change the maximum height of the building, envelope or setbacks and the change to FSR, building bulk or wall height. In consideration of the modification elements the applicant has sought to achieve minimal to nil view impacts by maintaining a low roof profile. Therefore the modification works are assessed as having no unreasonable view impacts.



Image: Outlook across the roof terrace area toward Manly Esplanade.

In summary, the overall view impact when considered in terms of the proposed building design modification and ancillary elements is considered satisfactory and does not create an unreasonable view impact for any adjacent or surrounding properties.

The development is further considered against the Objectives of the DCP control as follows:

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

Comment:

The proposal maintains view sharing with a reasonable design response that minimises impacts that are consistent with view sharing principles outlined above. The existing flat building and additions that will change the building roof profile does not create an unreasonable loss of view outlook with regard to the quantitative and qualitative overall outlook.

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

*footpaths).*

Comment:

The proposed building height, envelope and alignment of the building is unchanged. The changes to the roof top area will not have an unreasonable impact on views from adjacent properties along Eustace Street. The alterations and additions to the flat building will have no unreasonable impact on public views along the street.

- *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 proposal is consistent with the objectives of the Manly DCP to ensure development may take place where a local outlook or water views are concerned and the design responds appropriately to the site constraints and opportunities without creating unreasonable view amenity impacts for surrounding development that overlook the site. On balance in considering the whole of views available from various positions and relevant properties and view lines in particular over / through the site, the proposal is considered to be consistent with this objective.

Having regard to the above assessment, and site inspection made to assess the view context in the local surroundings, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) 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)**

On existing sites in Residential LEP Zones with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

The undersized nature of a lot is a matter that Council may consider in determining whether ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ and ‘there is sufficient environment planning grounds to justify contravening the development standard’ under LEP clause 4.6(3).

For the purposes of this clause the proposal complies with the MDCP requirement using the Area "C" (250sqm) which applies to any undersized lots in the subzone that may be less than 250sqm. In this case the site is 697.4sqm and therefore only the LEP requirement applies and the DCP exception to FSR is not applicable.

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

Relevant requirements and objectives pursuant to *Clause 4.1.4 Setbacks*, are considered as follows:

Merit Assessment Comments:

- The additions to the building propose new windows (W1 and W2) that will be within 3.0m of the side boundary at ground level for Unit 1. At the upper level for Unit 5 all windows are 3.0m or more from the side boundary. In this regard, consideration of the non-compliance for Unit 1



demonstrates no unreasonable impact on adjacent land due to the solid adjacent building wall for No.7 Eustace Street.



Image: Area of additions across part of the ground level side terrace (Unit 1) and the adjacent neighbouring solid wall.

- The alteration and additions are consistent with the spatial proportion of the overall massing of the building and the front and rear setback will be retained.
- The building alterations do not create unreasonable amenity impacts by way of the setback elements of the upper storey for Unit 5 or changes to Unit 1 at the lower residential levels. Reasonable access to sunlight, ventilation, outlook and noise amenity will be maintained that are appropriate for the density of the surrounding residential environment.
- The changes to wall setback for Unit 1 allow for flexible and improved internal amenity, including livability of Unit 1 (as a small 1 bedroom unit) and usable internal space for Unit 5 (as a larger 3 bedroom unit). The change to the building do not disrupt the pattern and scale of the streetscape character.
- Considerations about building fire separation have been addressed by the applicant to the satisfaction of Council's Building Inspector for the purposes of fire engineering solutions. The site is not affected by natural bushfire hazard.

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 section 1.3(a) 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**

Relevant requirements and objectives, pursuant to *Clause 3.1.5 Open Space and Landscaping*, are considered as follows:

### Merit Assessment Comments:

- No change is proposed to landscaping in that the proposal utilises hard paved open space of terraces and roof top areas with no change to existing vegetation. The alterations and additions to not change any existing deep soil landscape zones on the site and the enclosure of parts of the existing private open space for Unit 1 and Unit 5 do not detract from the existing building style and streetscape. No detailed landscape referral assessment is required as the proposal does not seek to change any soft landscape elements or propose additional canopy trees. While there is a minor non-compliance with the proportion of above ground open space to total open space the alterations and additions seek to make better use of existing marginal outdoor open space areas for improved internal living areas.
- Landscape areas will remain consistent with the existing building layout, including common property areas of deep soils zones that remain unchanged. The site is not appropriate for very large trees which would impact surrounding coastal outlook, light or potentially building elements over the long term. This is consistent with the pattern of surrounding development along Eustace Street.
- The site backs onto a local reserve and no change is proposed to the landscape areas at the rear of the site. The site is not within a bushfire zone that would limit certain tree species where there are alterations and additions proposed.
- Landscape elements have at the rear and front of the building will remain unchanged to complement the architecture of the building and provide amenity when viewed from public and private land. The proposed alterations only affect hard paved terrace areas and seek to make better design use of the marginal open space areas (side setback and roof terrace) to improve internal amenity and convenience of the principal living areas for Unit 1 and Unit 5.

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 section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **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 2021**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$3,699 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$369,876.

## CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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.

In summary, a detailed assessment has been required for the following specific issues:

Consideration of a variation to the FSR in context of the alterations and additions that involve partial enclosure of a roof top terrace (Unit 5) and renovation work to Unit 2. Overall the existing FSR is being increased from 0.88:1, being currently above the maximum (.75:1) FSR, up to 0.94:1 principally associated with augmenting existing terrace areas of private open space to improve internally livability of Unit 1 and Unit 5 only.

Building setbacks, height, FSR, solar and privacy amenity issues raised in submissions have been considered and the design of the proposal is not considered to create unreasonable impacts on adjacent land. The property currently contains 8 Units in a split level layout for the building with the overall height being unchanged and the proposed works enabling some building improvements to Unit 1 and Unit 5. The residential density of the surrounding streetscape, building separation, privacy (visual and acoustic), solar access, views and general amenity will not be unreasonably affected by the proposed works. Other construction related issues (fire engineering, strata plan changes) are addressed by conditions.

In conclusion, the principal issues in the assessment have been addressed and the proposal is considered to maintain consistency with the objectives and requirement of the Manly LEP and DCP for

the alterations and additions to the residential flat building.

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

## RECOMMENDATION

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.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2409 for Alterations and additions to a residential flat building on land at Lot 1 SP 31425, 1 / 9 Eustace Street, MANLY, Lot 5 SP 31425, 5 / 9 Eustace Street, MANLY, Lot CP SP 31425, 9 Eustace Street, MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 002 / A Site Plan	2.12.2021	Cradle Design
DA101 / B Unit 1 Existing and Demolition Plans and Elevations	2.12.2021	Cradle Design
DA102 / B Unit 1 Floor, Roof and Stormwater Plans	2.12.2021	Cradle Design
DA103 / B Unit 1 Proposed Elevations	2.12.2021	Cradle Design
DA 104 / B Unit 1 Section A	2.12.2021	Cradle Design
DA 111 B Finishes Schedule	2.12.2021	Cradle Design
DA 501 / B Unit 5 Existing and Demolition Plans	2.12.2021	Cradle Design
DA 502 / B Unit 5 Existing and Demolition Elevations	2.12.2021	Cradle Design
DA 503 / B Unit 5 Floor, roof and Stormwater Plans	2.12.2021	Cradle Design
DA 504 B Unit 5 East Elevations	2.12.2021	Cradle Design

DA 505 B Unit 5 North and South Key Elevations	2.12.2021	Cradle Design
DA 506 B Unit 5 North and South Elevations	2.12.2021	Cradle Design
DA 504 B Unit 5 Sections A and B	2.12.2021	Cradle Design
DA 514 B Unit 5 Finishes Schedule	2.12.2021	Cradle 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 A434527	13.10.2021	Cradle Design
Basix Certificate A433084	1.10.2021	Cradle Design

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>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste management plan - 9 Eustace Street	2.12.2021	Cradle Design

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

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

## 2. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not

be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

### 3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of

jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant



shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (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

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$3,698.76 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 2021. The monetary contribution is based on a development cost of \$369,876.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash

contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

## 5. **Security Bond**

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

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

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

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

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

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

### 6. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The side highlight window W41 for the rumpus is to have fixed translucent window glazing.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

### 7. **Fire Resisting Construction**

The proposed building works associated with the dining room/kitchen extension is required to

comply with Specification C1.1 Fire-resisting construction clause 2.1 of the Building Code of Australia. Details demonstrating compliance from an appropriately qualified Registered Certifier\* are to be provided prior to the issue of the Construction Certificate.

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

8. **Structural Adequacy**

A Certificate of structural adequacy signed by a practicing structural engineer, stating that the wall is capable of supporting the proposed additions and has an FRL of 30/-/-is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the existing building is capable of supporting all additional loadings.

9. **Compliance with Standards**

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

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

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

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

10. **Survey Certificate**

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

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

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

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

Prior to any works commencing on site, where applicable, including demolition / mixing loose / granular materials, 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.

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

12. **Strata Plan**

The Strata Plan for the subject property Title is to be revised / updated by a qualified and

practicing Surveyor to reflect the approved building layout changes. Evidence of the updated Strata Plan having been lodged for registration with the NSW Land Titles Office is to be submitted to Council.

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

Reason: Land Title records