

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2024
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 6 DP 31806, 38 Frenchs Forest Road SEAFORTH NSW 2092 Lot 5 DP 31806, 38 Frenchs Forest Road SEAFORTH NSW 2092 Lot 4 DP 31806, 38 Frenchs Forest Road SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to shop top housing
Zoning:	Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jameson Family Investments NSW Pty Ltd
Applicant:	Jameson Family Investments NSW Pty Ltd

Application Lodged:	04/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	12/11/2021 to 26/11/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 1.85%
Recommendation:	Approval

Estimated Cost of Works:	\$ 460,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing shop top housing development. The works consist of:

- Demolition of a major portion of the existing residential unit on the first floor, with the concrete slab and eastern façade being retained.
- Demolition of existing access stairs to first floor and construct new access stairs to first floor.
- Substantial alterations to the existing residential unit on the first floor to include a foyer, 4 bedrooms, 3 bathrooms, laundry, open plan kitchen/living/dining and a balcony on the northern

elevation.

- Associated civil works.
- New solar panels and AC units on the roof.

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 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.8 Waste Management

Manly Development Control Plan - 4.2.8.2 Setbacks

Manly Development Control Plan - 4.2.8.3 Landscaping

SITE DESCRIPTION

Property Description:	<p>Lot 6 DP 31806 , 38 Frenchs Forest Road SEAFORTH NSW 2092</p> <p>Lot 5 DP 31806 , 38 Frenchs Forest Road SEAFORTH NSW 2092</p> <p>Lot 4 DP 31806 , 38 Frenchs Forest Road SEAFORTH NSW 2092</p>
Detailed Site Description:	<p>The site consists of three allotments located on the corner of Frenchs Forest Road and Brook Road, Seaforth. The site is legally described as Lots 4, 5 and 6 of DP. 31806. Vehicular access to the site is provided via the Brook Road frontage.</p> <p>The site is irregular in shape with a frontage of 16.46m to Frenchs Forest Road and 29.25m to Brook Road. The site has a surveyed area of 655sqm.</p>

The site is located within the B1 Neighbourhood Centre zone pursuant to Manly LEP 2013 and accommodates a two storey shop top housing development comprising six commercial tenancies and a single residential unit located on the first floor. The site contains an open hardstand area along the western confines of the site that allows for two vehicles to be parked on the site. A number of 90 degree parking spots are located on the Brook Road frontage which serve the retail units on the site.

The site experiences a fall of approximately 4.5m that slopes away from south-west towards the north-east. The site contains a small canopy tree and small shrubs along the Brook Road frontage.

Description of Surrounding Development

Located to the north and south of the site contains detached low density residential development (i.e. dwelling houses), typically 1-2 storeys in height. Located directly to the west of the site is a retail premises (Amber Tiles) and located directly to the east of the site is an educational establishment (Seaforth Public School).

Map:



SITE HISTORY

The land has been used for commercial/residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Development Application No. 3740/90 for proposed hairdressing salon approved by Council on 14 September 1990.

- Development Application No. 261/95 for internal alterations to existing shop approved by Council on 29 January 1996.
- Development Application No. 42/08 for change of use from an office to a commercial grade food preparation kitchen refused by Council on 4 August 2008.
- Development Application No. 356/09 for change of use to take away food shop (pizza), fitout and signage approved by Council on 31 December 2009.
- Development Application No. 88/2013 for change of use to a café with signage and outdoor seating - Four brothers Café - Shop 4 approved by Council on 22 July 2013.
- Development Application No. 233/2014 for alterations and additions to an existing shop including amalgamation of two (2) shops with amended hours of operation, new windows and door, signage, awning and increase in parapet height - Bottle Shop approved by Council on 16 April 2015.
- Development Application No. 267/2015 for change of use to a gymnasium with fitout and one (1) car parking space - Units 7 and 8 approved by Council on 23 December 2015.
- Development Application No. 173/2017 for signage approved by Council on 29 September 2017.
- Complying Development Certificate CDC2018/0006 for change of use and fitout of a grocery shop approved by a Private Certifier on 21 December 2017.
- Complying Development Certificate CDC2021/1167 for change of use to a bakery, along with associated internal fitout works approved by a Private Certifier on 19 November 2021.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 6 December 2021.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant requesting that a Clause 4.6 variation request be submitted to justify the variation to the FSR development standard. In the absence of an adequate Clause 4.6 request, Council has no power to vary a Principal Development Standard.

Subsequently, the applicant submitted a written request pursuant to Clause 4.6 of Manly LEP 2013 to justify the variation to the FSR development standard. The additional information did not alter the design of the proposal or scope of works. Therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the commercial/residential use of the site, and is not considered a

Section 4.15 Matters for Consideration	Comments
	contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 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&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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a written request pursuant to Clause 4.6 of Manly Local Environmental Plan 2013 to justify the variation to Clause 4.4 'Floor Space Ratio' of Manly Local Environmental Plan 2013.</p> <p><u>Clause 92</u> of the EP&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>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/11/2021 to 26/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Withheld	BROOKVALE NSW 2100

One submission was received during the public exhibition period. The submission raised concern of non-planning related matters which do not form part of Council's assessment pursuant to Section 4.15 of the EP&A Act 1979. Therefore, the concerns do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<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><i><u>Note:</u> 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.</i></p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Application is for the proposed alteration of an existing shop top housing residential unit.</p> <p>The SEE advises the following:</p> <p><i>Generally, the following works are proposed:</i></p> <ul style="list-style-type: none"> • Demolition of relevant structures on site; • Alteration of the existing residential apartment converting it from a three bedroom unit to a four bedroom unit; and • Associated civil engineering works. <p>There can be a number of noise sources for residents within shop-top housing given</p>

Internal Referral Body	Comments
	<p>the adjacent commercial/retail tenancies. In particular, this development contains an approved Gym and a café that may be potential sources for noise. However, this is already a constructed three bedroom shop top housing unit. The applicant seeks to make alterations and hopefully the alterations will provide an opportunity to improve acoustic amenity for the residents.</p> <p>The applicant has also provided an Acoustic report by Koikas Acoustics Pty Ltd dated 20 May 2021 (reference: 4550R20210420pdf38FrenchsForestRdSeaforth_DA) that provides a number of measures to improve acoustic amenity for the residents.</p> <p>Recommendation</p> <p>Supported - subject to conditions</p>
Landscape Officer	<p>The proposed development is for the alteration and conversion of a residential apartment in the existing shop-top building from a three bedroom unit to a four bedroom unit.</p> <p>Construction material deliveries and any craneage may impact existing street trees and one tree within the property, and as such standard conditions for tree protection shall be imposed to ensure protection of the existing street trees, and tree within the property.</p>
Strategic and Place Planning (Urban Design)	<p>The proposed development is for the alteration and addition of the residential apartment in the existing shop-top building converting it from a three bedroom unit to a four bedroom unit. The proposed built form is acceptable and will generally fit in contextually to the streetscape and surrounding developments.</p>
Traffic Engineer	<p>The proposal is for conversion of the existing 3 bedroom shop top apartment to a 4 bedroom apartment. No changes to the carparking or access arrangements are proposed.</p> <p>The DCP Parking requirement for the residential component of this site is 1.95 spaces. The DCP parking requirement does not change as a result of the conversion of the unit from a 3 to a 4 bedroom dwelling and the 2 spaces currently available on site meet the DCP parking requirement. The change would however have the potential to result in higher car ownership levels at the dwelling which may not be able to be accommodated within the two stacked spaces available on site. Parking in stacked parking spaces can also be inconvenient as vehicles can be "parked in". These factors could, in turn, result in greater pressure on the 90 degree parking spaces on the Brook Road frontage of the site which have been introduced to cater for parking needs generated by the ground floor retail units. These spaces are currently unrestricted but would benefit from the introduction of timed parking restrictions to encourage turnover and prevent their occupation on a long term basis. This change has previously been approved by Council's Traffic Committee but has not yet been installed.</p> <p><u>Planner Comment:</u></p> <p>Council's Traffic Engineer has recommended a condition requiring the two stacked parking spaces at the rear of the site to be used by the residential unit. The condition</p>

Internal Referral Body	Comments
	was placed under the 'Operational Conditions' heading, however Council's Development Assessment Planner has amended the condition to ensure that it is an on-going requirement for the stacked parking spaces to be used by the residential unit.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential/commercial 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/commercial land use.

SEPP 65 - Design Quality of Residential Apartment Development

The provisions within SEPP 65 apply in the following circumstances:

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

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

(i) the erection of a new building,

(ii) the substantial redevelopment or the substantial refurbishment of an existing building,

(iii) the conversion of an existing building, and

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

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

Comment:

Whilst the works involve alterations and additions to a shop top housing development, the provisions within SEPP 65 do not apply as the building concerned is less than three storeys in height and does not contain at least four or more dwellings. Therefore, no further consideration of this SEPP is required for the purpose of this assessment.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with this application (see BASIX Certificate No. A404083_03, dated 28 October 2021). A condition has been included with this consent to ensure compliance with the aforementioned 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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.45m	-	Yes
Floor Space Ratio	1:1 (655sqm GFA)	1.02:1 (667.1sqm GFA)	1.85%	No

Note: GFA refers to gross floor area.

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
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	1:1 (655sqm GFA)
Proposed:	1.02:1 (667.1sqm GFA)
Percentage variation to requirement:	1.85%

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 applicant's written request argues, in part:

- The FSR non-compliance does result in overshadowing of adjacent or nearby residential development.
- The additional gross floor area is not visible from the public domain.
- The FSR non-compliance does not disrupt any significant view lines.
- A compliant design would not result in an improved environmental planning outcome and would result in an inferior design.
- The proposed development is consistent with relevant objects specified within the EP&A Act 1979.

Planner Comment:

The Development Assessment Planner agrees generally with the applicant's justification.

It is accepted that the FSR non-compliance does not result in overshadowing of nearby residential development. The adjacent residential dwelling house is located directly to the north of the site and will not be subject to overshadowing from the development. The shadows cast from the development will be largely confined to the subject site and the footpath and roadway.

It is also accepted that the additional gross floor area will not be visually prominent within the

townscape. The existing façades fronting Brook Road and Frenchs Forest Road will be retained and the additional gross floor area will be confined to the north-western confines of the site. Furthermore, the existing northern setback of the shop top housing development will be retained. In this regard, the perceived bulk and scale of the existing shop top housing development will remain unaltered as the works will not be discernible from the public domain.

In relation to views, an examination of the site and the surrounds has concluded that the FSR non-compliance will not disrupt any significant view lines from public and private land.

It is further agreed that a compliant design would not result in an improved environmental planning outcome and would result in an inferior design, noting that the proposal has been designed to allow for a high level of internal amenity and does not result in any adverse streetscape or amenity impacts.

Moreover, it is accepted that the proposal is consistent with relevant objects of the EP&A Act 1979, in particular Clauses 1.3 (c) and (g).

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 Clauses 1.3 (c) and (g) of the EP&A Act.1979.

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 B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The southern and eastern facades of the shop top housing development, which front Frenchs Forest Road and Brook Road, will be retained and the existing northern boundary setback will be unaltered. As such, the additional gross floor area will not alter the perceived bulk and scale of the existing shop top housing development.

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 additional gross floor area is located within the western confines of the site and will not be discernible from the public domain. The works will not obscure any important townscape or landscape features.

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

Comment:

The existing landscaped elements along the Brook Road frontage will be retained. Furthermore, the perceived bulk and scale of the development will remain unaltered and hence, the development will continue to maintain an appropriate visual relationship with the surrounding environment.

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

Comment:

The development does not result in any adverse environmental impacts and will not preclude the use or enjoyment of adjoining land or the public domain.

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

Comment:

The proposal allows for the continued use of the retail tenancies on the ground floor.

Zone objectives

The underlying objective of the B1 Neighbourhood Centre zone is:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The development will present to the street and the neighbouring properties as a small scale shop top housing development that will provide accommodation and services to meet the needs

of the community.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the zone and FSR 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, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 665sqm	Requirement	Proposed	% Variation*	Complies
4.2.8.2 Setbacks	Street Front Setbacks: Prevailing Building Line	No change to front setbacks to Frenchs Forest Road or Brook Road	-	Yes
	North: 8m (ground floor) - 8m plus 45 degree angle from 3m above ground level	5.55m - as existing (outside envelope)	N/A	No
	West: nil setback	nil setback	-	Yes
4.2.8.3 Landscaping	Private open space: 20sqm with at least 3m dimensions	21sqm	-	Yes
		2.78m in dimension	4%	No
Schedule 3 Parking and Access	2 spaces required for the proposed 4 bedroom unit	2 spaces provided for the unit	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	No	Yes
4.2.8.3 Landscaping	No	Yes
4.2.8.4 Residential Density	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.10 Local Character provisions	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

Detailed Assessment

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

The proposal is considered to align with the Manly DCP 2013 amenity provisions for the following reasons:

Views

- The works sit comfortably below the 8.5m height plane and do not disrupt any significant view lines from nearby private and public land.

Privacy

- The north facing windows and balcony are located over 11m from private open space on the northern adjacent site (2 Brook Road), which is sufficient separation to avoid direct overlooking into the nearby private open space.
- The first floor of the dwelling house at 2 Brook Road is devoid of windows on the southern elevation and therefore, the occupants of the proposed residential unit within the shop top housing development will not be able to directly overlook into habitable rooms on the adjacent dwelling house.
- The existing northern setback will be maintained and therefore, a reasonable level of acoustical privacy will be maintained between the shop top housing development and northern adjacent dwelling at 2 Brook Road.

Solar Access

- The shadows resulting from the proposal are largely confined to the subject site, footpath and roadway. The adjacent dwelling house to the north will not be subject to overshadowing.
- The residential unit has incorporated decking and windows on the northern elevation to maximise solar access on the winter solstice (June 21).

3.8 Waste Management

The application has not been accompanied by a Waste Management Plan. To ensure the proper disposal of builders' waste, a suitable condition has been included with this consent requiring a Waste Management Plan to be prepared in accordance with Council's waste management guidelines and submitted to the Certifying Authority prior to the issue of the Construction Certificate. Subject to satisfying the above, the proposal will demonstrate consistency with the requirements and objectives of this control.

4.2.8.2 Setbacks

Description of non-compliance

The Manly DCP 2013 requires a rear setback of 8m at ground level and also requires upper levels to be within an envelope projected from the 8m rear setback line at 45 degrees and 3m above ground level.

The proposed development maintains an existing non-compliant rear setback of 5.55m on the first floor, which sits outside of the prescribed envelope requirement.

Merit consideration

The Manly DCP 2013 does not include objectives for this clause. As such an assessment of the objectives of the parent Clause 4.2.8 Neighbourhood Centres (LEP Zone B1) has been carried out below:

Objective 1) To accommodate a range of small scale development permitted by the LEP within established residential neighbourhoods where such development is compatible with the amenity of the surrounding area.

Comment:

The development will present to the street and the neighbouring properties as a small scale shop top housing development that will provide accommodation and services to meet the needs of the community. Furthermore, the works are appropriately sited and scale to ensure that a reasonable level of amenity is maintained to the adjacent residential development to the north. Overall, the proposal satisfies this objective.

Objective 2) To provide side and rear setbacks which ensure the building height and distance of the building from its boundaries at various storeys, maintain the amenity of neighbouring residential sites and contributes to the amenity of the building and surrounds through landscape design.

Comment:

The proposal maintains the existing rear boundary setback and two storey built form. The existing dense vegetation located along the southern boundary of the northern adjacent site (2 Brook Road) will continue to act as a visual buffer between the shop top housing development and northern adjacent dwelling house to the rear (north).

Conclusion

Having regard to the above assessment, it is concluded that the applicable objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.2.8.3 Landscaping

Description of non-compliance

The Manly DCP 2013 requires residential units within this zone to have 20sqm of private open space at a dimension of 3m x 3m. The proposal includes a north facing balcony directly accessible from the living room which will serve as the private open space for the subject residential unit. The balcony in question is 21sqm in area, however has a depth of 2.78m and does not meet the prescribed 3m x 3m requirement.

Merit consideration

The Manly DCP 2013 does not include objectives for this clause. As such an assessment of the objectives of the parent clause 4.2.8 Neighbourhood Centres (LEP Zone B1) has been carried out below:

Objective 1) To accommodate a range of small scale development permitted by the LEP within established residential neighbourhoods where such development is compatible with the amenity of the surrounding area.

Comment:

The development will present to the street and the neighbouring properties as a small scale shop top housing development that will provide accommodation and services to meet the needs of the community. Furthermore, the proposed private open space that serves the residential unit is appropriately located to ensure that it is not directly visible from the street frontage and to ensure that it receives more than 3 hours of direct sunlight between 9am - 3pm on June 21 (winter solstice). Overall, the proposal achieves this objective.

Objective 2) To provide side and rear setbacks which ensure the building height and distance of the building from its boundaries at various storeys, maintain the amenity of neighbouring residential sites and contributes to the amenity of the building and surrounds through landscape design.

Comment:

The proposal is consistent with the side setback requirement and the maintenance of the non-compliant rear setback does not exacerbate any amenity impacts to the northern adjacent dwelling house, specifically in relation to views, solar access, privacy and visual bulk. The proposed private open space is orientated towards the north to receive an appropriate level of direct sunlight during winter months and the size of the balcony is conducive to serve as private open space for the subject residential unit.

Conclusion

Having regard to the above assessment, it is concluded that the applicable objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 \$4,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$460,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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

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.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/2024 for Alterations and additions to shop top housing on land at Lot 6 DP 31806, 38 Frenchs Forest Road, SEAFORTH, Lot 5 DP 31806, 38 Frenchs Forest Road, SEAFORTH, Lot 4 DP 31806, 38 Frenchs Forest Road, SEAFORTH, 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-AR-0100 (Revision E)	06/07/2021	Mode Design

DA-AR-0200 (Revision E)	06/07/2021	Mode Design
DA-AR-0201 (Revision E)	06/07/2021	Mode Design
DA-AR-0202 (Revision E)	06/07/2021	Mode Design
DA-AR-1000 (Revision F)	06/07/2021	Mode Design
DA-AR-1001 (Revision F)	06/07/2021	Mode Design
DA-AR-1002 (Revision F)	06/07/2021	Mode Design
DA-AR-1100 (Revision E)	06/07/2021	Mode Design
DA-AR-1200 (Revision E)	06/07/2021	Mode Design
DA-AR-1201 (Revision E)	06/07/2021	Mode Design
DA-AR-5000 (Revision E)	06/07/2021	Mode Design

Engineering Plans		
Drawing No.	Dated	Prepared By
D1 Site and Ground Floor Stormwater Drainage Concept Plan and Details Revision B	26 July 2021	LMW Design Group
D2 First Floor Stormwater Drainage Concept Plan and Details Revision B	26 July 2021	LMW Design Group
D3 Roof Terrace Stormwater Drainage Concept Plan and Detail Revision B	26 July 2021	LMW Design Group
D4 Roof Stormwater Drainage Concept Plan and Detail Revision B	26 July 2021	LMW Design Group

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A404083_03	28 October 2021	The L.C Trust Luis Contigiani
Acoustic Report	20/05/2021	Koikas Acoustics Pty Ltd
Access Report Ref. MSA2178DDA_Rev02	21/09/2021	Matt Shutter and Associates
BCA Compliance Assessment Ref. MSA2178_Rev03	21/09/2021	Matt Shutter and Associates
Parking Assessment Ref. 15008	04/07/2021	Terraffic Pty Ltd

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

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

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

3. 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.

4. **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

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$4,600.00 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 \$460,000.00.

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

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.

6. 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).

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

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

7. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use on site parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site adjacent to Seaforth Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the

timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

8. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council’s Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council’s Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council’s website.

Compliance with this condition must not result in variations to the approved development or

additional tree removal.

Reason: To ensure satisfactory management of stormwater.

9. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

10. Acoustic Report Recommendations

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that recommendations within the Acoustic Report by Koikas Acoustics Pty Ltd dated 20 May 2021 (reference: 4550R20210420pdf38FrenchsForestRdSeaforth_DA) have been implemented/incorporated into the design of the premises.

Reason: To maintain acoustic amenity of occupants.

11. 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.

12. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be

obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

14. Road Occupancy Licence

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows on Frenchs Forest Road, a State Road.

Reason: Requirement of TMC for any works that impact on traffic flow.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Protection of existing street trees and vegetation, and tree within the property

All existing street trees and associated understorey garden planting in the vicinity of the works, and the existing tree within the property facing Brook Road shall be retained during all construction stages in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Deliveries shall be conducted to ensure no damage to existing trunks, branches and canopies, or removal of any garden planting.

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

Reason: Tree and vegetation protection.

16. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

17. Removing, Handling and Disposing of Asbestos

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

18. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

19. Waste Management During Development

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

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

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

20. Right of Carriageway to be maintained during works

The Right of Carriageway located adjacent to the northern boundary must not be blocked off by vehicles, machinery or equipment and is to be maintained at all times during construction works.

Reason: To ensure unimpeded vehicular movement and pedestrian safety.

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

21. Signage and Linemarking – Implementation

The applicant is to install all signage and linemarking, as per the plans approved at the April 2021 Traffic Committee meeting for installation of 2P Parking restrictions applying 8:30am-6pm Mon-Fri and 8:30am-12:30pm Saturday in the 5 angle parking bays on the west side of Brook Road fronting 38 Frenchs Forest Road . These works are to be completed prior to the issue of any Occupation Certificate to the satisfaction of Council's Traffic Engineer.

Reason: To manage parking generated by the site.

22. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

23. **Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with the recommendations within the Acoustic Report by Koikas Acoustics Pty Ltd dated 20 May 2021 (reference: 4550R20210420pdf38FrenchsForestRdSeaforth_DA).

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent. The acoustic certification is to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To maintain acoustic amenity of occupants.

24. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

25. **Noise - Mechanical Plant**

All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Reason: To ensure an appropriate level of residential amenity.

26. **Stacked Parking Spaces (Residential)**

The stacked parking spaces at the rear of the site are to be assigned for use by the residential unit.

Reason: To minimize conflicts regarding parking areas.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Thomas Burns, Planner

The application is determined on 18/01/2022, under the delegated authority of:



Claire Ryan, Acting Development Assessment Manager