

The subject property is commonly known as 5 Commonwealth Parade, Manly and legally known as SP 11874. The site is located on the western side of Commonwealth Parade. The property is an irregular rectangle in shape, has a frontage of 15.4m to Commonwealth Parade and 9.2m to The Crescent, an average depth of 38.8m and an overall site area of 460m². The property currently contains a three-storey residential flat building with vehicular access via an existing driveway from The Crescent to an existing single garage to the rear of the existing dwelling. The property slopes approximately 6m from west to east.

The adjacent property to the north, at 1-3 Commonwealth Parade, is developed with a three-storey residential development. The adjacent property to the south, at 7 Commonwealth Parade, is developed with a seven-storey residential development. Development in this area of Commonwealth Parade consists of residential developments.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

Recent relevant applications on site include:

- DA211/2004: Demolition and construction of a new four-unit residential flat building, and strata subdivision. Approved by DAU on 29 September 2006.
- DA436/2008: Amendment to the basement level design to minimise the environmental impact. Approved by DAU on 3 March 2009.
- DA436/2008 – Part 2: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building - involving the conversion of upper level apartment into two apartments - one (1) two (2) bedroom apartment and one (1) one (1) bedroom apartment with changes to the internal wall, door and windows. Withdrawn by the applicant on 13 August 2013.
- DA436/2008 – Part 3: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building – involving conversion of a car parking space into a storage area, level 1, 2 and 3 extension, pergola extensions to level 2 and level 3, internal alterations, delete planter box on level 1, addition of an dividing screen and changes to window and doors. Approved by DAU on 9 November 2016.

Substantial Commencement

Development Consent No. 436/2008 included works and referenced plans associated with the earlier Development Consent No. 211/2004. Therefore, it is considered that Development Consent 436/2008 included the whole of DA211/2004 and that both consents relate to the same development. On 11 September 2009, geotechnical bore holes were drilled on site in relation to the proposed development, thus physical commencement of works is considered to have occurred prior to the two consents' lapse dates.

Description of proposed development

The proposal seeks approval for the following:

- Reduction in four units to three;
- Reduction in parking requirement and introduction of a car stacker;
- Reduction in basement level and adjustment of all other floor levels (increased floor to ceiling height, no additional overall height);
- Changes to windows, doors, façade and eastern balconies;
- Internal reconfiguration;
- Addition of privacy screening to western balconies; and
- Addition of hydrant and drencher booster assembly cupboards.

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Landscaping Comments

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments

Council's Heritage Officer offered no objections to the proposal.

Waste Comments

Council's Waste Officer offered no objections to the proposal.

Traffic Comments

Council's Traffic Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Driveway Comments

Council's Driveway Officer offered no objections to the proposal.

External Referrals

AUSGRID

The proposal was referred to Ausgrid. No comments from Ausgrid had been received by Council at the time of writing this report.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:***
 - (i) *any environmental planning instrument, and***

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide.

The provisions of SEPP 65 and the ADG do not apply to this development, as the modifications result in three dwellings.

Manly Local Environmental Plan 2013

The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R1 General Residential

Objectives of zone

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

The proposed modifications maintain the residential use of the site.

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

The proposed modifications maintain the existing variety of housing types and densities in the locality.

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

Not applicable. The proposed modifications maintain the residential use of the site.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Approved	Proposed	Complies	Comments
4.3	Height of buildings	11m	15.05m (See note below)	11.4m	No	No additional non-compliant height proposed.
4.4	Floor Space Ratio	0.75:1 345m ²	1.27:1 584.2m ²	1.3:1 601m ²	No	See comment below.

Note: The previous assessment recorded an overall building height as measured to the proposed excavated ground level, rather than the existing natural ground level. The overall building height has been amended as part of this assessment, in accordance with the definition of building height within the Manly LEP 2013.

4.6 Exceptions to development standards

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications. Nevertheless, an assessment of the variation is as follows:

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	0.75:1 (345m ²)
Proposed	1.3:1 (601m ²)
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	74.2% to development standard 2.8% to existing non-compliance

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

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

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

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

Comment: The proposed modifications to the approved development are minor and predominantly internal. The development is consistent with the existing and desired streetscape character, in that the street contains a number of examples of residential flat buildings of comparable scales.

- (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 modifications to the approved development do not obscure any important landscape or townscape features.

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

Comment: The proposed modifications provide the same side setbacks and result in general building envelope as the approved development, thereby providing an appropriate visual relationship between the existing development surrounding the site and the proposed works on site.

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

Comment: The proposed modifications to the approved development do not unreasonably impact upon the use or enjoyment of adjacent properties 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: Not applicable. The subject site is zoned R1 General Residential.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of Zone R1 General Residential:

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

The proposed modifications maintain the residential use of the site.

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

The proposed modifications maintain the existing variety of housing types and densities in the locality.

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

Not applicable. The proposed modifications maintain the residential use of the site.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the floor space ratio development standard.

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

Comment: The proposed development results in a better outcome by providing allowing for reconfiguration of the approved development, without resulting in unreasonable amenity impacts to the subject site or adjacent sites.

(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.

(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.*

Comment: As detailed, a written request is not required in this case. Nevertheless, the applicant has provided the following justification for the variation:

“1.0 INTRODUCTION

This variation under Clause 4.6 of Manly Local Environmental Plan 2013 (LEP 2013) has been prepared by BJA.

It is submitted to Manly Council in support of a S96 Development Application (DA) for the redevelopment of 5 Commonwealth Pde Manly for residential purposes.

Clause 4.6 of Manly LEP 2013 allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This Clause 4.6 variation should be read in conjunction with the original Statement of Environmental Effects (SEE) prepared by BJA dated September 2017.

2.0 CLAUSE 4.6 FRAMEWORK

Clause 4.6 (Exceptions to Development Standards) of the LEP allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and*
- That 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.*

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

3.0 DEVELOPMENT STANDARD PROPOSED TO BE VARIED

The development standard that is sought to be varied as part of this application is Clause 4.4 of LEP 2013, relating to Floor Space Ratio of the building. Under Manly LEP 2013 the site has a maximum FSR of 0.75:1.

4.0 IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,...

The maximum FSR control under Clause 4.4 of the LEP is clearly a development standard.

5.0 EXTENT OF VARIATION SOUGHT

The FSR for the site is 0.75:1.

The FSR proposed in this S96 application is 1.3 : 1

The approved FSR in the original approval dated March 2004 was 1.25 :1

This equates to a 66% variation on the Floor Space Ratio Development Standard of Clause 4.4 of the Manly LEP 2013 and a 4% variation on the existing non-compliance. Given the existing context of the site and the minor increase to gross floor area proposed

within the approved building envelope, variation to the Floor Space Ratio development standard can be supported.

6.0 JUSTIFICATION FOR CONTRAVENTION OF DEVELOPMENT STANDARD

The original FSR non-compliance was approved on the basis that the existing dwelling already exceeds the FSR. In the context of the site, the FSR non-compliance has minimal impact. The additional areas is largely due to increases on level 3 which extends further to the front and back of the site. As such it does not impact on view corridors from the dwellings behind or privacy, bulk and overshadowing of the adjoining properties.

The SEE by Planning Overload (Paul Drake, submitted in the original Application and dated March 2004, noted that the existing house FSR is 1.11:1 and the subsequently approved scheme had a FSR of 1.25:1. (see excerpt below)

4.2.4 Density

The development provides medium/high density urban housing. The total site area is 461.69 square meters and the gross floor area is 581 square metres, resulting in a floor space ratio of 1:25.1. The existing FSR is 1.11:1 with a gross floor area of 499.6 square metres.

The current proposal of 1.3:1 is a 4% increase on the original approval and a 15% increase on the most recent S96 approval.

6.1 Public Benefit

Clause 4.6(4)(a)(ii) of the LEP requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

The proposal is assessed against the objectives for the R1 Residential zone development standard.

Despite the variation from the FSR, the proposal is considered to be in the public interest as it nevertheless satisfies the objectives of the zone and the development standard.

Consistency with the Objectives of the Zone and Standard

Table 1 demonstrates that the proposed variation standard will still result in a development that achieves the objectives height of buildings development standard. The response also considers the appropriateness of the building in the context of the adjoining developments.

Table 1 – Assessment against zone objectives and objectives of the development standard

- | | |
|---|---|
| (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character, | The bulk and scale of the building maintains that- of the existing dwelling including the street scape set-backs. It is consistent with properties along Commonwealth Pde built under the old Density Control of 1960 which allowed 1 dwelling/100m2. |
| (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, | The volume and envelope of the proposed S96 modification to no. 5 improves the visibility of No 7, the heritage building from Commonwealth Pde, compared with both the existing and the approved buildings |

- | | |
|--|---|
| (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area, | The proposal is 2.6M higher than No. 3 and significantly lower than No. 7, which is 7 storeys high. The sandstone podium, which is characteristic of this streetscape is maintained by reusing the extant material. Front setbacks are transitional |
| (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain, | The proposal does not change the impact on public land |
| (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. | Not applicable to residential area |

6.2 Compliance with the development standard is unnecessary and unreasonable

Clause 4.6(3)(a) of the LEP requires the departure from the development standard to be justified by demonstrating:

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard.*
3. *The underlying object or purpose would be defeated*

The objectives of the standard are otherwise achieved

The objectives of the FSR standard predominantly set out to ensure that proposed developments have a bulk and scale that is compatible with the surrounding character, to ensure development does not cause unreasonable amenity impacts on surrounding properties and to protect public and private views.

These objectives are satisfied by the proposal despite the numerical variation from the FSR standard. The proposed development, will continue to achieve the objectives of the standard for the following reasons:

- *The exceedance of the FSR will have a negligible impact upon the streetscape in terms of visual privacy and solar access provisions for surrounding residential development. View corridors to the side of the development have been maintained. The view lines over the roof are also maintained as the proposed height is no higher than the existing building or the approved building.*
- *The proposal is of a suitable bulk and scale given its context. It is consistent with the streetscape, which includes buildings approved under the old planning ordinance which allowed greater bulk and density than the current LEP.*

The underlying purpose or objective would be thwarted or defeated

The third way relates to compliance with a development standard resulting in the underlying purpose being defeated or thwarted. The underlying purpose of the development standard is to ensure that built form is appropriate and consistent with the surrounding context of the site and desired future streetscape character.

Strict adherence to the development standard would result in a poor development of the site, and would diminish the site's scale in relation to the adjoining properties.

Having regard to the above, in our view it would be unreasonable and unnecessary to enforce compliance with the FSR controls contained within Clause 4.4 of Manly LEP 2013.

6.3 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the LEP requires the departure from the development standard to be justified by demonstrating:

that there are sufficient environmental planning grounds to justify contravening the development standard.

The streetscape context of the proposal and the scale of the existing building on the site provide sufficient justification for the variation in FSR standard.

8.0 SUMMARY

Clause 4.4 of the LEP applies a maximum FSR of 0.75:1 to the site. The development proposes a maximum FSR of 1.3 :1. This request under Clause 4.6 of the LEP is submitted to Council in support of this departure.

There are unique constraints which affect the site and a context whereby adjoining buildings already exceed the FSR.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility in certain circumstances to achieve better outcomes for and from development, a departure from the FSR standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the FSR, the proposed development is considered to satisfy the objectives of the development standard, as well as those of the R1 Residential zone, and it will provide environmental benefits particular to the site by providing improved residential amenity. On this basis, the Clause 4.6 variation is considered well founded and Council's support for the variation is requested."

- (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*

Comment: As detailed, a written request is not required in this case. Nevertheless, the applicant's written request has adequately addressed the relevant matters.

- (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: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard is assumed.

Part 5 Miscellaneous Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comments
5.10	Heritage Conservation	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.

Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulphate Soils	Yes	Yes	The subject site is classified Class 5 Acid Sulfate Soils. The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.1 of the Manly LEP 2013.
6.2	Earthworks	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.
6.4	Stormwater Management	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.9 of the Manly LEP 2013.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with controls	Inconsistent with controls
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	NA	
Landscape/Tree Preservation	NA	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:

The Landscape Design and Landscape/Tree Preservation objectives under Part 3 of the Manly DCP 2013 are not relevant in this case, as no modifications to the approved landscaping are proposed.

3.1 Streetscapes and Townscapes

Streetscape

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

The proposed modifications do not introduce any additional walls, fences or car parking on the street frontage.

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

The proposed modifications generally maintain the approved envelope of the approved development, with the exception of reduced front setbacks. However, these modified setbacks are consistent with the prevailing building line along Commonwealth Parade.

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

The proposed treatment of the street frontage is acceptable in the context.

3.2 Heritage Considerations

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- the foreshore, including its setting and associated views; and*
- potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The proposed development does not unreasonably alter any significant heritage fabric, relics, views or the foreshore. The subject site does not contain any potential archaeological sites, places of Aboriginal significance or places of natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

The proposed modifications to the approved development does not alter any heritage items, potential heritage items or buildings within a conservation area.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

The proposed works are of a form and design so as to appropriately redevelop the site, without detracting from the significance of the nearby heritage listed items.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

The proposed development does not involve infrastructure.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

The heritage significance of the site has been considered throughout the planning process for this application. The proposed modifications adequately conserve the heritage value of the adjacent heritage items and surrounds.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposed modifications to the approved development retain equitable access to light and sunshine in that the side setbacks and overall building height remain unchanged.

The reduced front setbacks would result in minimal additional overshadowing, that would fall predominantly to the street. The reduced rear setback to the third floor is also minor in nature and would result in insignificant additional overshadowing, falling predominantly on the subject site.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The minor reductions in front and rear setbacks do not result in a significant or unreasonable increase to overshadowing to private open spaces and windows to living rooms/habitable rooms on the subject site or adjacent sites, beyond that of the approved development.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed modifications retain adequate building modulation and the approved southern side setback.

3.4.2 Privacy and Security

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

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

The proposed modifications minimise the loss of privacy to adjacent and nearby development with the inclusion of privacy screening to rear balconies. In this way, the proposed modifications are appropriately designed for privacy and mitigate direct viewing between properties.

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

The proposed modifications provide adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed modifications retain the front-facing balconies, which encourages awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

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

The proposed modifications do not unreasonably impact upon views to, from or across the subject site or adjacent sites.

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

The proposed modifications do not unreasonably impact upon views from adjacent and nearby development, and to and from public spaces, including to icons, landmarks and buildings.

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

The proposed modifications do not result in unreasonable view creep.

Part 4 - Development Controls

Site Area:	460m ²	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
Residential Density – Area D2		150m ² of site area per dwelling	115m ² of site area per dwelling	153.3m ² of site area per dwelling	Yes
Setback Front		6.0m or streetscape	0m to basement and ground 3.4m to first floor 4.7m to second floor 7m to third floor	0m to basement and ground 2.12m to first floor 4.7m to second floor 7m to third floor	No. See comment below.
Setback Rear		8.0m	4.7m to basement 6.5m to ground 0m to first floor stairs and landscaping 7m to second floor 12m to third floor	4.7m to basement 6.5m to ground 0m to first floor stairs and landscaping 7m to second floor 10.8m to third floor	Yes
Open space – total		Min. 50% of total site area (230m ²)	66.8% (307.6m ²)	No change proposed	Yes
Open space – landscaped		Min. 30% of total open	13% (40m ²)	No change proposed	Yes – Approved

Site Area:	460m ²	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
		space (92.1m ²)			
Open space – above ground	Max 40% of total open space (122m ²)	60.6% (186.6m ²)	55% (169.6m ²)	Yes – Improvement on approved	
Private Open Space	12m ² per dwelling	20-54m ² per dwelling	20-71m ² per dwelling	Yes	
Car Parking – Residents	1 per dwelling, plus 0.2 per 2-bedroom dwelling, plus 0.5 per 3-bedroom dwelling: 5 spaces	9 spaces (5 required for four previous units)	7 spaces	Yes	
- Visitors	0.25 spaces per dwelling: 1 space	1 space	1 space	Yes	
Excavation	Generally 1m Dilapidation or Geotechnical report	7.5m for the purpose of a basement car park	8.1m for the purpose of a basement car park	Yes	

Comment:

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

Clause 4.1.4.1 of the MDCP 2013 provides that street front setbacks must relate to prevailing building line in the immediate vicinity, or be a minimum of 6m. The approved development has front setbacks of 0m to the basement and ground, 3.4m to the first floor, 4.7m to the second floor, and 7m to the third floor. The proposed modifications alter the front setbacks at the first and second floors to 2.12m and 4.7m respectively.

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

The proposed modified front setbacks are minor in nature. Further, the proposed modified front consistent with and complementary to existing developments within the immediate vicinity, thereby maintaining the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed modifications are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed modifications do not impact upon traffic conditions.

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

The proposed development (with modifications included) is adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

Objective 4) To enhance and maintain natural features by:

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

The proposed modifications to the approved development do not impact upon planting, deep soil zones, vegetation, or the landscaped context of the site. The subject site does not contain urban bushland.

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

The subject site is not within an area of bushfire prone land.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

Comment:

The proposed modifications to the approved development are not considered to unreasonably impact upon the visual aesthetic amenity of the Foreshore Scenic Protection Area.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

No planning agreement has been entered into in relation to the proposed modifications to the approved development.

79C(1)(a) (iv) - the regulations

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed modifications to the approved development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed modifications to the approved development are suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Council's Development Control Plan 2013 Section 2.3 with one submission received from the following objector raising the following concerns:

Submission and Address	Main Issues raised in the submission
1. B. Foley 3/1 Commonwealth Parade, Manly	<ul style="list-style-type: none">• Development has not "substantially" commenced• Minimal gap between Nos. 3 and 5 Commonwealth Parade no longer exists on plans.

Comment:

Substantial Commencement

As per Clause 95 of the *Environmental Planning and Assessment Act 1979*, development consent lapses five years after the date of determination, unless building, engineering or construction activity relating to the work is physically commenced on the site prior to the consent lapsing. On 11 September 2009, prior to the consent lapse date, geotechnical bore holes were drilled, representing physical commencement of works. As such, the consent has been activated.

Inconsistencies in Plans

The plans submitted with this application demonstrate consistency with previously approved plans in relation to the northern side boundary setbacks.

79C(1) (e) - the public interest.

The proposed modifications to the approved development are in the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
- (a) the dedication of land free of cost, or
 - (b) the payment of a monetary contribution, or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

Comments:

The proposed modifications to the approved development result in a reduction of the number of units contained within the residential flat building from four to three. Further, four dwellings currently exist on site, so no additional new dwellings are proposed. Accordingly, no contribution is applicable to the proposed development.

Section 96(2) of the Environmental Planning and Assessment Act 1979

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (5) **Threatened species**

Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

- (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
- (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with one submission received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

CONCLUSION:

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **Approval**, subject to conditions.

RECOMMENDATION

That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 436/2008 for a Residential Flat Building – at 5 Commonwealth Parade, Manly be **Approved** subject to:

The following Condition No. ANS01 (3MS01) is to be amended as per Section 96(2) Application – Part 4:

ANS01 (3MS01)

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

The following Condition No. ANS02 is to be amended as per Section 96(2) Application – Part 4:

ANS02

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

The following Condition No. ANS03 (2PT01) is to be amended as per Section 96(2) Application – Part 4:

ANS03 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

The following Condition No. ANS04 (2PT02) is to be amended as per Section 96(2) Application – Part 4:

ANS04 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

The following Condition No. ANS05 (2PT03) is to be amended as per Section 96(2) Application – Part 4:

ANS05 (2PT03)

The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Reason: To ensure compliance with this consent and Australian Standards relating to manoeuvring, access and parking of vehicles.

The following Condition No. ANS06 (2PT05) is to be amended as per Section 96(2) Application – Part 4:

ANS06 (2PT05)

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Drawings must be submitted with the Construction Certificate application.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

The following Condition No. ANS07 (3PT01) is to be amended as per Section 96(2) Application – Part 4:

ANS07 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

The following Condition No. ANS08 (3PT02) is to be amended as per Section 96(2) Application – Part 4:

ANS08 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

The following Condition No. ANS09 (6PT01) is to be amended as per Section 96(2) Application – Part 4:

ANS09 (6PT01)

The visitor parking is to be accessible at all times, and a sign post erected at the vehicular entry point(s) of the development indicating the location of the visitor parking.

Reason: To ensure visitors are not forced to park on public streets when visitor parking has been provided and is available within the development.

The following Condition No. ANS10 (6PT02) is to be amended as per Section 96(2) Application – Part 4:

ANS10 (6PT02)

Adequate vehicle parking as required by the Manly Development Control Plan 2013 is to be available at all times for motor vehicles associated with the use of the land.

Reason: To ensure users of the land are not forced to park on public streets.

The following Condition No. ANS11 (5LD01) is to be amended as per Section 96(2) Application – Part 4:

ANS11 (5LD01)

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately

The following Condition No. ANS12 (5LD02) is to be amended as per Section 96(2) Application – Part 4:

ANS12 (5LD02)

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

The following Condition No. ANS13 (6LP03) is to be amended as per Section 96(2) Application – Part 4:

ANS13 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

The following Condition No. ANS14 (6LP04) is to be amended as per Section 96(2) Application – Part 4:

ANS14 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

GENERAL CONDITIONS

The following Condition No. DA1 is to be amended as per Section 96(2) Application – Part 4:

DA1

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

This approval relates to Drawings Nos. 110.09 / S.96 / 02H, 03H, 08H, 10H, 11H and 12H; dated 11 November 2008 and received 27 November 2008.

NOTE: These drawings supersede the basement and ground floor plans approved under DA211/04, as amended. Apart from these works to the basement and ground floor, the approved drawings under DA211/04 as amended remain the approved plans.

Except as amended by:

Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 3:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
Site Plan	Undated	17 June 2016
110.09 / S96-03 Basement & Ground Floor Plan	Issue J 10 June 2016	17 June 2016
110.09 / S96-04 Level 1 & Level 2 Plan	Issue J 10 June 2016	17 June 2016
110.09 / S96-05 Level 3 & Roof Plan	Issue J 10 June 2016	17 June 2016
110.09 / S96-03 Sections A, B, C, D, E & F	Issue J 10 June 2016	17 June 2016
110.09 / CD-105 Elevations	Issue A Undated	3 November 2016
110.09 / CD-107 Sections G & H	Issue A Undated	3 November 2016

Reference Documentation affixed with Council's stamp relating to this Section 96(1A) Application – Part 3:

- Statement of Modifications prepared by Baxter & Jacobson Architects dated 10 June 2016 and received by Council on 17 July 2016

Except as amended by:

Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96() Application – Part 4:

Plan No. / Title	Issue/ Revision & Date	Prepared By
1.20 Site Analysis Plan	Rev. A 17 October 2017	Baxter & Jacobson
2.20 Basement Floor Plan	Rev. A 17 October 2017	Baxter & Jacobson
2.21 Ground Floor Plan – Unit 01	Rev. A 17 October 2017	Baxter & Jacobson
2.22 Level 01 Floor Plan – Unit 02	Rev. A 17 October 2017	Baxter & Jacobson
2.23 Level 02 Floor Plan – Unit 03	Rev. A 17 October 2017	Baxter & Jacobson
2.24 Level 03 Floor Plan – Unit 03	Rev. A 17 October 2017	Baxter & Jacobson
2.25 Roof Plan	Rev. A 17 October 2017	Baxter & Jacobson
3.00 Elevations	Rev. A 17 October 2017	Baxter & Jacobson
3.10 Elevations	Rev. A 17 October 2017	Baxter & Jacobson
3.20 Elevations	Rev. A 17 October 2017	Baxter & Jacobson
3.30 Sections A & B	Rev. A 17 October 2017	Baxter & Jacobson
3.40 Section C	Rev. A 17 October 2017	Baxter & Jacobson
3.50 Section D	Rev. A 17 October 2017	Baxter & Jacobson
3.60 Section E	Rev. A 17 October 2017	Baxter & Jacobson
4.00 Landscape Plan	Rev. A 17 October 2017	Baxter & Jacobson
5.10 Cross Section – Floor Level Analysis	Rev. A 17 October 2017	Baxter & Jacobson

Reference Documentation relating to this Section 96(2) Application – Part 4:

- BASIX Certificate No. 315056M_03 prepared by AGA Consultants dated 17 October 2017
- NatHERS Certificate No. 0002042140 prepared by AGA Consultants Pty Ltd dated 17 October 2017
- NatHERS Certificate No. 0002042067 prepared by AGA Consultants Pty Ltd dated 17 October 2017

- NatHERS Certificate No. 0002042083 prepared by AGA Consultants Pty Ltd dated 17 October 2017
- NatHERS Certificate No. 0002042091 prepared by AGA Consultants Pty Ltd dated 17 October 2017
- NatHERS Thermal Performance Specifications prepared by Robert Mallindine dated 17 October 2017

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

DA16

Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works**, payment of a Trust Fund Deposit of \$5000. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

DA18

Details of the builder's name and licence number contracted to undertake the works shall be provided to Council/Accredited Certifier **prior to issue of the Construction Certificate**.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site**.

DA19

Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council /Accredited Certifier **prior to issue of the Construction Certificate**.

DA21

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

DA22

Retaining walls being constructed in conjunction with excavations with such work being in accordance with structural engineer's details. Certification of compliance with the structural detail during construction shall be submitted to the Principal Certifying Authority.

DA23

No person shall use or occupy the building or alteration which is the subject of this approval without the **prior issue of an Occupation Certificate**.

DA24

A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

DA26

All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans with certification being submitted to the Principal Certifying Authority during construction from a registered surveyor certifying ground and finished ridge levels.

DA31

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

DA39

Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed retaining walls shall be submitted to the Council/Accredited Certifier **prior to the issue of the Construction Certificate.**

DA40

Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.

DA44

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.

DA47

A suitable sub-surface drainage system being provided adjacent to all excavated areas and such drains being connected to an approved disposal system.

DA48

The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.

DA58

An adequate security fence, is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

DA59

Building work shall not progress beyond first floor level until such time as Registered Surveyor's details of levels are submitted to the Principal Certifying Authority. These levels shall confirm that the works are in accordance with the levels shown and approved in the development approval.

DA60

On completion of the building structure a Registered Surveyor's report is to be submitted to the Principal Certifying Authority confirming that the building has been completed in accordance with the levels as shown on the approved plan.

DA109

All demolition is to be carried out in accordance with AS2601-2001.

DA111

Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.

DA121

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

DA261

A sediment/erosion control plan for the site shall be submitted for approval to the Council/Accredited Certifier **prior to the issue of the Construction Certificate**. Implementation of the scheme shall be completed prior to commencement of any works on the site and maintained until completion of the development.

DA269

A Construction Certificate Application is required to be submitted to and issued by the Council/Accredited Certifier **prior to any building works being carried out on site**.

DA270 Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction then the following inspection/certification are required:-

- Silt control fences
- Footing inspection –
- Reinforced concrete slab x 5
- Framework inspection
- Wet area moisture barrier
- Drainage inspection – pits & tanks
- Landscaping inspection
- Retaining wall steel
- Final inspection

The cost of these inspections by Council is \$2860. (being \$220.00 per inspection inclusive of GST). **Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1573 or 9976 1587.**

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$100.00.

DA271

An Occupation Certificate is to be issued by the Principal Certifying Authority **prior to occupation of the development**.

DA279

All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.

DA283

De-watering from the excavation or construction site must comply with the Protection of the Environment Operations Act 1997 and the following:

- a) Ground water or other water to be pumped from the site into council's stormwater system must be sampled and analysed by a NATA certified laboratory or Manly council for compliance with ANZECC Water Quality Guidelines
- b) If tested by NATA certified laboratory, the certificate of analysis issued by the laboratory must be forwarded to Manly Council as the appropriate regulatory authority under the Protection of the Environment Operations Act 1997, prior to the commencement of de-watering activities.
- c) Council will grant approval to commence site de-watering to the stormwater based on the water quality results received.
- d) It is the responsibility of the applicant to ensure that during de-watering activities, the capacity of the stormwater system is not exceeded, that there are no issues associated with erosion or scouring due to the volume of water pumped.
- e) Turbidity readings must not at any time exceed the ANZECC recommended 50ppm (parts per million) for receiving waters.
- f) Also the developer must contact the Department of Infrastructure, Planning and Natural Resources and comply with any of their requirements.

DA285

Roof and framing including provision for tie downs, bracing and fixings are to be designed by a practising Structural Engineer. The Engineer is to specify appropriate wind category relating to the site terrain, house design and height of the structure, with details being submitted to the Principal Certifying Authority **prior to the commencement of framework**.

DA289

Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

DA290

The operations of mechanical services are not to give rise to an offensive noise within the meaning of the Protection of the Environment Operations Act 1997.

DA319

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements shall be submitted to the Council/Accredited Certifier **prior to issue of the Construction Certificate**. Attention is drawn to the provisions of Australian Standard 3660.1 "Protection of Buildings from Subterranean Termites - New Buildings" and to Council's Code for the "Protection of Buildings Against Termite Attack".

DA320

Prior to issue of the Occupation Certificate, a durable termite protection notice shall be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with Council's Code for the "Protection of Buildings Against Termite Attack".

DA332

The capacity and effectiveness of erosion and sediment control devices must be maintained to Council's satisfaction at all times.

DA333

A copy of the Soil and Water Management Plan must be kept on-site at all times and made available to Council officers on request.

DA334

Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted.

DA335

Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.

DA336

Drains, gutters, roadways and access ways shall be maintained free of sediment and to the satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

DA337

Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

DA338

All disturbed areas shall be stabilised against erosion to Council's satisfaction within 14 days of completion, and prior to removal of sediment controls.

DA339

Stormwater from roof areas shall be linked via a temporary downpipe to a Council approved stormwater disposal system immediately after completion of the roof area. Inspection of the building frame will not be made until this is completed to Council's satisfaction.

DA340

The applicant and/or builder must prior to the commencement of work, install at the periphery of the site, measures to control sedimentation and the possible erosion of the land.

The measures must include:-

- (i) siltation fencing;
- (ii) protection of the public stormwater system; and
- (iii) site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

DA357

Four (4) copies of Architectural Drawings consistent with the development consent and associated specifications are to be submitted to Council/Accredited Certifier **prior to the issue of the Construction Certificate**.

DA274

Payment of contributions in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, may be required for this development. If required the amount will be in accordance with Councils Section 94 Policy applicable at the time of payment prior to the issue of the Construction Certificate.

The following Condition No. DA323 (3MS01) is to be added as per Section 96(1A) Application – Part 3 – determined on 09 November 2016:

DA323

DELETED