

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0688
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 8 DP 3742, 35 Fairlight Street FAIRLIGHT NSW 2094 Lot 9 DP 3742, 33 Fairlight Street FAIRLIGHT NSW 2094
Proposed Development:	Demolition works and construction of a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	John William Allen
Applicant:	Allen Group Developments Pty Ltd

Application Lodged:	23/05/2022
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	03/06/2022 to 01/07/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	4.3 Height of buildings: 9.3% 4.4 Floor space ratio: 50.7%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 9,985,330.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a residential flat building consisting of six apartments with basement car parking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as it seeks a variation to the floor space ratio development standard that exceeds 10%.

The proposal was notified and advertised for a period of 14 days. Council received nine submissions in objection to the development in response to the advertising of the application. Concerns raised in the objections primarily relate to:

- Built form non-compliance, bulk and scale
- Amenity
- Dwelling density, traffic and parking
- Excavation impacts

Critical assessment issues include the proposal's excessive bulk and scale attributable to the building height and floor space ratio variations; the excessive excavation to accommodate car parking surplus to the requirements of the MDCP; solar access and privacy impacts; and inconsistencies with the provisions of SEPP65 and the ADG.

The proposal seeks variations of 9.3% to the height of buildings development standard and 50.7% to the floor space ratio development standard. The Applicant's Clause 4.6 written request does not adequately demonstrate that the proposal achieves the relevant objectives of the development standards, or that there are sufficient environmental planning grounds to justify the extent of the proposed variations sought. The variations would result in undue visual bulk that would be inconsistent with the desired future character of the locality. It is noted that insufficient information was submitted to calculate the proposed building height to the existing ground level in accordance with the *Merman Investments Pty Ltd v Woollahra Municipal Council*, and that the extent of the variation may in fact be greater than 9.3%. It is also noted that the surplus car parking provided contributes a total of 43.3m² to the proposed floor space ratio variation.

Following a preliminary assessment of the application, the applicant was afforded an opportunity to amend the proposal to address the above concerns. No amendments were submitted and the applicant commenced a Class 1 Deemed Refusal appeal to the NSW Land and Environment Court (Case No. 2022/00386046) which, at the time of writing, remains undetermined.

The proposal is not supported by the Design and Sustainability Advisory Panel or Council's Development Engineering section for the reasons discussed in the Internal Referrals section of this report.

Based on the detailed assessment contained in this report, the application is not supported and is recommended for refusal for the reasons listed.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and the construction of a residential flat building containing six apartments, as follows:

Ground floor - RL38.95 - RL39.05

- Lower floor of split-level apartments 05 & 06
- Basement car parking for 8 vehicles, two shared spaces
- Storage & bicycle parking
- Bin and plant rooms
- Landscaped rear courtyards

Level 1 - RL42.19

- 2 x Three bedroom apartments (05 & 06 - upper floor)
- Basement car parking for 6 vehicles
- Lobby

- Storage and switch room

Level 2 - RL45.33

- 2 x Four bedroom apartments (03 & 04)
- Lobby
- Landscaped front courtyards

Level 3 - RL48.45

- 2 x Three bedroom apartments (01 & 02)
- Lobby & pedestrian access
- New vehicle crossing, suspended driveway and car lift
- Front fence and bin store at street frontage

External

- Demolition of existing dwellings, retaining walls and associated structures
- Bulk excavation and site preparation works
- Relocate sewer line
- New stormwater works including OSD and rainwater tanks
- New landscaping works including retaining walls, paths/paving & planting

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

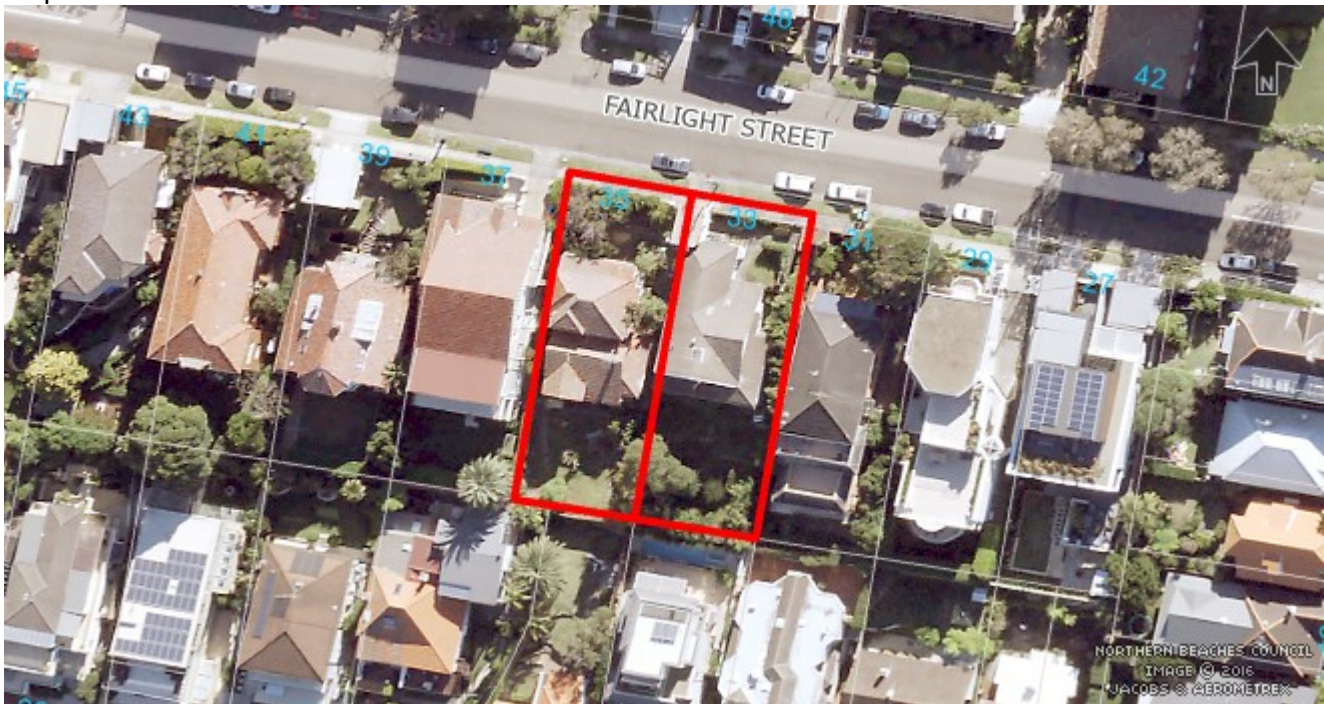
- Manly Local Environmental Plan 2013 - 6.2 Earthworks
- Manly Local Environmental Plan 2013 - 6.4 Stormwater management
- Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
- Manly Development Control Plan - 3.1 Streetscapes and Townscapes
- Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
- Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
- Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
- Manly Development Control Plan - 3.4.2 Privacy and Security
- Manly Development Control Plan - 3.4.3 Maintenance of Views
- Manly Development Control Plan - 3.6 Accessibility
- Manly Development Control Plan - 3.7 Stormwater Management
- Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
- Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
- Manly Development Control Plan - 4.1.5 Open Space and Landscaping
- Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Manly Development Control Plan - 4.1.8 Development on Sloping Sites
- Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 8 DP 3742 , 35 Fairlight Street FAIRLIGHT NSW 2094 Lot 9 DP 3742 , 33 Fairlight Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of two (2) allotments located on the southern side of Fairlight Street.</p> <p>The site is regular in shape with a frontage of 30.48m along Fairlight Street and a depth of 40.235m. The site has a surveyed area of 1226m².</p> <p>The site is located within the R1 General Residential zone. No. 33 Fairlight Street accommodates a one, two and three-storey dwelling house and single garage. No. 35 Fairlight Street accommodates a one and two-storey dwelling house.</p> <p>The site slopes steeply from front (north) to rear (south) with a maximum fall of approximately 10.6m.</p> <p>The site contains 5 significant trees and a variety of landscaped lawn and garden areas. The site also accommodates various retaining wall structures and exposed rock outcrops.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential developments of varying typology, density, age and character. The adjoining properties to the east and west, Nos. 31 and 37 Fairlight Street, comprise multi-storey</p>

residential flat buildings. To the rear (south), Nos. 10 and 12 Clifford Avenue, comprise a multi-storey dwelling house and a dual occupancy, respectively. Beyond the immediately adjoining properties, the surrounding locality is characterised by multi-storey dual occupancy and residential flat buildings interspersed with detached dwellings.

Map:



SITE HISTORY

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

On 4 February 2021, a pre-lodgement meeting was held between Council and the Applicant. Council's written advice concluded that:

"This review has identified a number of issues which require attention prior to the lodging of a Development Application. The issues primarily revolve around the proposed bulk and scale of the development and the significant noncompliance with the Building Height and Floor Space Ratio development standards which indicates the current scheme is an overdevelopment of the site. As such, the proposal as presented at the pre-lodgement meeting could not be supported in its current form."

On 23 May 2022, the Development Application was lodged with Council.

On 23 June 2022, the Development Application was referred to Council's Design and Sustainability Advisory Panel (DSAP) for review. The DSAP Report included a total of 14 recommendations in relation to the proposed development, generally relating to:

- Strategic context, urban context: surrounding area character;
- Scale, built form and articulation;
- Access, vehicular movement and car parking
- Landscape;
- Amenity;
- Façade treatment / Aesthetics; and

- Sustainability.

The DSAP Report concluded that:

"The Panel does not support the proposal in its current form. A redesign and substantial reduction in the floor area is required.

As noted, any breaching of the gross floor area controls would need to be supported by an analysis of the benefits compared to a complying scheme."

On 16 September 2022, Council wrote to the Applicant requesting the amendment of the Development Application to address concerns generally relating to:

- Building height and floor space ratio variations;
- Internal and external amenity, ADG non-compliances;
- Extent of excavation;
- Rear setback non-compliance; and
- Inadequacy of architectural plans.

No amended plans were submitted in response to the concerns raised.

On 22 December 2022, the Applicant commenced Class 1 appeal proceedings against Council's deemed refusal of the Development Application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in the form of amended plans to address concerns raised by Council in relation to built form non-compliances, ADG and amenity concerns, excavation, landscaped area and plan details. No additional information was received in response to Council's request.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent were the application recommended for approval.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) 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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for residential flat building development. However, the proposed development does not provide an appropriate contextual response in relation to the applicable controls or the character of the surrounding locality.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public</p>	<p>This assessment has found the proposal to be contrary to the</p>

Section 4.15 Matters for Consideration	Comments
interest	relevant requirement(s) of the Manly LEP, Manly DCP and SEPP 65 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 03/06/2022 to 01/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Mr Douglas Harold Kingshott	50B Fairlight Street FAIRLIGHT NSW 2094
Mr Terrence John Galton	9 / 52 Fairlight Street FAIRLIGHT NSW 2094
Mr Giles Edward Newcombe Man Yee Kam	3 / 31 Fairlight Street FAIRLIGHT NSW 2094
Mr Kenneth Herd Ms Elizabeth Anne Webber	2 / 48 Fairlight Street FAIRLIGHT NSW 2094
Mr John Frederick Hanlon	1 / 31 Fairlight Street FAIRLIGHT NSW 2094
Mrs Penelope Jane Hale	2 / 21 Kangaroo Street MANLY NSW 2095
Mr Graeme John Gandy	3/44 Fairlight Street FAIRLIGHT NSW 2094
Ms Emma Jane Mary Nesbitt	58 Bower Street MANLY NSW 2095
Mr Gareth James Edgecombe Mrs Eva Tamara Edgecombe	10 Clifford Avenue FAIRLIGHT NSW 2094

The issues raised in the submissions are addressed as follows:

- **Built form non-compliance, bulk and scale**

The submissions raised concerns that the proposal is non-compliant with the building height, floor space ratio and setback controls and that these breaches will cause adverse bulk and scale impacts.

Comment:

This report includes an assessment of the development against the applicable MLEP and MDCP built form controls. The proposal seeks substantial variations to the building height and floor space ratio controls and is recommended for refusal for these reasons. The non-compliances in relation to wall height and rear setback are also unsupported. The proposed front setback of 5.4m is consistent with the prevailing building line on the southern side of Fairlight Street and no objection is raised in this regard.

- **Amenity**

The submissions raised concerns that the proposal will cause adverse impacts upon the privacy, solar access and views of surrounding properties.

Comment:

The amenity impacts of the proposal are discussed in detail under the relevant MDCP and SEPP 65/ADG sections of this report. In summary, the resulting privacy impacts are found to be unreasonable and insufficient information has been provided in relation to solar access to both the development site and adjoining properties; it is considered that these impacts are a result of the inadequate articulation and building separation and the application is recommended for refusal on these grounds. It is noted that no roof terrace is proposed and that the 'terrace' references shown on the roof plan refer to the level 3 terraces below. The submitted Visual Impact Analysis has been prepared in accordance with the NSW Land and Environment Court's photomontage requirements and is sufficient for assessment purposes. The resulting view impacts to surrounding properties are considered to be acceptable and do not warrant refusal of the application. Were the application recommended for approval, the undergrounding of the existing power lines could be required by condition.

- **Dwelling density, traffic and parking**

The submissions raised concerns that the proposed dwelling density exceeds the relevant MDCP control. Concern was also raised regarding the traffic and parking implications of the development, particularly the potential increased demand for on-street parking.

Comment:

The proposal, consisting of 6 apartments, exceeds the permitted density of 4.9 dwellings on the site. Despite the proposal's non-compliance, the site is considered capable of supporting six dwellings for the reasons discussed under 4.1.1.1 of this report. Council's Traffic Engineer raised no objection to the proposal as it exceeds the minimum required parking provision and is expected to generate minimal traffic during peak periods. Given the constrained vehicular access to the site the use of a car stacker is appropriate in this case. Were the application recommended for approval, future occupants of the development would be ineligible for residential parking permits and would be subject to the timed on-street parking restrictions.

- **Excavation impacts**

The submissions raised concerns that the proposed excavation may cause damage to adjoining properties.

Comment:

The volume of the proposed excavation, its proximity to the side boundaries and existing retaining walls is unacceptable and is included as a reason for refusal. Were the application

recommended for approval, conditions would be imposed requiring compliance with the submitted geotechnical report and the preparation of dilapidation reports for the adjoining properties.

- **Miscellaneous**

The submissions raised concerns various additional concerns including; removal of asbestos, impacts to existing vegetation and operation of the sewer main at the rear of the site, protection of the existing stone kerbs and the application of development contributions.

Comment:

Were the application recommended for approval, these concerns would be addressed through the imposition of conditions and do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>Not Supported.</p> <p>The application was referred to the Design Sustainability Advisory Panel (DSAP) for consideration and comment.</p> <p>The DSAP raised a number of fundamental issues with the design of the development and overall did not support the proposal. The Panel made a total of 14 recommendations to improve the design quality, contextual fit and sustainability of the proposal as follows:</p> <p><u>Strategic context, urban context: surrounding area character</u></p> <p>1. A modified design should consider stepping the built form of the street fronting apartments 1-2m in response to the natural gradient of Fairlight Street. This would provide a more fine grain-built form outcome whilst retaining the single storey character of the lower side of streets in Fairlight. Importantly it would enable sunken bedroom areas on the second floor with poor visual and daylight amenity to be raised. Scale, built form and articulation.</p> <p><u>Scale, built form and articulation</u></p> <p>2. A modified design should consider increasing setbacks from Gridline 2 towards Fairlight Street to provide winter sunlight to the living areas of Unit 03 and Unit 04. A minimum setback of 5m from the side boundaries is envisaged. This will also increase public domain street vistas to the harbour.</p> <p><u>Access, vehicular movement and car parking</u></p> <p>3. Due to the extent of the proposed earthworks, the basement car parking excavation should be limited to that necessary to achieve compliance with the car parking and storage requirements for the development.</p> <p><u>Landscape</u></p> <p>4. Reconfigure the architectural layout to provide better solar access</p>

Internal Referral Body	Comments
	<p>to private open space.</p> <p>5. Look at creating excavated tree vaults for larger endemic canopy tree species suitable for the coastal location to increase % canopy cover.</p> <p>6. The removal of one large Eucalyptus botryoides should be replaced with at least 2-3 larger endemic canopy tree species.</p> <p>7. Where lawns are likely to be unviable replace with planting solutions with permeable paving or shade tolerant ground cover.</p> <p>8. Ensure planters are located on common property with a maintenance plan in place. Access will need to be considered with safe access/ fixing points for at height work.</p> <p><u>Amenity</u></p> <p>9. Achieve full ADG compliance Refer Recommendations 1 and 2 above.</p> <p><u>Sustainability</u></p> <p>10. Any design modifications should seek to achieve an average star rating of 7 stars.</p> <p>11. The Department advises that dwellings with electric heat pump hot water systems, efficient reverse cycle air conditioners and induction cooktops can achieve the higher BASIX standard. Accordingly, the Panel recommends that to contribute to design excellence in sustainability, these appliances and fittings be utilised as a sustainability commitment to avoid the use of high emission energy sources such as gas.</p> <p>12. EV charging facilities be provided at a rate of one per dwelling. Consider future proofing with bi-directional vehicle to grid (2-way) electrical infrastructure.</p> <p>13. Discrete outdoor clothes drying facilities should be provided not visible from the public domain.</p> <p>14. Consider increasing PV system capacity by using all of the roof space to offset loads resulting from increased electrification.</p> <p>The DSAP Report concluded that "The Panel does not support the proposal in its current form. A redesign and substantial reduction in the floor area is required. As noted, any breaching of the gross floor area controls would need to be supported by an analysis of the benefits compared to a complying scheme."</p> <p><u>Planner Comment:</u></p> <p>Council concurs with the concerns raised by the DSAP for the reasons discussed in this assessment. The DSAP comments and recommendations were provided to the applicant and were incorporated into Council's Request for Information (RFI) letter. However, no amendments or written response was provided in relation to either the DSAP comments or RFI letter.</p> <p>A copy of the written advice provided by the DSAP is attached to this report.</p>
Building Assessment - Fire	

Internal Referral Body	Comments
and Disability upgrades	<p>Supported with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>Supported with conditions.</p> <p>General Comments</p> <p>Demolition of existing clad brick dwellings and construction of a 3 storey residential flat building is unlikely to have health amenity impacts. An acoustic report was provided to demonstrate requirements for compliance with internal acoustic amenity targets. We have no objections to the proposal.</p>
Landscape Officer	<p>Supported with conditions.</p> <p>The development application is for the demolition of existing structures, and the construction of a residential flat building, as described and illustrated in the Reports and Plans. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral</p> <p>Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (a) (b) and (c), including Schedule 1, Principle 5: Landscape, • the associated Apartment Design Guide, including the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and • Manly Local Environment Plan, and the following Manly Development Control Plan controls (but not limited to): 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable <p>The Landscape Plans submitted generally provide adequate landscape treatment to satisfy Schedule 1, Principle 5: Landscape, of SEPP 65 including deep soil provision, appropriate landscape design to natural ground areas and upon slab structures. The Landscape Plans generally satisfy Manly Development Control Plan controls for the provision of a suitable landscape setting.</p> <p>It is noted that the provision of native tree planting as required under Manly Development Control Plan is satisfied and the selection</p>

Internal Referral Body	Comments
	<p>and location of such tree planting is appropriate for the rear of the property where the expected mature height is unlikely to impact neighbouring views, and the proposed tree in the front is located at a lower level than the street and likewise does not impact any view corridor. Whilst small tree planting such as the Blueberry Ash is appropriate along the side boundaries, it is considered that the proposed Blue Lilly Pilly located along the western boundary may achieve a mature height that may impact structures and as such shall be replaced with an alternative small native tree. All proposed planters shall be constructed in accordance with the width and depth as documented on the Landscape Plans. Subject to imposed conditions, Landscape Referral raise no objections to the landscape outcome of the proposal.</p> <p>The Arboricultural Impact Assessment report submitted includes investigation of the impact to existing trees from the proposed development. As advised in the report, all existing trees within the property are impacted by the development and unable to be retained. The report identifies that all existing trees are not considered significant or worthy of arboricultural measures to ensure their preservation, and Landscape Referral raise no concerns with the findings and thus the removal of existing trees, due to short useful life expectancy and arboricultural issues such as poor form and vigour with the existing trees. Of the seven existing trees located within the property, six are exempt species that do not require Council consent for management or removal.</p>
NECC (Development Engineering)	<p>Not supported.</p> <p>06/07/2022: The proposal seeks consent for the demolition of the existing dwellings and construction of a three storey residential flat building comprising 6 residential apartments and carparking for 14 vehicles.</p> <p>Access</p> <p>New and widen driveway crossing is proposed. Applicant is advised to provide a longitudinal profile of centerline and both edges of driveway from street kerb to proposed car lift showing chainage, existing and proposed levels and grades. Footpath levels along frontage of site should remain same and new driveway to be at least 1m away from existing Telstra pits. The power pole along frontage of site near proposed driveway is to be relocated.</p> <p>Stormwater</p> <p>Property is on the low side of the road and is located in stormwater zone 1 of Council's Manly stormwater zone. An on-site stormwater detention system (OSD) is required. Onsite stormwater detention system is proposed discharging to Clifford Avenue via a proposed easement with rear neighbor No. 12 Clifford Avenue.</p>

Internal Referral Body	Comments				
	Applicant to provide drainage plans of basement and sectional details of the proposed OSD tank.				
NECC (Water Management)	<p>Supported with conditions.</p> <p>This application has been assessed against relevant legislation and policy relating to water quality, waterways, riparian areas, and groundwater.</p> <p><i>Stormwater management</i> The proposed stormwater management strategy is satisfactory.</p> <p><i>Dewatering</i> Tailwater (surface water, rainwater, minor seepage): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A Council dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.</p> <p>If there is groundwater on the construction site, it needs to be removed before work can begin. The method required to dewater is determined by the geological conditions and characteristics of the soil, and the level, size and depth of excavation. To undertake construction dewatering, the following approvals must be obtained from WaterNSW.</p> <ul style="list-style-type: none"> • water supply work approval • water access licence (WAL) - unless the project qualifies for an exemption, please refer to the exemption aquifer interference activities taking 3ML or less and exemption for excavation dewatering taking greater than 3ML fact sheets for more information • water use approval - unless there is a development application from a local government authority. <p>NECC Water Management has no objection to the proposed development application.</p>				
Strategic and Place Planning (Heritage Officer)	<p>Supported with conditions.</p> <table border="1" data-bbox="520 1742 1428 2072"> <thead> <tr> <th data-bbox="520 1742 1428 1787">HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="520 1787 1428 1821">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="520 1821 1428 2033"> <p>The proposal has been referred to Heritage as it is in the vicinity of a heritage item, listed in Schedule 5 of Manly LEP2013:</p> <p>Item I2 - All stone kerbs - Along Fairlight Street</p> </td> </tr> <tr> <td data-bbox="520 2033 1428 2072">Details of heritage items affected</td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as it is in the vicinity of a heritage item, listed in Schedule 5 of Manly LEP2013:</p> <p>Item I2 - All stone kerbs - Along Fairlight Street</p>	Details of heritage items affected
HERITAGE COMMENTS					
Discussion of reason for referral					
<p>The proposal has been referred to Heritage as it is in the vicinity of a heritage item, listed in Schedule 5 of Manly LEP2013:</p> <p>Item I2 - All stone kerbs - Along Fairlight Street</p>					
Details of heritage items affected					

Internal Referral Body	Comments		
	<p>Details of the heritage item, as contained within the Manly Heritage Inventory, are:</p> <p>Item I2 - All stone kerbs <u>Statement of Significance:</u> Stone kerbs are heritage listed. <u>Physical Description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent for the demolition of the existing dwellings and construction of a residential flat building, including six apartments and carparking on the subject site.</p> <p>Heritage recommended an investigation into the potential heritage significance of these buildings and the Heritage Assessment provided with this application concluded that "<i>Due to its historic and aesthetic significance, and its representative quality and low level of intactness, the building does not reach the threshold for local significance.</i>" Heritage agrees with this conclusion and requires a photographic archival recording of the existing dwellings at both 33 and 35 Fairlight Street, Fairlight.</p> <p>Existing stone kerbing located within the adjoining public road reserve is identified as a heritage item that will be affected by the proposed extension of the existing driveway crossover. The removed stone kerbing should be salvaged and reused elsewhere if possible and care should be taken to protect the retained stone kerbing.</p> <p>Therefore, no objections are raised on heritage grounds, subject to two conditions.</p>		

Internal Referral Body	Comments
	<p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 22 June 2022</p>
Traffic Engineer	<p>Supported with conditions.</p> <p>Proposal: Demolition of the existing structures and construction of a residential flat building comprising 6 residential apartments (4 x 3 bedroom apartments and 2 x 4 bedroom apartments) and car parking for 14 vehicles (12 residential and 2 visitor spaces) accessed via a car lift to Fairlight Street.</p> <p>The Traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> • Plans (Master Set) – Revision A, designed by platform Architects, dated October 2021, • Traffic and Parking Assessment prepared by ttpa dated October 2021, • Construction Traffic Management Plan prepared by ttpa dated December 2021, • Statement of Environmental Effects prepared by B Urb & Reg Plan (UNE) MPIA, Boston Blyth Fleming Pty Ltd dated March 2022, • Pre Lodgement Advice (PLM2021/0002) dated 4 February 2022. <p><u>Notes/comments</u></p> <p><u>Parking</u></p> <ul style="list-style-type: none"> • Application of the Manly DCP car parking rates to the proposed development would result in 9 residential parking spaces and 2 visitor parking spaces. Parking in excess of DCP is proposed (14 spaces), to which there is no objection in this location. • Accessible parking spaces (2 spaces) are proposed in excess of the requirements of the DCP (Section 3.6.3.2) and will improve the equitability of access to the premises for persons with a disability. On the Architectural plans, bollards shall be provided for the disabled shared areas as shown in Figure 2.2

Internal Referral Body	Comments
	<p>of the Australian Standard AS2890.6:2009 Parking Facilities- Off Street Parking for People with Disability.</p> <ul style="list-style-type: none"> • The parking spaces and parking aisle width on Level 1 on the plans have not been dimensioned and although scaled dimensions suggest they are adequate this needs to be confirmed on dimensioned plans. The architectural plans for parking spaces on the ground floor have been dimensioned and are adequately sized in accordance with AS2890.1. It will be conditioned that dimensioned plans be submitted for the level 1 parking area to confirm that parking bays and aisles are appropriately sized. • In the traffic and parking report and the swept path analysis provided in Appendix B of the report, the B99 vehicle entry/exit movements are shown for travel between the car lift and parking space modules. These movements require the driver to undertake 4 and 5-point turns and while this is acceptable under Appendix B4.8 of AS/NZS 2890.1 it does demonstrate that access is constrained and a degree of inconvenience for drivers of larger vehicles will exist. No plots for access to and from parking spaces by B85 vehicles have been provided. Additional swept path plots will be conditioned to demonstrate that access to each parking space by the B85 vehicles is possible. as required by AS2890.1. The plots should demonstrate that access for a B85 is possible to all spaces by no more than a 3-point turn (as required by AS2890.1 Table 1.1 for user class 1A). • As outlined above, forwards entry and exit to/from the car lift to/from the street are satisfactorily shown by the B99 vehicle in the swept path assessment appended to the traffic report. • The Manly DCP 2013 requires the provision of one (1) bicycle stand for every three (3) car parking spaces. The proposed plans detail the provision of six (6) bicycle parking spaces, satisfying Council's DCP requirements and catering for alternate travel mode options. <p><u>Access driveway</u> The driveway from the property boundary into the lift is 5.0m in width for the first 6m into the property and swept path plots have shown that it is appropriately sized to permit a B99 vehicle to pass a B85 vehicle entering or exiting the lift as required by AS2890.1 clause 3.2.2.</p> <p><u>Traffic generation</u> The proposal will generate minimal traffic during peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance.</p> <p><u>Construction Traffic Management Plan</u> A CTMP has been lodged with the DA , while some adjustment to the CTMP will be required to reflect approved work hours, site contact details it is generally acceptable. The CTMP advises that deliveries will be accommodated on site, with no requirement for a Works Zone</p>

Internal Referral Body	Comments
	<p>anticipated. It is reported that at the demolition /construction stage, an average of 7 trucks per day is expected, with a maximum of 15 trucks per day. The heavy vehicle movements are also likely to be spread throughout the day. Queuing or marshaling of construction vehicles will not be permitted on the road network, and call-up procedures will be implemented to manage arrivals. Workers will also begin and end their workday outside of network peak periods. These arrangements are unlikely to adversely impact the surrounding road network.</p> <p>The plans require minor amendments which will be conditioned however the amendments required are not sufficient to prevent the application from being supported.</p>
Waste Officer	<p>Supported with conditions.</p> <p>Waste Management Assessment. Recommendation - Acceptable, subject to conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>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 would be included as a condition of consent were the application recommended for approval.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

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

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

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

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

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

As previously outlined the proposed development is for the erection of a three-storey residential flat 'housing' development for the provision of six self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

Responding to context involves identifying the desirable elements of an area's existing or future

character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The desired future character of the locality is set out by the planning controls contained within the Manly LEP and DCP. The proposal includes substantial variations to the building height and floor space ratio development standards in addition to breaches of the DCP wall height and number of storeys controls. Given the additional building bulk created by these non-compliances the proposal does not respond and contribute the context and desired character of the locality.

Principle 2: Built Form and Scale

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

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

Comment: The building height and floor space ratio variations reflect the proposal's exceedance of the appropriate scale, bulk and height in relation to the desired character of the locality. The streetscape presentation of the building is generally acceptable, however the excessive overall proportions of the building and its lack of articulation and responsiveness to the topography will adversely impact the amenity of the development and adjoining properties.

Principle 3: Density

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

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

Comment: The proposed development comprising six apartments is appropriate for the site. Each of the apartments significantly exceed the minimum required dimensions. However, these internal dimensions are achieved at the expense of greater side setbacks that would facilitate improved solar access to the apartments. Given that the development does not comply with the solar access provisions of the ADG it is considered that either the density or dimensions of the apartments are greater than can be supported by the site.

Principle 4: Sustainability

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

Comment: Each of the apartments benefit from multiple aspects and quality outlooks/views. However, the already limited solar access available to the units is further restricted by the privacy treatments provided at the eastern and western elevations in lieu of the required building separation distances. The proposal provides a compliant deep soil area, however the paved areas within the rear setback unnecessarily prevent opportunities for additional deep soil and landscaping that would be beneficial to

the development, adjoining properties and the natural environment.

Principle 5: Landscape

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

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

Comment: The proposed landscape design is generally acceptable in the context of the site. As discussed above, the paved areas within the rear setback are considered to be excessive in proportion and were the application recommended for approval, the provision of additional deep soil within this area would be required by condition.

Principle 6: Amenity

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

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

Comment: The proposed building is comprised of open-plan, dual aspect apartments of substantial internal dimensions and with access to high quality outlook and views. However, the internal dimensions are achieved through a significant floor space ratio variation and inadequate side setbacks that compromise the level of solar access to the apartments within the development as well as the privacy of adjoining properties. It is noted that the potential solar access to the development is already limited by the southerly aspect of the site and the desire to maximise the available harbour views by locating living areas to the south of the building. It is considered that the proposal does not appropriately balance the amenity benefits achieved through the size of the apartments with those achieved through solar access.

Principle 7: Safety

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

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

Comment: The proposal provides safe and secure access to the site via the centrally located vehicular and pedestrian access points. Opportunities for passive surveillance are limited by the topography of the site, but are provided in the form of balconies facing the street frontage with semi-transparent and operable privacy screening.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment: The proposed mix of three and four-bedroom apartments is appropriate in the context of the site. The steeply sloping topography is a significant constraint to the provision of communal spaces for social interaction amongst residents and such spaces are not considered necessary in this circumstance.

Principle 9: Aesthetics

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

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

Comment: The streetscape presentation of the proposal responds to the streetscape character, includes an appropriate range and selection of materials and incorporates desirable elements of nearby developments. However, the overall proportions of the building are excessive, as evidenced by the extent of the development standard variations, and it cannot be said that the proposal is consistent with the desired future character.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent. Residential flat building development is compatible with the site context. The proposal is appropriately sited but is of excessive proportions and does not respond appropriately to the desired character of the locality.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the	Inconsistent. The proposed siting and

	development and to neighbouring properties?	<p>layout of the proposal are compatible with the streetscape and provide each apartment with a dual aspect.</p> <p>However, the overall design of the development does not ensure satisfactory outcomes in relation to visual bulk, privacy or solar access either within the development or to adjoining properties.</p>
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Consistent. The proposed building incorporates safe and secure access from the street frontage and provides opportunities for casual surveillance of the public domain.</p> <p>The building facade and front setback treatment will retain and enhance the amenity of the public domain.</p>
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Consistent - On Merit. The proposed development does not include any communal open space areas. Opportunities for communal areas are constrained by the steeply sloping topography and the location of the site on the lower side of the street.</p> <p>Given the generous private open spaces provided within each of the apartments and the proximity of the site to the harbour and foreshore public recreation areas, the provision of a communal open space area is not considered necessary in this case.</p>

Deep Soil Zones

Deep soil zones are to meet the following minimum requirements:

Site area	Minimum dimensions	Deep soil zone (% of site area)
Less than 650m ²	-	7%
650m ² – 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

Consistent.

The proposal provides in excess of the minimum 7% deep soil area required. As discussed above, additional deep soil areas would be required were the application recommended for approval.

Visual Privacy

Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

Inconsistent.

The proposal includes numerous living room windows and balconies with side setbacks ranging from 3m to 5.5m.

The adjoining properties to the east and west, Nos. 31 and 37 Fairlight Street, accommodate residential flat buildings developed prior to the introduction of SEPP65/ADG. These properties include various windows and balconies with limited screening that do not provide the required separation distances.

The elements of particular concern are the elevated living room windows and balconies at Levels 2 and 3 of the proposal. The proposal's reliance on privacy screening in lieu of adequate physical separation is not an appropriate solution in this case as it precludes the provision of solar access as required by this plan. It

		<p>is also doubtful that any supplementary screen planting could be established and maintained due to the extent of excavation and limited soil volumes within the side setbacks.</p> <p>Given the dimensions of the site and the proposed apartments, the proposal is readily capable of compliance with the control. The separation distances proposed are insufficient to achieve a satisfactory privacy outcome.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and address the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent.</p> <p>The proposed pedestrian and building entries are easily identifiable and provide suitable access to the development.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Inconsistent.</p> <p>The location of the proposed driveway is generally acceptable in relation to the streetscape. However, insufficient information has been provided to enable assessment by Council's Development Engineer.</p>
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>Consistent.</p> <p>The proposal includes surplus car parking to the MDCP requirements and Council's Traffic Engineer raised no objection to the development.</p> <p>It is noted that the provision of surplus car parking is not supported on planning grounds as it necessitates excessive excavation that is not responsive to the topography.</p>

The car parking needs for a development must be provided off street.

Parking and facilities are provided for other modes of transport.

Visual and environmental impacts are minimised.

Part 4 Designing the Building

Amenity

Solar and Daylight Access

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:

- Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.

Inconsistent.

Of the six proposed apartments, only Unit 03 will receive the required 2 hours of direct sunlight by means of windows (16.7%). Unit 04 will receive approximately 1.5 hours of sunlight. The four remaining apartments receive negligible sunlight by means of windows.

Via the proposed skylights, Units 03 and 02 will receive 4.5 and 5.5 hours of sunlight and Unit 03 will receive approximately 2 hours. However, the control states that skylights should only be used as a secondary light source.

As noted earlier in this assessment, the potential solar access to the development is limited by the southerly aspect of the site and the location of living rooms to the south of the building to access the available views. It is also noted that the substantial roof height and pitch of the adjoining development to the west also limits the availability of sunlight throughout the afternoon.

Notwithstanding, it is considered that the proposed design, specifically the insufficient

		side setbacks and use of external privacy screens, further and unnecessarily reduce solar access to the development.												
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>Inconsistent.</p> <p>Two of the six proposed apartments will receive no direct sunlight via windows (33.3%).</p> <p>It is noted that the submitted sun-view diagrams depict a window at the southern end of the eastern elevation of Unit 06 that is not depicted on the floor plan or elevation plan.</p>												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Consistent.</p> <p>100% of the apartments are cross ventilated.</p>												
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Consistent.</p> <p>Each of the apartments are dual aspect and/or cross through.</p>												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used	3.3m for ground and first floor to promote future flexibility of use	<p>Consistent.</p> <p>The proposal provides adequate floor to ceiling heights.</p>
	Minimum ceiling height													
Habitable rooms	2.7m													
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areas	
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Apartment Size and Layout

Apartments are required to have the following minimum internal areas:

Apartment type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

Consistent.
Each of the apartments exceed the minimum required dimensions for the relevant number of bedrooms.

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

Inconsistent.
The proposed TV rooms within Units 03 and 04 have no external window. It is considered that the excessive gross floor area of the development contributes to the existence of these rooms without windows.

Habitable room depths are limited to a maximum of 2.5 x the ceiling height.

Consistent.
The requirement is achieved.

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

Consistent.
The requirement is achieved.

Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).

Consistent.
The requirement is achieved.

Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.

Consistent.
The requirement is achieved.

Living rooms or combined living/dining rooms have a minimum width of:

- 3.6m for studio and 1 bedroom apartments
- 4m for 2 and 3 bedroom apartments

Consistent.
The requirement is achieved.

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts

Consistent.
The requirement is achieved.

Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Consistent. The requirement is achieved.													
	<table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>		Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments
Dwelling Type	Minimum Area	Minimum Depth													
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3+ bedroom apartments	12m ²	2.4m													
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Consistent. The requirement is achieved.													
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent. The requirement is achieved.													
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable to the development.													
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Consistent. The building design is satisfactory in this regard.													
	<table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m²</td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m²</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m²</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²			
Dwelling Type	Storage size volume														
Studio apartments	4m ²														
1 bedroom apartments	6m ²														
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Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent. The building design is satisfactory in this regard.													
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent. The building design is satisfactory in this regard.													
Configuration															
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and	Consistent. The proposed apartment mix is acceptable in the													

	into the future and in the suitable locations within the building.	context of the site.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent. The street-facing apartments include sunken courtyards at Level 2 and balconies at Level 3. The lower courtyards are separated from the public domain by the front fence, retaining walls and landscaping. The upper level balconies include operable screening to maintain privacy while allowing casual surveillance.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent. The facade design is well-articulated, incorporates common elements of nearby contemporary developments and will contribute to the visual interest of the streetscape.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent. The proposed flat roof design is compatible with contemporary developments in the locality and incorporates PV panels. Communal open space is not proposed on the roof top and would not be compatible with the site context.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent. The proposed landscape design is generally responsive to the site and surrounding context. As previously discussed, an increase to landscaping within the rear setback would be required were the application recommended for approval.
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range	Consistent. Were the application

of plant sizes:

Plant type	Definition	Soil Volume	Soil Depth	Soil Area
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent
Shrubs			500-600mm	
Ground Cover			300-450mm	
Turf			200mm	

recommended for approval, a condition would be imposed to ensure sufficient soil volume/depth for the proposed on-slab planting.

Universal Design

Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features

Consistent.
The proposal includes 2 apartments (33.3%) that incorporate the Livable Housing Guideline's silver level universal design features.

Adaptable Reuse

New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.

Not applicable to the development.

Mixed Use

Can the development be accessed through public transport and does it positively contribute to the public domain?

Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.

Not applicable to the development.

Awnings and Signage

Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.

Not applicable to the development.

	Signage must respond to the existing streetscape character and context.	
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent. The minimum NATHERS and BASIX requirements are included on the submitted plans
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Inconsistent. The application includes insufficient information to enable assessment of the proposed stormwater design by Council's Development Engineer.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent. The proposal complies with Council's Waste Management Design Guidelines.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent. The material selection is satisfactory with regard to longevity and sustainability.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

- (a) The proposal includes a compliant number of car parking spaces in accordance with the Manly DCP requirements.
- (b) The proposal achieves the minimum internal area for each of the apartments.
- (c) The proposal achieves the minimum required ceiling height for each of the apartments.

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

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

(3) To remove doubt:

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

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

Comment:

The application is recommended for refusal due to various inconsistencies with the design criteria of the ADG, as discussed above.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1260245M_02 dated 30 March 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	35

A condition would be included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate, were the application recommended for approval.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Existing ground: Insufficient information	N/A	N/A
		Natural ground: 9.291m	9.3%	No
Floor Space Ratio	0.6:1 735.6m ²	0.87:1 1065.2m ²	44.8	No
		0.9:1 1108.5m ² (incl. surplus car parking)	50.7%	

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
6.2 Earthworks	No
6.4 Stormwater management	No
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

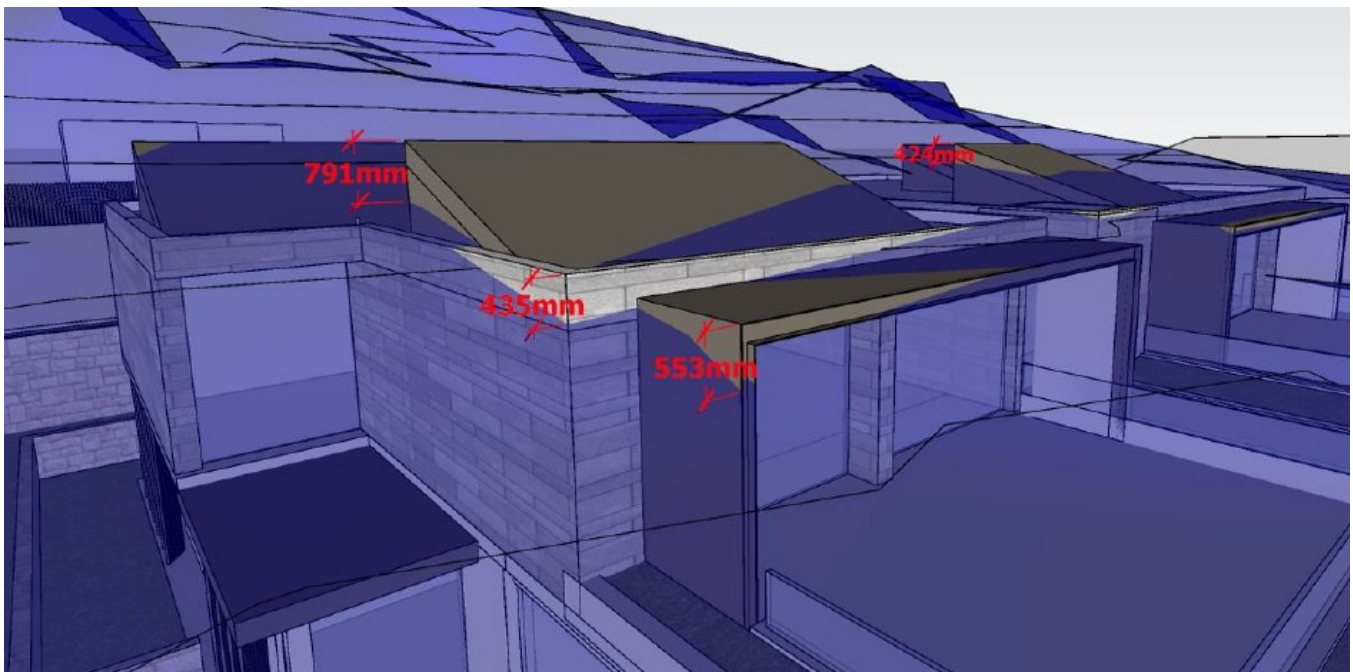
Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	Existing ground: Insufficient information Natural ground: 9.291m
Percentage variation to requirement:	9.3%



The above height plane diagrams are not certified, however the portions of building projecting above the 8.5m height plane are generally in alignment with Council's calculations, and are presented in a more practical format than a two dimensional elevational drawing. On that basis, the diagrams can be used for assessment purposes.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings 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 4.3 – Height of Buildings 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 not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's

written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- That the development represents a contextually responsive design that is compatible with the height of adjoining and surrounding development;
- That the site experiences a fall in excess of 10m from north to south and that the development is appropriately stepped in response to the fall of the land; and
- That the extent of the proposed variation is minor and does not cause any unreasonable impacts upon the amenity of adjoining sites or the public domain, and that the variation provides for improved amenity for the future occupants of the development.

It is acknowledged that the surrounding locality includes various examples of developments that exceed the building height control. However, it is not agreed that it is necessary to breach the building height control in order to facilitate a development that is compatible with surrounding developments. As such, the first environmental planning ground provided by the applicant is not sufficient.

Notwithstanding the steeply sloping nature of the site, the proposal includes extensive bulk excavation works that largely negate any constraints posed by the topography. Further, the volume of excavation to a maximum depth of 10m is not characteristic of a design that is responsive to the topography of the land. As such, the second environmental planning ground provided by the applicant is not sufficient.

The extent of the variation sought and the lack of any resulting impacts are not considered identifiable

as environmental planning grounds. While the non-compliant elements would provide for improved amenity for the future occupants of the development, it is considered that there are alternate design solutions that would provide a similar level of amenity while reducing the overall height of the development. As such, the third environmental planning ground provided by the applicant is not sufficient.

Therefore, the applicant's written request has not 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 not 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 Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The proposed building height and roof form are not incongruent with the desired streetscape or surrounding developments in the locality. However, given the excessive depth and volume of excavation proposed in addition to the building height breach it cannot be said that the development is consistent with the topographic landscape. For this reason, the proposal is assessed as failing Objective (a).

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development is considered to be excessive, as evidenced by the proposed variations both the building height and floor space ratio development standards. The visual bulk impacts of the development are exacerbated by the inadequacy of the side setbacks

and articulation of the eastern and western elevations. For these reasons, the proposal is assessed as failing Objective (b).

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

Despite the building height breach, the proposal is not considered to cause adverse impacts to views to, from or between nearby residential developments and public spaces, including the harbour and foreshores. A detailed assessment of view loss is completed under 3.4.3 in this report. For this reason, the proposal is assessed as achieving Objective (c).

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

Comment:

The application does not provide sufficient detail to demonstrate that the building height breach will not unreasonably impact solar access to adjoining properties. For this reason, the proposal is assessed as failing Objective (d).

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

Comment:

N/A - The site is not located within a recreation or environmental protection zone.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of Clause 4.3 Height of buildings.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal provides additional housing to meet the needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposal contributes to the variety of housing types and densities in the locality.

It is considered that the development satisfies this objective.

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

Comment:

N/A

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation with the objectives of the height of buildings development standard, the concurrence of the Director-General for the variation to the development standard can not be assumed.

Clause 4.4 Floor Space Ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (735.6m ²)
Proposed:	0.9:1 (1108.5m ²)
Percentage variation to requirement:	50.7%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

development,

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) assessment:

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

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

Comment:

The Applicant's written request (attached to this report as an appendix has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

standard.

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- That the proposed building is situated across two lots on the low side of Fairlight Street and has a single storey presentation to the street frontage;
- That the building steps with the topography and the majority of the building bulk is below street level;
- That by being situated across two lots, the proposal gains efficiencies in relation to the achievable quantity of floor space through the centre of the site; and
- That the size and scale of the building will be compatible with the existing streetscape, which includes examples of buildings of greater bulk and scale.

It is agreed that the proposal presents to Fairlight Street as single-storey that and that the building steps down the slope towards the south, though not to the extent that it complies with the building height control. While these points promote the benefits of the development as a whole, they are not specific to the proposed variation to the floor space ratio development standard. As such, the first and second

environmental planning grounds provided by the applicant are not sufficient.

The proposal does gain additional floor area through the middle of the site as a result of the site consolidation that does not cause undue bulk or amenity impacts. However, the inadequate setbacks and articulation of the eastern and western elevations facilitate a greater proportion of gross floor area at the expense of visual bulk and amenity impacts to the adjoining properties. As such, while properly described as an environmental planning ground, the third ground provided by the applicant is not considered to be sufficient in justifying the extent of the variation sought and the resulting impacts.

While there are remnant examples of larger residential flat buildings within the locality, these examples are not predominant and would not be anticipated by the current planning controls. As such, the fourth environmental planning ground provided by the applicant is not sufficient.

Therefore, the applicant's written request has not 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 not 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 Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal is single-storey at the street frontage and is consistent with the existing and desired streetscape character. For this reason, the proposal is assessed as achieving Objective (a).

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:

While the building bulk of the proposal is not considered acceptable in relation to the site area, this excessive bulk will not cause adverse view impacts or obscure any important landscape or townscape features. For this reason, the proposal is assessed as achieving Objective (b).

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

Comment:

The proposed building, by virtue of its excessive gross floor area, height and envelope, does not maintain an appropriate visual relationship with the existing character and landscape of the area. For this reason, the proposal is assessed as failing Objective (c).

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

Comment:

The proposed setbacks and treatment of the eastern and western elevations will cause unreasonable visual and amenity impacts to the adjoining properties. Specifically, the side elevations are not sufficiently articulated to provide visual relief and facilitate sunlight access and the proposed setbacks do not achieve the separation distances required by the ADG. For this reason, the proposal is assessed as failing Objective (d).

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:

N/A - The site is not located within a business zone zone.

Zone objectives

The proposal is assessed as consistent with the underlying objectives of the R1 General Residential zone in the above Clause 4.6 assessment in relation to the height of buildings development standard.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation with the objectives of the floor space ratio development

standard, the concurrence of the Director-General for the variation to the development standard can not be assumed.

6.2 Earthworks

Description of non-compliance

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land*
- (c) the quality of the fill or the soil to be excavated, or both*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*
- (e) the source of any fill material and the destination of any excavated material*
- (f) the likelihood of disturbing relics*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposal is unlikely to cause adverse impacts in relation to drainage patterns, soil stability or the future use and redevelopment of the site. The site is not mapped as having a high potential for Aboriginal or other relics and is not in proximity to any watercourse, drinking water catchment or environmentally sensitive areas. In the event that the application was recommended for approval, conditions would be recommended in relation to the removal/disposal of excavated material and the quality of any fill material.

Given the depth and extent of the proposal excavation extending to the eastern and western boundaries, it is considered that the proposal will adversely impact the amenity of adjoining properties and that insufficient measures to avoid, minimise or mitigate the impacts of the development have been incorporated into the design.

Having regard to the above assessment, it is concluded that the proposed development is contrary to matters (d) and (h) above, and is inconsistent with objective (a) of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

6.4 Stormwater management

The application was referred to Council's Development Engineering department, who advised that insufficient information was provided in relation to the stormwater design. As such, Council is unable to properly assess the proposal for compliance with the Water Management for Development Policy or the objectives and requirements of the control.

6.9 Foreshore scenic protection area

Despite the proposal's excessive bulk and scale as viewed from surrounding properties, the building is located generally below street level and will not unreasonably impact views to and from Sydney Harbour or the Manly foreshore.

Accordingly, the proposal is consistent with the objective of the control.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1226m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density	1 dwelling/250m ²	1 dwelling/204.3m ²	18.28%	No
4.1.1.1 Dwelling Size	3 bed, 2 bath: 95m ²	Min. 127m ²	N/A	Yes
	3 bed, 3 bath: 100m ²	Min. 171m ²	N/A	Yes
	4 bed, 3 bath: 112m ²	Min. 190m ²	N/A	Yes
4.1.2.1 Wall Height (East)	7.9m (gradient 1:4.3)	L1: 5m	N/A	Yes
		L2: 7.1m	N/A	Yes
		L3 terrace: 7.4m	N/A	Yes
		L3 wall: 8.2m	4.17%	No
4.1.2.1 Wall Height (West)	8m (gradient 1:4+)	L1: 4.6m	N/A	Yes
		L2: 7m	N/A	Yes
		L3 terrace: 7.7m	N/A	Yes
		L3 living: 6.9m-9m	12.5%	No
		L3 beds: 6.9m	N/A	Yes
4.1.2.2 Number of Storeys	2	3 + basement	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Entry/stair: 0m	100%	No
		Building: 5.4m	N/A	Yes (prevailing)
4.1.4.2 Side Setbacks and Secondary Street Frontages (East)	L1: 1.67m	3m	N/A	Yes
	L2: 2.37m	3m	N/A	Yes
	L3 terrace: 2.47m	4.9m	N/A	Yes
	L3 wall: 2.73m	3m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (West)	L1: 1.53m	3m	N/A	Yes
	L2: 2.33m	3m	N/A	Yes
	L3 terrace: 2.57m	5.3m	N/A	Yes
	L3 living: 2.3m-3m	5.3m	N/A	Yes
	L3 beds: 2.3m	3m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	Paving: 2.5m	68.75%	No
		8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space	Open space 55% of site area	67% 821.1m ²	N/A	Yes

Requirements Residential Open Space Area: OS1/2/3/4	674.3m ²			
	Open space above ground 40% of total open space 328.44m ²	29.2% 239.8m ²	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 287.385m ²	37.4% 307.2m ² (deep soil)	N/A	Yes
		44.7% 366.8m ² (incl. planters)	N/A	Yes
4.1.5.3 Private Open Space	12m ² per dwelling	> 12m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5m	N/A	Yes
Schedule 3 Parking and Access	Residential: 9 spaces	12 + 2 shared spaces	N/A	Yes
	Visitor: 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	No
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	No
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:

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

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

Comment:

The proposed building is single-storey at the street frontage and is adequately set back from the front boundary relative to adjoining and nearby development. The front fence is articulated and incorporates semi-transparent panelling to minimise its bulk and the proposed vehicular and pedestrian entry is appropriate given the constraints posed by the topography.

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

Comment:

The proposal is comparable to existing residential flat buildings in the locality in relation to facade height, front setbacks and bulk as it presents within the streetscape. The overall design and architectural style complements existing contemporary developments within the identified streetscape.

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

Comment:

The proposed front fence is an appropriate design response in this case given the steep drop in the topography at the front boundary of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

3.1.1 Streetscape (Residential areas)

Compliance with control

3.1.1.5 Garbage Areas

Buildings with more than 1 dwelling require garbage storage enclosures which are:

- a) not visible off site;*
- b) integrated into the building design;*
- c) unobtrusive and blend in with the design of front fences and walls when forward of the building; and*
- d) located and designed with consideration given to the amenity of adjoining properties.*

Comment:

Due to the steep topography of the front setback it is not practical to locate the bin collection structure so that it is not visible offsite or integrated into the building design, as required by (a) and (b). The proposed bin collection area is integrated into the design of the front fence and is located to minimise its impact upon the streetscape and adjoining properties. Accordingly, the proposal complies with requirements (c) and (d) and the variations to requirements (a) and (b) are supportable in this case.

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

- i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) ensure the bulk and design of development does not detract from the scenic amenity of the area when viewed from surrounding public and private land;*
- iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like.*
- v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting;*
- vi) visually improve existing streetscapes through innovative design solutions; and*
- vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged.*

Comment:

The proposal complements the predominant form, character and finishes of contemporary buildings in the locality and presents a level of bulk and height at the street frontage that is comparable to surrounding developments. The proposal does not incorporate elevated structures on columns or impact any nearby heritage items. The proposed bulk and scale of the development will not adversely impact views from surrounding properties or the public domain. The amenity impacts caused by the development are not relevant to the streetscape considerations and are addressed under section 3.4 of this report.

Setback Principles in Low Density Areas

b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.

Comment:

N/A

Setback Principles in Higher Density Areas

c) In higher density areas (including LEP Zones R1 & R3), careful consideration should be given to minimising any loss of sunlight, privacy and views of neighbours. This is especially relevant in the

design of new residential flat buildings adjacent to smaller developments. See also paragraph 3.4 Amenity.

Comment:

The proposed design does not have adequate regard for the retention of sunlight or privacy for surrounding properties. These matters are discussed and included as reasons for refusal under the relevant amenity controls in 3.4 of this report.

3.1.1.2 Front Fences and Gates

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

Comment:

The proposed front fence design is compatible with existing fencing within the visual catchment and would not conflict with the local character. The materials complement the building and are acceptable. Were the application recommended for approval, a condition would be imposed to ensure that the bin store gate not open outwards onto the road reserve.

3.1.1.3 Roofs and Dormer Windows

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) Roofs should be designed to avoid or minimise view loss and reflectivity.*
- c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.*

Comment:

The proposed roof form complements newer developments within the locality, which consists predominantly of flat roof designs. The roof is generally designed to minimise view and glare impacts. The proposed skylights are acceptable in principle but are not supported due to their contribution to the building height variation.

The proposal is generally acceptable in relation to streetscape and character considerations. The non-compliances with the amenity considerations within 3.1.1.1 are addressed in further detail and included as reasons for refusal under 3.4 of this report.

3.3.2 Preservation of Trees or Bushland Vegetation

Council's Landscape Officer raised no objection to the proposed development, subject to the recommended conditions of consent. Were the application to be recommended for approval, these conditions would be applied to the development.

3.4.1 Sunlight Access and Overshadowing

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

Comment:

The submitted shadow diagrams include insufficient detail to enable assessment of the proposal's compliance with the above controls. Specifically, the shadow diagrams do not show the full extent of the shadow impact to private open spaces of surrounding properties, nor do they include calculation of the affected areas of adjoining properties. Further, the submitted 3D/sun-view diagrams do not clearly indicate all existing living room windows of the adjoining buildings.

Accordingly, the proposal does not demonstrate compliance with this control and it cannot be said that the relevant objectives are achieved.

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.1 Window Design and Orientation

a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.

b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

Comment:

The proposed ground floor, level 1 and level 3 windows are appropriately designed and located for privacy. Level 2 includes substantial glazed areas orientated to the eastern and western side boundaries; while the windows are partially screened they are not offset from those of the adjoining properties and do not provide adequate physical separation to minimise privacy impacts.

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

The proposed ground floor courtyard and level 1 balconies are designed and located to maintain privacy between the adjacent developments. Were the application recommended for approval, conditions would be imposed requiring the provision of additional deep soil areas within the rear setback to accommodate supplementary screen planting. The level 2 southern terraces are sufficiently set back from the rear boundary and screened to the east and west, however the living room balconies orientated directly towards the side boundaries are not acceptable. The level 3 terrace locations are generally appropriate, however they do not incorporate adequate privacy measures to minimise overlooking.

Merit consideration:

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

Objective 1) To minimise 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.*

Comment:

The proposal is not appropriately designed to maintain privacy between the subject development and adjoining properties. While the existing developments to the east and west contribute to the resulting privacy impacts, it is considered that the proposal does not minimise these conflicts.

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

Comment:

The proposal's reliance on privacy screens does compromise sunlight access into the development and is not considered to be an appropriate design response in this case.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides adequate opportunities for passive surveillance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and

future Manly residents.

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

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

Three objections relating to view loss were received from residents at 2/48 Fairlight Street, 50B Fairlight Street and 2/37 Fairlight Street. This assessment relies on the submitted Visual Impact Analysis prepared encompassing various properties on the northern side of Fairlight Street in accordance with the NSW Land and Environment Court's guidelines for photomontages.

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

Comment:

2/48 Fairlight Street

The property obtains water views of North Harbour including land-water interface at Forty Baskets Beach, Dobroyd Head and South Head. The views are generally whole with the exception of the lower portion which is somewhat obscured by the existing buildings and vegetation on the subject site and surrounding developments. The available views are shown in Photos 1 and 2 (Viewpoint 10) below.



Photo 1. Existing views from 2/48 Fairlight Street (Viewpoint 10, Visual Impact Analysis prepared by

Urbaine Architectural).



Photo 2. Proposed views from 2/48 Fairlight Street (Viewpoint 10, Visual Impact Analysis prepared by Urbaine Architectural).

50B Fairlight Street

The property obtains water views of North Harbour including land-water interface at South Head and glimpses of land-water interface at Dobroyd Head and North Head. The views of South Head are whole views, however the water views and land-water interface at Dobroyd Head and North Head as they are significantly obscured by existing developments and vegetation. The available views are shown in Photos 3 and 4 (Viewpoint 13) below.



Photo 3. Existing views from 50B Fairlight Street (Viewpoint 13, Visual Impact Analysis prepared by Urbaine Architectural).



Photo 4. Proposed views from 50B Fairlight Street (Viewpoint 13, Visual Impact Analysis prepared by Urbaine Architectural).

The submitted Visual Impact Analysis makes no assessment of the available views from this property. Given its proximity and orientation in relation to the subject site it is anticipated to obtain similar views, including water views of North Harbour and land-water interface at Forty Baskets Beach, Dobroyd Head, South Head and North Head.

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

Comment:

2/48 Fairlight Street

The affected views are available from the living room and bedroom at the front of the dwelling. The views are obtained across a front boundary from a sitting or standing position.

50B Fairlight Street

The affected views are available from the living room, kitchen and balcony at the front of the dwelling. The views are obtained across a front boundary from a sitting or standing position.

2/37 Fairlight Street

The affected views are available from the rear of the dwelling, which is understood to contain the living room. The views are primarily obtained across a rear boundary from a sitting or standing position.

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

Comment:

2/48 Fairlight Street

The submitted Visual Impact Analysis indicates that the available views are not materially impacted by the proposal. There is a minor loss of partial water views through the corridor between the two existing dwellings on the site. A net increase in the extent of water views available is achieved through the lower height of the primary roof form in comparison to the existing dwellings and the removal of the tree within the rear yard, offsetting the minor loss of view through the centre of the site. There is no impact to the available land-water interface views.

50B Fairlight Street

Similar to No. 2/48, the proposal will have minimal impact on the available views, with the impact being primarily to the views obtained through the corridor between the two existing dwellings. Although this corridor includes land-water interface at Dobroyd Head, this portion of the view is partial as it is obscured by the existing tree within the rear setback and the hedge vegetation at the front boundary. Therefore, while the extent of the view is somewhat reduced, it does become less obscured. There is an overall minor reduction in land-water interface and a minor increase in water views.

2/37 Fairlight Street

The proposed ground and first floors are significantly lower than the level of No. 2/37 and extend a

maximum of approximately 2m further south. The level 2 roof is generally aligned with the rear balcony of No. 2/37 and the level 3 terrace is aligned with the rear wall of No. 2/37. Given the predominantly southerly aspect of the views and the limited extension of the proposal beyond the rear building line of No. 37, the proposal is not anticipated to have any unreasonable on views; any impact to views would occur across a side boundary as a result of the compliant ground and first floor level built forms.

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

Comment:

The submitted Visual Impact Analysis indicates that the development as proposed would result in a net increase, or at worst neutral impact, to the available views from surrounding properties, despite the non-compliance of the built form. The overall impact to views is found to be negligible-minor. Therefore, the proposed non-compliances cannot be said to contribute to any unreasonable view impacts in this case and a more skillful design is not considered warranted in this circumstance.

Notwithstanding that the proposal is found to be acceptable in relation to view loss, the impact occurs in part due to elements of the building that breach the building height standard. These elements are not supported for the reasons discussed in this report.

3.6 Accessibility

Compliance with control

The control requires that 25% of dwellings within residential accommodation containing 4 or more dwellings be provided as adaptable housing, being 1.5 (2) apartments in this case. The proposal includes 2 adaptable dwellings (33.3%) and complies with the control.

3.7 Stormwater Management

See MLEP Clause 6.4 assessment.

4.1.1.1 Residential Density and Dwelling Size

Description of non-compliance

The residential density control requires a minimum 250m² of site area per dwelling, which would enable a total of 4.9 dwellings on the subject site. The proposal includes six dwellings resulting in 1 dwelling per 204.3m², or a variation of 18.28%.

Merit consideration

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

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

Manly.

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

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

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

Objective 5) To maximise the use of existing infrastructure.

Comment:

Despite the proposal's non-compliance with various MLEP, MDCP and ADG controls as discussed in this report, the subject site is considered capable of accommodating six apartments based on the following:

- Each of the six proposed apartments substantially exceed the minimum internal areas required by the MDCP and the ADG;
- The proposed built form generally complies with the MDCP setback controls, though it is noted that additional physical separation is required in order to achieve compliance with the relevant ADG requirements. Given the aforementioned surplus internal floor areas, it is anticipated that an alternate design could achieve appropriate built form and physical separation outcomes while maintaining adequate amenity for six apartments;
- Similarly, it is anticipated that the concerns raised in relation to excessive excavation could be resolved while maintaining a compliant number of car parking spaces for six apartments; and
- The proposed development is compatible with the density of existing multi-dwelling residential development in the surrounding locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

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

Description of non-compliance

4.1.2.1 permits a maximum wall height of 7.9m at the eastern elevation and 8m at the western elevation. 4.1.2.2 permits a maximum of 2 storeys at any point.

The proposed building has a maximum wall height of 8.2m at the eastern elevation and 9m at the western elevation. The proposal exceeds the two-storey control but is generally compatible with the surrounding multi-storey developments.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal is not considered to achieve the objectives of the height of buildings control due to its excessive visual bulk and inconsistency with the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

See MLEP Clause 4.4 assessment.

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

Description of non-compliance

4.1.4.1 Street Front setbacks

The proposed nil setback to the pedestrian entry structure is non-compliant with the 6m control. The remainder of the building is set back 5.4m and is compatible with adjoining and surrounding developments.

4.1.4.2 Side setbacks and secondary street frontages

The proposed eastern and western setbacks comply with the 1/3 wall height requirement. However, the 4.1.4 also includes the below note requiring consideration of the ADG physical separation requirements.

Note: In addition to the setbacks required in this plan, residential development subject to the Residential Apartment Code is subject to additional setback requirements for adequate building separation to achieve reasonable levels of privacy e.g. 12m separation between habitable rooms and balconies between buildings up to 4 storeys either on the same site or across a site boundary to a neighbouring building.

4.1.4.4 Rear Setbacks

The proposed 2.5m rear setback to the ground floor paved area is non-compliant with the 8m control. The proposed setback does not provide sufficient separation or space for planting adjacent to the boundary.

Merit consideration:

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

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

Comment:

The proposed front setback breach is necessary to facilitate safe and practical access to the site and will not adversely impact the streetscape or 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.*

Comment:

The proposal will not cause adverse impacts in relation to views, streetscape character or traffic conditions. The proposed side and rear setbacks do not enable adequate privacy to be maintained between the subject development and adjoining properties, noting the proposal's non-compliance with the ADG building separation requirements. As discussed under 3.4.1, insufficient information has been provided in relation to the overshadowing impacts of the development.

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

Comment:

Given the substantial site area, lack of notable site constraints and the extent of the FSR variation sought, it is not considered necessary or reasonable to allow flexibility in the siting of the dwelling in this case.

Objective 4) To enhance and maintain natural features by:

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

Comment:

While a greater proportion of the site could be devoted to landscaping by reducing the extent of paving within the rear setback, the proposal provides compliant open space and landscaped areas and will not result in the unnecessary removal of prescribed vegetation. Were the application recommended for approval, conditions would be included in this regard.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Compliance with control

The proposal complies in relation to the total open space, landscaped area, above ground open space and private open space.

Merit consideration

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

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

Were the application recommended for approval, conditions would be included to address privacy impacts resulting from the above ground terraces and increase the proportion of landscaped area within the rear setback, as discussed under 3.4.2 and 4.1.4.

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

Description of non-compliance

The application was referred to Council's Development Engineering department, who advised that insufficient information was provided in relation to the proposed driveway design and impact to the existing footpath levels. As such, Council is unable to properly assess the proposal for compliance with the control.

Further, the proposal is found to be inconsistent with Objective 4 of the control, as assessed below.

Merit consideration

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

Noting the proposal's inconsistency with the excavation provisions of MLEP 6.2 and MDCP 4.4.5, the inclusion of surplus car parking and shared spaces fails to limit the volume of site excavation required to accommodate the development, contrary to Objective 4 above.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

4.1.8 Development on Sloping Sites

The site is mapped as Landslip Risk Area G4. The submitted geotechnical report is considered to provide suitable recommendations to minimise the risk of landslip, which would be incorporated into the conditions of consent were the application recommended for approval. Concerns regarding the extent and depth of excavation are discussed under MLEP 6.2 in this report.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

a) Earthworks must be limited to that part of the site required to accommodate the building and its immediate surrounds to protect significant natural features of the site including vegetation and prominent rock outcrops.

b) Natural and undisturbed ground level must be maintained within 0.9m of side and rear boundaries.

Comment:

The proposed excavation extends beyond the proposed building footprint, resulting in substantial alteration of the natural landform including the removal of several rock outcrops within the side

setbacks. The proposed excavation and retaining walls to the eastern and western side boundaries is also non-compliant with the 900mm setback control.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The proposed earthworks exceed the extent necessary to accommodate the proposed development. The application indicates the excavation of 4,211m³ of rock/soil to a depth of up to 10m. Insufficient information is provided in relation to the excavation of the side setbacks, however it appears that the development includes retaining walls up to and exceeding a height of 2.5m at the eastern and western boundaries. Given the substantial earthworks beyond the building footprint and the inclusion of surplus car parking and "shared" spaces that require additional excavation depth and volume, it cannot be said that the proposed development limits excavation or the height of retaining walls.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objective of the control. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$99,853 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,985,330.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that:

1) The Applicant's written requests under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio have adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

The detailed assessment in this report finds that the proposal is an overdevelopment of the site that is inconsistent with the desired future character as set by the applicable controls.

The built form is excessive in bulk and scale above ground and includes excessive excavation below ground. The variations to both MLEP and MDCP controls, which are intended to limit the intensity and impact of development, demonstrate that the proposal is unsuitable for the site. The proposal does not respond appropriately to the topography or adjoining developments and will result in an unacceptable level of internal amenity and impact to adjoining properties.

The proposed variations to the building height and floor space ratio development standards contribute to the unreasonable visual and amenity impacts of the development and are not adequately justified in the Applicant's Clause 4.6 written requests.

Council received nine submissions in response to the advertising of the application and the concerns raised are discussed in detail in this report.

For the reasons set out in this report, the application is recommended for **REFUSAL**.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2022/0688 for the Demolition works and construction of a residential flat building on land at Lot 8 DP 3742,35 Fairlight Street, FAIRLIGHT, Lot 9 DP 3742,33 Fairlight Street, FAIRLIGHT, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Specifically, the development is not in the public interest having regard to the matters set out in the submissions to the extent that the concerns raised are consistent with Council's assessment.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.

Specifically, the proposal is inconsistent with the Design Quality Principles set out in SEPP 65 and is inconsistent with various provisions of the Apartment Design Guide.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

Specifically, the proposal is inconsistent with the underlying objectives of MLEP Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio. Further, the applicant's written request under Clause 4.6 of MLEP has not adequately demonstrated that compliance with the standards is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify the contraventions or that the proposed development will be in the public interest.

5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.2 Earthworks of the Manly Local Environmental Plan 2013.

Specifically, the proposed volume and depth of excavation to accommodate the proposed building are excessive and do not respond to the topography of the site. The proposal is contrary to the provisions of MLEP Clause 6.2 and MDCP Clause 4.4.5.

6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013.

Specifically, the proposed stormwater design does comply with Council's Water Management for Development Policy, contrary to MLEP Clause 6.4 and MDCP Clause 3.7.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan.

Specifically, the application includes insufficient information to demonstrate that the proposal complies with the provisions of MDCP Clause 3.4.1 and that there will be no unacceptable loss of solar access to adjoining properties.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan.

Specifically, the proposal results in unacceptable privacy impacts to adjoining properties with regard to MDCP Clause 3.4.1 and ADG Objective 3F.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan.

Specifically, the proposal is inconsistent with the provisions of MDCP Clause 4.1.6 and provides insufficient information to demonstrate that acceptable access to the site is achieved.