

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0972
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot CP SP 7114, 22 Central Avenue MANLY NSW 2095
Proposed Development:	Alterations and additions to a mixed use building.
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre OLDManly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 7114 & 13245
Applicant:	The Owners Sp7114

Application Lodged:	21/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	31/07/2023 to 14/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 71.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 660,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a mixed use building, specifically the replacement of solid balustrades to balconies with glazed balustrades.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to part of the balustrading being to balconies above the 25 metres height limit, which results in a variation to the development standard by more than 10% (with a maximum 71.6% variation proposed). The 4.6 request for the non-compliance with height standard arises from the proposed glass balustrades replacing existing concrete balustrades along the eastern elevation. There is no increase to the maximum height of the building.

The application was publicly notified between 28 July 2023 to 11 August 2023, and no submissions were received during this time.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent to demolish the existing concrete balustrades to each balcony on the eastern elevation and and replace these with glass balustrades, with a maximum height of 1.2 metres.

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 - 6.9 Foreshore scenic protection area

Manly Local Environmental Plan 2013 - 6.11 Active street frontages

Manly Local Environmental Plan 2013 - 6.13 Design excellence

Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

SITE DESCRIPTION

Property Description:	Lot CP SP 7114 , 22 Central Avenue MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Central Avenue. The site is regular in shape with a frontage of 90.73m along

Central Avenue and a depth of 31.2 metres. The site has a surveyed area of approximately 2782.0m².

The site is located within the E1 Local Centre zone within the *Manly Local Environmental Plan 2013* (MLEP 2013) and accommodates a multi-storey mixed-use shop top housing development, with businesses located on the ground floor level and Council-owned carparking on the next four levels. The remaining levels are used for residential purposes.

The site is located on a flat block with an easterly orientation. There are various pedestrian entry points along the ground floor level along both the eastern and western elevations.

The site is not known to have any threatened species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by mixed-use developments, residential flat buildings, commercial businesses along The Corso. Manly Oval is located a short distance away to the west of the subject site.

Map:



SITE HISTORY

The land has been used for mixed-use shop-top housing purposes for an extended period of time. A search of Council's records has revealed that multiple development applications have been lodged, primarily relating to the use of business premises.

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	<p>See discussion on “Environmental Planning Instruments” in this report.</p> <p>The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 Local Centre zone to an E1 Local Centre zone. The proposed use of the building does not change under this development application. The existing use will remain, and be permissible in the new zone.</p>
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 recommended 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 clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</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 clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 Matters for Consideration	Comments
	<p>Building Act 1989. This matter has been addressed via a recommended condition of consent.</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 has been addressed via a recommended condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) 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 the proposed development.</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 interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 31/07/2023 to 14/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments					
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions.</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>					
NECC (Development Engineering)	<p>Supported, subject to conditions.</p> <p>The proposal does not require any change to the existing drainage system. There is limited availability for parking adjoining the site so a construction traffic management plan has been conditioned.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>					
NECC (Flooding)	<p>Supported, without conditions</p> <p>The property is partially affected by the Medium Flood Risk Precinct. The proposed development relates to modifying the existing balcony balustrades, which are above the FPL. This is compliant with Section 5.4.3 of the Manly DCP.</p>					
Strategic and Place Planning (Heritage Officer)	<p>Supported, without conditions</p> <table border="1" data-bbox="528 1328 1439 2119"> <thead> <tr> <th data-bbox="528 1328 1439 1361">HERITAGE COMMENTS</th> </tr> <tr> <th data-bbox="528 1361 1439 1395">Discussion of reason for referral</th> </tr> </thead> <tbody> <tr> <td data-bbox="528 1395 1439 1895"> <p>This application has been referred as the site is within the vicinity of a number of heritage items:</p> <p>I231 - Congregational Church, Sydney Road (corner of Whistler Street)</p> <p>I234 - Group of 5 commercial buildings, 39-47 Sydney Road, Manly</p> <p>I255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly</p> <p>I254 - St Mary's Church presbytery and school, Whistler Street (corner Raglan Street), Manly</p> <p>The site also adjoins the C2 Town Centre Conservation Area to the south</p> </td> </tr> <tr> <th data-bbox="528 1895 1439 1928">Details of heritage items affected</th> </tr> <tr> <td data-bbox="528 1928 1439 2119"> <p>Details of the closest heritage item (and a State item), as contained within the Heritage Inventory, are:</p> <p>I255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly</p> <p>The Manly Zone Substation is a well detailed electricity substation</p> </td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>This application has been referred as the site is within the vicinity of a number of heritage items:</p> <p>I231 - Congregational Church, Sydney Road (corner of Whistler Street)</p> <p>I234 - Group of 5 commercial buildings, 39-47 Sydney Road, Manly</p> <p>I255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly</p> <p>I254 - St Mary's Church presbytery and school, Whistler Street (corner Raglan Street), Manly</p> <p>The site also adjoins the C2 Town Centre Conservation Area to the south</p>	Details of heritage items affected	<p>Details of the closest heritage item (and a State item), as contained within the Heritage Inventory, are:</p> <p>I255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly</p> <p>The Manly Zone Substation is a well detailed electricity substation</p>
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Internal Referral Body	Comments		
	<p>building still in service for its original purpose. It is an excellent and externally intact representative example of the Interwar Art Deco style and is the last remaining known asset constructed by the Manly Electric Supply Company. It was subsequently acquired and extended by the Municipal Council of Manly. It is representative of the transition period from private to public electricity in the early 20th century in Sydney's Northern Beaches area.</p>		
	<p>Other relevant heritage listings</p>		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	Electricity Substation in Whistler Street is State listed
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	<p>Consideration of Application</p>		
	<p>This application proposes alterations and additions to an existing multi-storey mixed-use building, consisting of the replacement of balcony balustrades on the eastern facade (Level 11 and above). This work involves removal of the upper concrete component of the balustrade and installation of a BCA compliant glass balustrade.</p> <p>These works will not increase the bulk or scale of this building and they will have a negligible impact upon views of the building from surrounding heritage items and the Manly Town Centre Conservation Area. As the works are only on the eastern facade, there will be no visibility from the surrounding heritage items, however being the tallest building in the area, it is visible from beyond the immediate vicinity. Nevertheless it is considered that the visual impact of this change is negligible on surrounding heritage items and areas.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p>Consider against the provisions of CL5.10 of MLEP 2013: Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>		

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	<p><i>Supported, without conditions.</i></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent for alterations and additions to an existing mixed-use development. The works involve demolition of the existing concrete balustrades and installation of new glass balustrades to all the existing balconies. The proposed changes to the facade will be minor and will not have any major impact on the surrounding developments and general streetscape.</p> <p>Urban Design raises no objection to the proposed works.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions.</i></p> <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 will be included as a condition of consent.</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 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.

The building to which this application relates is a mixed-use building, comprising commercial development on the ground floor level, with multiple levels of public carparking and the remaining levels comprising residential accommodation pursuant to SEPP No. 65. However, and with regard to Clause (1)(a)(iii), the replacement of the concrete balustrades with glass balustrades is not considered to constitute the substantial redevelopment or refurbishment of the existing building (as indicated in Figure 1. below, the change is not easily or readily discernible when viewed from nearby public and private places). Furthermore, the actual building mass of the building is no changing. The extent of works within the context of the building as a whole are minor and, therefore, does not constitute a substantial refurbishment of the building in any way.

As such, SEPP No. 65 is not considered to apply, despite the building being a mixed-use development in the context of that policy.



Figure 1. Existing concrete balustrades (left) and proposed glass balustrades (right) (Source: Urbaine Architecture).

SEPP (Building Sustainability Index: BASIX) 2004

The proposed development does not trigger the need for a BASIX Certificate in accordance with the

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, as there are no changes to the existing window and door schedule of the building.

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 which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

This Clause applies to the subject site. As the proposed works are sited entirely to the residential portion of the existing building, the assessment has found that the proposed works can achieve the matters as prescribed within the above Clause.

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

Comment:

This Clause applies to the subject site. As the proposed works are sited entirely to the residential portion of the existing building, the assessment has found that the proposed works can achieve the matters as prescribed within the above Clause.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

This Clause applies to the subject site. As the proposed works are sited entirely to the residential portion of the existing building, the assessment has found that the proposed works can achieve the

matters as prescribed within the above Clause.

Division 5 General

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

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

Comment:

The proposed development will not increase risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential and use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	25m	42.9m	71.6%	No
Floor Space Ratio	FSR: 3:1	No change	N/A	N/A
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000sqm per premises	No change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 4.3 Height of buildings
Requirement:	25m
Proposed:	42.89m
Percentage variation to requirement:	71.56%

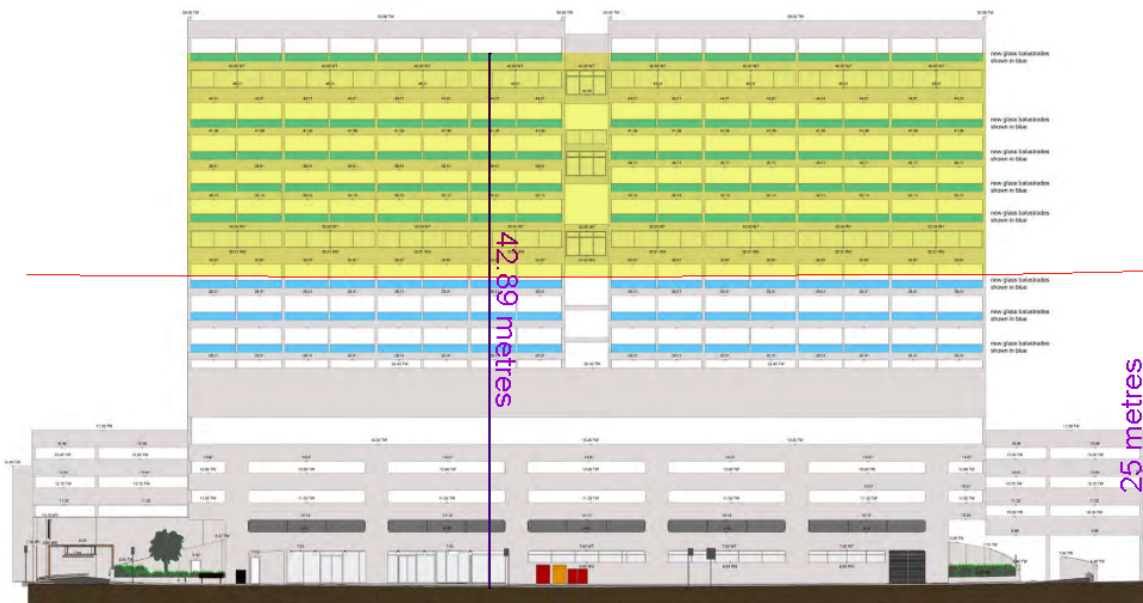


Figure 2. Proposed maximum height of building.

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 has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *'The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.*
- *The objectives of the MLEP2013 E1 Local Centre zone are achieved notwithstanding the technical non-compliance.*
- *The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.*
- *There are sufficient environmental planning grounds to support the proposed variation.*
- *The proposal does not impact existing solar access to private and public places.*
- *The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.*

- *Despite the variation to the Height of Building control which occurs due to the existing building, the proposed development is considered to be in keeping with the desired future character of the locality.*
- *The proposal has been strategically designed to minimise the impact and bulk and scale of the project.*
- *The project architects have designed a new compliant balcony balustrade noting the existing non-compliant design and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Manly streetscape and locality.*
- *The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing noting the building height remains as existing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard.*
- *It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types.*
- *By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particularly the Manly precinct.*
- *The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.*
- *The proposal is for alterations and additions to the existing mixed-use development on the residential component of the building which does not change the existing maximum building height for the site. It is important to acknowledge that the building existing is over the 25m maximum height allowance and that the proposed works are below that existing on the site. There is no further variation to that existing.*
- *...the works are considered to be inconsequential to that existing and purely relate to the replacement of balustrades on the balconies.*
- *It is noted that notwithstanding the existing breach to the building height, other properties within the Manly LGA have similar breaches, and the approval would not result in significant impacts to the bulk and scale of Manly. It is important for Council to acknowledge the existing streetscape and built form of 22 Central Avenue, as existing. The proposed works relate to cosmetic alterations and additions that are consistent with the desired future streetscape of the locality.*
- *Sufficient environmental planning grounds exist to justify the height of buildings variation namely the retention of the existing building height noting that the proposal will not alter the existing variation on site.*
- *There would be no public benefit in maintaining the development standard in this instance for the following reasons:*
 - *the variation to the Height of Building development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.*
 - *maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.*
 - *the breach to the development standard is existing and not exacerbating through the proposal.'*

The Applicant's written request to vary the numeric requirement of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013 (MLEP 2013) is considered to be acceptable given the proposed resultant built form will remain unchanged to what is existing, and will be commensurate with the surrounding and nearby residential developments. The proposed development and the existing site constraints mean that strict compliance with this development standard is considered to be

unreasonable and unnecessary as the residential portion of the building extends beyond the prescribed maximum height of 25.0 metres.

The proposed external works (being the replacement of the existing concrete balustrade with glass balustrades that meet the BCA requirements) does not increase or extend the built form further above the maximum building height. Therefore, the contravention to the maximum building height will not be discernible from adjoining and nearby public and private places, and will not adversely or unreasonably impact upon the character of Manly Town Centre, nor will it result in unreasonable amenity impacts to adjoining public and private places.

Notwithstanding the numerical non-compliance, the building mass does not change and will remain commensurate with surrounding developments within the Manly Town Centre and surrounds. In this instance, the overall building height will not adversely or unreasonably impact upon the existing character of the streetscape of Central Avenue or the Corso, which is within close proximity to the subject site.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E1 Local Centre zone within the Manly Local Environmental Plan 2013 (MLEP 2013). 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 development retains the existing building height, bulk and scale and is therefore consistent as existing with the prevailing heights and roof forms. It is noted that notwithstanding the existing breach to the building height, this application and proposed works to the balcony balustrades are below the existing maximum building height for the building, therefore the works are considered to be inconsequential to that existing and purely relate to the replacement of balustrades on the balconies. It is noted that notwithstanding the existing breach to the building height, other properties within the Manly LGA have similar breaches, and the approval would not result in significant impacts to the bulk and scale of Manly.

b) to control the bulk and scale of buildings,

Comment:

The proposal has been strategically designed by the project architect to be the replacement of the existing concrete balustrade with a new glass balustrade only. It is noted that the existing concrete balustrade does not comply with the Building Code of Australia, therefore the proposal is required to ensure compliant balconies for the site. The proposal will not have an adverse visual impact and will not disrupt views, privacy or have amenity impacts to neighbouring properties. It is therefore considered that the bulk and scale of the existing building is retained.

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:

The proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade, and does not extend the existing building mass. The proposal will have no impact to views from both adjoining properties and public spaces.

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 proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade, and does not extend the existing building mass. The proposal will have no impact to views from both adjoining properties and public spaces.

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:

This objective is not applicable to the subject site as it is not in a recreation or environmental protection zone.

Zone objectives

The underlying objectives of the E1 Local Centre zone are:

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

Comment:

The existing building is mixed-use with commercial business located on the ground floor level, public carparking and residential accommodation in the remaining building. The proposed development does not seek to change the mixed-use of the building.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment:

As above, the proposed development does not interfere with the existing commercial businesses. Therefore, opportunities to encourage investment in local development shall remain, and thus contribute to employment opportunities and economic growth within the Manly Town Centre.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment:

As above, the proposed development does not interfere with the existing residential portion of the building. Therefore, the proposal will continue to enable residential development that contributes to the vibrant and active Manly local centre and remain consistent with the strategic planning for the Manly Town Centre.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment:

The existing commercial and business uses of the ground floor tenancies will not change under this development application.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The existing land use is not proposed to change under this development application.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment:

The existing street frontages of the subject site will remain under this development application.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The proposed development will be an appropriate scale within the context of the existing building and the adjoining and nearby land uses. The replacement of the existing concrete balustrades with glass balustrades that meet the BCA requirements will be an appropriate architectural treatment. Any landscaping on the subject site will not change as a result of the proposed development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The assessment has found that the proposed development achieves the abovementioned matters as prescribed within this Clause.

6.11 Active street frontages

Under this clause, development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

Comment:

The proposed development does not involve the erection of a new building, or a change of use to the existing building. As such, the existing building will continue to provide an active street frontage.

6.13 Design excellence

This Clause applies to the subject site. As such, the following is to be considered:

(3) Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

(4) In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to*
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and*
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation*
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian,*
- (e) encourages casual surveillance and social activity in public places, streets, laneways and*
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed built*
- (g) protects and enhances the natural topography and vegetation including trees, escarpments*
- (h) promotes vistas from public places to prominent natural and built landmarks, and*
- (i) uses high standards of architectural design, materials and detailing appropriate to the*
- (j) responds to environmental factors such as wind, reflectivity and permeability of surfaces*
- (k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces*

Comment:

The proposed development does not seek to alter the built form in such a way that changes the form, bulk, massing and modulation of the building. The overshadowing is existing and will not change as a result of the proposal. Furthermore, the proposal does not adversely impact upon the existing streetscape or nearby public places and plazas, nor does it impact upon the definition of the building in its relationship to the edge of public places, streets, lanes and plazas as the proposal does not involve structurally enhancing the built form. The proposal does not contribute to street clutter or impact upon ease of movement and circulation around the building for pedestrians, bicyclists and vehicles, and service areas. Casual surveillance is maintained. The proposal is sympathetic to its setting and site context with no unreasonable or adverse impacts upon neighbouring sites or the natural topography of the site (the site has no trees, escarpments or other significant natural features). The proposed replacement of the concrete balustrades with glass balustrades will promote a high architectural design with appropriate materials for the building type and location. However, to ensure the glass is not reflective, a condition will be recommended to require non-reflective glass so as to limit unreasonable glare upon adjoining and nearby public and private places. Finally, the proposed works are not sited on the ground floor level, therefore there is no disruption to the public spaces on the street level.

6.16 Gross floor area in Zone B2

While this Clause applies to the subject site, the proposed development does not involve any changes to the existing gross floor area of the building. In this instance, the assessment has found that the subject site will continue to provide for viability in the E1 Local Centre zone and will continue to allow for the diversity of business activities which will contribute to the economic growth, retention of local services and employment opportunities in the Manly Local Centre.

Manly Development Control Plan

Built Form Controls

Due to the zoning, there are no specific numeric built form provisions to consider. Rather, consideration is to be given to the design for townscape under 4.2.5 Manly Town Centre and Surrounds, as prescribed within the MDCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

The building height variation is discussed within this report under section Clause 4.6 Exceptions to Development Standards of MLEP 2013.

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 \$6,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$660,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the *Manly Local Environmental Plan 2013* seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a mixed use building has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the maximum building height of 42.9 metres, which results in a variation to the development standard by more than 10% (being 71.6%).

The application was publicly notified between 29 July to 11 August 2023. During this period, no submissions were received.

The critical assessment issues Clause 4.3 Height of Building, Clause 4.6 Exceptions to development standards, Clause 6.9 Foreshore scenic protection area, Clause 6.11 Active street frontages, Clause 6.13 Design Excellence, Clause 6.16 Gross floor area in Zone B2 of the MLEP 2013; and, control 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2).

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for **approval**. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0972 for Alterations and additions to a mixed use building. on land at Lot CP SP 7114, 22 Central Avenue, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A001b	N/A	Demolition	Urbaine Architecture	16 May 2023
A001c	N/A	New Proposal	Urbaine Architecture	16 May 2023
A002	N/A	Existing to Demolish	Urbaine Architecture	16 May 2023
A003	N/A	New Balustrade Proposal	Urbaine Architecture	16 May 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	N/A	Not signed	Not dated
Fire Safety Statement	N/A	Tony Strati (Building Manager)	27 February 2023
Building Code of Australia - Compliance Assessment Report for DA Submission	N/A	AED Group	6 July 2023

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

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	[INSERT]

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times

until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,600.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$660,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Traffic Management and Control**

The Applicant is to submit an Implement Traffic Control application for a Construction Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Construction Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

8. **Building Code of Australia Requirements**

The Building Code of Australia requirements for the building as detailed and recommended in the Compliance Assessment Report prepared by AEG, dated 6/7/2023, Report No. 7375_R02_Final, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

9. **Compliance with Standards**

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

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

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

10. Sydney Water "Tap In"

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

Please refer to the website www.sydneywater.com.au for:

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

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

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

DURING BUILDING WORK

11. Road Reserve

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

Reason: Public safety.

12. Removing, Handling and Disposing of Asbestos

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

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

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

13. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be

disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

14. Survey Certificate

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

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

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

15. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

16. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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