

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2034
----------------------------	-------------

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 50 DP 705739, 30 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:	30 Fairlight Pty Limited
Applicant:	30 Fairlight Pty Limited

Application Lodged:	02/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	12/11/2021 to 26/11/2021
Advertised:	12/11/2021
Submissions Received:	28
Clause 4.6 Variation:	4.4 Floor space ratio: 24.1%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 5,531,296.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

The proposal seeks consent for demolition works and the construction of a residential flat building containing five apartments with basement car parking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal attracted more than 10 submissions, includes a departure to the floor space ratio development standard that exceeds 10% and seeks approval to a Residential Flat Building.

The proposal was notified and advertised for a period of 14 days. Council received 28 submissions in objection to the development in response to the advertising of the application. The primary concerns raised in the submissions relate to the following matters:

- FSR variation, building height & overdevelopment of the site;
- Streetscape character and visual bulk;
- MDCP setback non-compliances;
- MDCP Wall height non-compliance and excessive floor-to-floor/ceiling heights;
- Non-compliance with SEPP 65 and the ADG;
- View loss, privacy and overshadowing impacts;
- Impacts of excavation extent and potential loss of trees on adjoining properties;
- Traffic, parking and safety impacts;
- Stormwater management and redirection of ground water flows to adjoining properties.

The development proposes a floor space ratio of 0.93:1, resulting in a variation of 24.1% (155.5m²) to the 0.75:1 control. The Applicant's Clause 4.6 written request does not adequately demonstrate that the proposal achieves the objectives of the height of buildings development standard, or that there are sufficient environmental planning grounds to justify the extent of the proposed variation sought. The variation will result in excessive visual bulk and generates a greater car parking demand than that which can be appropriately accommodated on the site.

The proposed development is found to be inconsistent with the desired future character as prescribed by the planning controls contained within the MLEP and MDCP, particularly with regard to bulk and scale, visual and amenity impacts and landscape outcomes. Further issues are also raised in relation to the provisions of SEPP 65 and the Apartment Design Guide, traffic and parking, and stormwater and waste management. Given the number and extent of the proposed non-compliances/inconsistencies with the applicable controls, the proposal is considered to represent an overdevelopment of the site.

The proposal is not supported by the Design and Sustainability Advisory Panel or Council's Development Engineering, Traffic, Waste and Landscape sections.

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

PROPOSED DEVELOPMENT IN DETAIL

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

Basement

- Pedestrian entry, lobby, stair and lift access
- Car parking for 10 vehicles
- Storage and bicycle parking
- Bin store room
- Plant room
- Pump room
- Services

Ground

- 2 x Three bedroom apartments
- Landscaped podium structure (south)
- Landscaped rear private open spaces areas (north)

Level 1

- 2 x Three bedroom apartments

Level 2

- 1 x Three bedroom apartment

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 - 3.3.1 Landscaping Design

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 - 3.8 Waste Management

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 3.10 Safety and Security

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 50 DP 705739, 30 Fairlight Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Fairlight Street.</p> <p>The site is irregular in shape with a frontage of 16.01m along Fairlight Street and a depth of 54.64m. The site has a surveyed area of 861.7m².</p> <p>The site is located within the R1 General Residential zone and accommodates an existing single-storey dwelling house, triple garage and swimming pool.</p> <p>The site slopes 6.2m from rear (north) to front (south) and includes a crossfall of up to 1m from west to east.</p> <p>The site contains a range of vegetation including 38 trees and smaller planted vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a range of multi-storey and mid-rise residential flat buildings and detached dwelling houses.</p>

Map:



SITE HISTORY

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

DA2020/0103 for Demolition works and construction of a Residential Flat Building was withdrawn by the Applicant in response to numerous concerns raised by Council in relation to:

- Height of buildings and Floor space ratio;
- General amenity, privacy, solar access and views;
- Number of storeys, setbacks and visual bulk;
- Open space and landscaping;
- Non-compliance with various aspects of SEPP 65 and the ADG;
- Vehicular access; and
- Waste management.

The subject application, **DA2021/2034** was submitted to Council on 2 November 2021 and was referred to the Design and Sustainability Advisory Panel on 9 December 2021. The DSAP Report included a total of 24 recommendations in relation to the proposed development, generally relating to:

- Strategic context, urban context: surrounding area character;
- Scale, built form and articulation;
- Landscape;
- Amenity;
- Facade treatment / Aesthetics; and
- Sustainability.

On 16 December 2021, 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter would addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter would be addressed via a condition of consent were the application recommended for approval.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for 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.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the 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 12/11/2021 to 26/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 28 submission/s from:

Name:	Address:
Mr Rajesh Arora	12/20-22 Fairlight Street MANLY NSW 2095
Mr Roger Charles Twigg	4 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Mark Damian Williams Mrs Catherine Marianna Williams	3 / 28 Woods Parade FAIRLIGHT NSW 2094
Mr Peter John Adams	3 / 1 Berry Avenue FAIRLIGHT NSW 2094
Mr Colin Reginald James	32 Fairlight Street FAIRLIGHT NSW 2094
Mr Stephen Hogan	3 / 34 Fairlight Street FAIRLIGHT NSW 2094
Withheld	ELANORA HEIGHTS NSW 2101
Ms Dianne Voun Parrish	2 / 1 Berry Avenue FAIRLIGHT NSW 2094
Ms Pamela Doreen Prior	3/26-28 Fairlight Street FAIRLIGHT NSW 2094
Ms Cheryle Annette Newton	3 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Robert Lester Smale	1 / 34 Fairlight Street FAIRLIGHT NSW 2094
Mr Errol John Fletcher	1 / 6 Pine Street MANLY NSW 2095
Ms Patricia Ann Laubinger	3 / 28 Woods Parade FAIRLIGHT NSW 2094
Mr Ian Joseph Glover Mrs Barbara Glover	7 / 26 Fairlight Street FAIRLIGHT NSW 2094
Ms Valerie Jean Bowman	5 / 26 Fairlight Street FAIRLIGHT NSW 2094
Ms Eilis Maire Hurley	6 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Alan Graham Keenleside	1 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Christopher John Milne	16 / 15 Laurence Street MANLY NSW 2095
Mr David Anthony Costa	21 Fairlight Street FAIRLIGHT NSW 2094
Ms Ann Helen Stone	7 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Nikki Britton	Address Unknown
Mrs Lucia Orvi Pattison	5 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Ross Geoffrey Kelly	Po Box 934 MANLY NSW 1655
James Dale Graham	4 / 137 Sydney Road FAIRLIGHT NSW 2094
Mr David Christopher Buckner Mrs Elizabeth Buckner	8 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Graham Carlton Mrs Patricia Elaine Carlton	2 / 34 Fairlight Street FAIRLIGHT NSW 2094
Mr Jeremy Owen Magee	1 / 26 Fairlight Street FAIRLIGHT NSW 2094
Ms Rebecca Ann Fee	4 / 49 Wood Street MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

- FSR variation, building height, overdevelopment of site

Comment:

The assessment of the applicant's Clause 4.6 written request finds that the proposed floor space ratio variation is excessive and is not supportable. The submitted plans indicate that a significant reduction to the overall building and wall height is readily achievable and necessary in order to reduce the associated visual bulk, overshadowing and view impacts of the proposal. The proliferation of non-compliances in relation to the controls contained within the Manly LEP and DCP, SEPP 65 and the ADG demonstrate the proposed development represents an overdevelopment of the site, and as such the proposal is not supportable.

This matter is considered to warrant the refusal of the application.

- Streetscape character and visual bulk

Comment:

The proposal is inconsistent with the character of the streetscape due to its excessive bulk, inadequate front setbacks and inappropriate landscape treatment at the streetfrontage.

This matter is considered to warrant the refusal of the application.

- MDCP setback non-compliances

Comment:

The proposal includes various breaches of the applicable MDCP built form and amenity controls, including wall height, setbacks, landscaped area, solar access, privacy and maintenance of views. The proposal does not achieve the relevant objectives of these controls and is not supportable.

This matter is considered to warrant the refusal of the application.

- MDCP Wall height non-compliance and excessive floor-to-floor/ceiling heights

Comment:

The proposal exceeds the maximum permitted wall height for the site at both the eastern and western elevations. Given the excessive level 2 floor to ceiling heights proposed and the adverse visual and amenity impacts resulting from the wall height breaches, the proposal is not supported.

This matter is considered to warrant the refusal of the application.

- Non-compliance with SEPP 65 and the ADG

Comment:

The proposal is inconsistent with multiple aspects of SEPP 65 and the ADG as discussed in this report, and is not supportable.

This matter is considered to warrant the refusal of the application.

- View loss impacts

Comment:

A view loss assessment is completed under 3.4.3 in this report. The assessment finds that the proposal has not given adequate consideration to views from surrounding properties and is not supportable.

This matter is considered to warrant the refusal of the application.

- Privacy impacts

Comment:

The proposal includes numerous large windows orientated to the eastern and western side boundaries that not appropriately designed or located for privacy and do not incorporate adequate screening measures. As such, the proposal will result in adverse privacy impacts to adjoining properties and is not supportable.

This matter is considered to warrant the refusal of the application.

- Overshadowing impacts to adjoining properties

Comment:

The proposal will maintain a reasonable level of sunlight access to the private open spaces of the adjoining properties. However, insufficient detail has been provided to consider the overshadowing of living room windows within these properties, particularly 32 Fairlight Street to the west.

This matter is considered to warrant the refusal of the application.

- Excavation and site stability

Comment:

The proposed excavation to accommodate the required car parking is anticipated to adversely impact adjoining properties and the natural environment, including significant trees located on 32 Fairlight Street to the west. Further, the car parking demand and subsequent extent of required excavation is largely attributable to the additional gross floor area achieved beyond the FSR control. The proposed excavation in proximity to the property boundaries is considered to be excessive and is not supported. Were the application recommended for approval, conditions would be imposed regarding certification of geotechnical measures and preparation of pre and post-construction dilapidation reports for the relevant adjoining properties/structures. However, any measures to allow the retention of trees located 32 Fairlight Street are not foreseen.

This matter is considered to warrant the refusal of the application.

- Impact to trees, including those located on adjoining properties, provision of open space and landscaping

Comment:

The likely impact to trees T27 and T37 located on 32 Fairlight Street is not supportable by Council. Further, the proposed landscape outcome for the site, which includes the removal of all existing trees and limited ability to provide compensatory planting, is also unacceptable.

This matter is considered to warrant the refusal of the application.

- Traffic, parking and safety impacts

Comment:

The proposal provides a compliant number of car parking spaces as required by the Manly DCP and is not considered to result in any adverse impact to the surrounding road network. However, the design of the proposed basement car park does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1 and the proposal does not demonstrate that forwards entry and exit to and from the site is possible from each parking space via a swept path analysis. Given the length of the circulation aisle, a waiting bay and traffic control measures inside the car park are also required. As such, the proposal does not appropriately address traffic and safety matters.

This matter is considered to warrant the refusal of the application.

- Stormwater management and redirection of ground water flows to adjoining properties

Comment:

The proposed stormwater design is inconsistent with Council's Water Management for Development Policy and is not supportable.

This matter is considered to warrant the refusal of the application.

- Reduced development potential of 32 Fairlight Street

Comment:

It is acknowledged that the proposal, if approved, would adversely impact the future development of 32 Fairlight Street due to the number and extent of non-compliances with the provisions of the MLEP, MDCP, ADG and SEPP 65 as discussed in this report. It is also likely that a future development of a similar scale at No. 32 would likely have an adverse impact on the amenity of the subject development, if approved.

This matter is considered to warrant the refusal of the application.

- No boundary fencing proposed

Comment:

Were the application recommended for approval, conditions would be imposed requiring that sufficient boundary fences be provided in accordance with the NSW Dividing Fences Act 1991.

This matter is not considered to warrant the refusal of the application.

- Mechanical plant equipment noise

Comment:

Were the application recommended for approval, conditions would be imposed requiring that all mechanical plant equipment be acoustically treated to comply with the relevant noise standards.

This matter is not considered to warrant the refusal of the application.

- Construction and excavation impacts

Comment:

Were the application recommended for approval, conditions would be imposed requiring that the works be carried out in accordance with the relevant standards to minimise disruption to the amenity of surrounding properties.

This matter is not considered to warrant the 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 24 recommendations to improve the design quality,</p>

Internal Referral Body	Comments
	<p>contextual fit and sustainability of the proposal. The primary issues raised by the Panel included:</p> <ul style="list-style-type: none"> • Strategic context, urban context: surrounding area character; • Scale, built form and articulation; • Access, vehicular movement and car parking; • Landscape; • Amenity; • Facade treatment / Aesthetics; and • Sustainability. <p>The DSAP Report concluded that <i>"The Panel does not support the proposal in its current form. A complete redesign incorporating substantial reduction in the floor area, significantly reduced extent of excavation and significant retention of existing tree canopy is required. Any breach of the floor space controls would need to be supported by an analysis of the benefits compared to a complying scheme."</i></p> <p>Council concurs with the concerns raised by the DSAP for the reasons discussed in this assessment.</p> <p>A copy of written advice provided by the DSAP is attached to this report.</p>
Building Assessment - Fire and Disability upgrades	Supported subject to conditions.
Environmental Health (Acid Sulphate)	<p>Supported without conditions.</p> <p>General Comments</p> <p>The property is located in a Class 5 for acid sulfate soils. Acid sulfate soils are not typically found in a Class 5 area. Areas classified as Class 5 are located within 500 metres on adjacent class 1,2,3 or 4 land. Any Works in a class 5 area that are likely to lower the water table below 1 metre AHD on adjacent class 1, 2, 3 or 4 land will trigger the requirement for assessment and may require management.</p> <p>SEE advises the following:</p> <p><i>Clause 6.1 Acid Sulfate Soils - Clause 6.1 of MLEP 2013 maps the site as Class 5 on the Acid Sulfate soils map. The DA is accompanied by a Geotechnical assessment report prepared by JKGeotechnics dated 12 July 2021 which did not identify the presence of acid sulfate soils. Accordingly, no further investigation is warranted.</i></p> <p>From the Geotechnical Report prepared by JKGeotechnics dated 12 July 2021 (Reference: 34216Brpt) there is no mention of acid sulphate soils or if the works are likely to lower the water table below 1 metre AHD on adjacent class 1, 2, 3 or 4.</p>

Internal Referral Body	Comments
	<p>However, the Geotechnical Report advises the following regarding excavation:</p> <p><i>The basement is proposed at RL42m, which is the street level at the south-eastern corner of the site, but will require excavation to a maximum depth of about 5.5m towards the rear of the site. The basement will extend to the eastern, southern and western boundaries and will be offset about 5.5m from the northern boundary. The portion of the site to the rear of the basement will require excavation to a depth of about 1.5m to 2m to form a level landscaped area, with retaining walls constructed along the boundaries to allow this excavation.</i></p> <p>Given that the site is located approximately 45m above sea level and nearest Class 4 is approximately 385m away at approximately 15m above sea level the likelihood of the works lowering the water table below 1 metre AHD within an adjacent Class 4 area is low.</p>
Landscape Officer	<p>Not supported.</p> <p>The development application is for the demolition of the existing dwelling house and construction of a residential flat building containing five units above basement parking.</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) (b) against the design quality principles within schedule 1; the Apartment Design Guide under SEPP 65 clause 28(2)(c); and clause 30. • the associated Apartment Design Guide, including Principle 5: Landscape, and the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and • Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): 3.3.1 Landscaping Design; Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings. <p>A Landscape Plan prepared by Black Beetle Landscape Architecture and a Arboricultural Impact Assessment prepared by Treeism, are submitted in accordance with Council's DA Lodgement Requirements,</p> <p>Landscape Plans and a Arboricultural Impact Assessment are provided with the development application in accordance with Council's DA Lodgement requirements.</p> <p>The existing site vegetation contains 38 trees and all are proposed for removal. Four (4) are assessed as prescribed trees under the Manly DCP and thus requiring Council consent for removal and these include T13 Cedrus deodara, T16 and T17 Yucca aloifolia, and T25</p>

Internal Referral Body	Comments
	<p>Pittosporum undulatum. The remaining thirty four (34) are Exempt Species by either height or by species type. Exempt Species located on the site include Black Bean, Cypress, Umbrella Tree, Gleditsia, Willow, Sweet Pittosporum, Kentia Palm, Golden Cane Palm, Cocus Palm, Alexandra Palm, and Canary Island Date Palm.</p> <p>The Landscape Plans provide the minimum 7% deep soil zone required under the Apartment Design Guide to the rear of the property, however this is disrupted with retaining walling for change of levels and by lawn areas. It is advised that to provide the landscape outcome intended for deep soil areas to support tree planting, the lawn areas shall be deleted and mass planting shall occupy the area. The location of the retaining wall shall be aligned to ensure that tree planting is at least two metres from walling.</p> <p>Smaller areas of natural ground landscape areas are provided along the front northern boundary and otherwise the remaining landscape areas are contained on slab within planters.</p> <p>Concern is raised on the impact of the basement alignment and excavation to the side boundaries in proximity of existing trees within adjoining property at No. 32. Existing trees T27 Camphor Laurel assessed in the Arboricultural Impact Assessment with a medium retention value, and T37 Rose Apple assessed in the Arboricultural Impact Assessment with a high retention value are both located in close proximity to the basement. The Arboricultural Impact Assessment recommends that the retention of T27 is not achievable based on the impact of development and whilst not providing a recommendation for removal for T37, the Arboricultural Impact Assessment notes that a tree root investigation is required to determine whether or not the tree can be retained.</p> <p>Council does not support the removal of any existing tree or vegetation within adjoining properties and does not provide recommendations for any removal upon land not the subject of a development application. The applicant may seek by way of written owner's consent from the adjoining property owner at No. 32 for common agreement to remove existing tree T27 but this is not a matter for Council to impose any recommendations. The matter of a firm understanding of the impact to existing tree T37 is not known at this stage and without evidence to the contrary to suggest retention of existing tree T37 is viable, it is suggested that the basement alignment shall be altered and setback at a distance as determined through arboricultural investigation. Likewise, without owner's consent for removal of existing tree T37, the basement alignment shall be altered and setback at a distance as determined through arboricultural investigation.</p> <p>At this stage Landscape Referral are unable to support the development application as the outcome of existing trees within adjoining property is unknown, potentially requiring the redesign of the basement alignment, and the Landscape Plans shall be adjusted to provide a deep soil zone to the rear of the property to establish tree</p>

Internal Referral Body	Comments
	planting.
NECC (Development Engineering)	<p>Not supported.</p> <p>The applicant proposed to install an OSD in the proposed courtyard on the proposed ground floor where limits the access to the OSD tank.</p> <p>In accordance with Council's Water Management for Development Policy, the OSD tank must be freely accessed due to the safety and possible maintenance.</p> <p>As such, the OSD tank shall be relocated to an accessible area as the requirement of the above policy.</p> <p>The application cannot be supported due to the clause 3.7 of Council's Manly DCP 2013.</p>
NECC (Water Management)	<p>Supported subject to conditions.</p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The development is subject the Water Management for Development Policy.</p> <p>Due to the sensitivity of the Sydney Harbour and to maintain a good water quality, Council recommend the stormwater filtration system to achieve the Policy General Stormwater Quality Requirements.</p> <p>In addition the carwash bay shall not be connected to the stormwater system, detention system or drained directly to the environment.</p> <p>Wastewater and rainwater run-off from vehicle, machinery and equipment wash bays can pose a significant threat to the health of natural waterways and coastal waters if they are discharged into the stormwater system.</p> <p>This application, subject to conditions, is supported.</p>
Strategic and Place Planning (Heritage Officer)	Supported subject to conditions.
	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>This proposal has been referred for heritage comment as it involves demolition of an Edwardian Federation cottage, one of a surviving adjacent pair of contemporaneous but dissimilar dwellings. Neither is listed, but a number of heritage items are located in the vicinity.</p>
	Details of heritage items affected
	<p>There are a number of listed heritage items within the vicinity of this site, being:</p> <p><i>Item 12 - All stone kerbs (sections of Fairlight Street);</i> <i>Item 151 - Group of 3 houses, 21-25 Fairlight Street;</i> <i>Item 161 - Group of dwellings, 2A-25, 27 and 29 Margaret Street and 38 The Crescent; and</i></p>

Internal Referral Body	Comments		
	<i>Item 162 - Street trees, Margaret Street (from Lauderdale Avenue to Fairlight Street).</i>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	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>This application is for demolition of the existing dwelling and construction of a new residential flat building. The application was supported by a Heritage Impact Statement (<i>Weir Phillips Heritage and Planning</i>, dated October 2021), which has been reviewed.</p> <p>The comparative and particular distances of the heritage items in the vicinity from No. 30 are such that it is considered that no substantive adverse heritage impacts will arise from the proposed development. These impacts are understandably favourably assessed in the submitted Heritage Impact Statement.</p> <p>The most perceivable outcome of the proposal will be its somewhat dominating and intrusive effect on views from the sensitive, heritage listed street opposite (Margaret Street). This street precinct is protected somewhat by its heritage listed street trees. However, the urban design qualities of the proposal, in terms of its relationship with the existing setting, should be carefully assessed. It is difficult to conclude however, that there is a substantial heritage impact on this heritage item in the vicinity.</p> <p>In heritage terms, the proposed loss of the existing cottage, and the new development proposed for the site, are regrettable but not capable of opposition on heritage grounds. As the existing cottage dates back to the early 20th century, archival recording of the cottage is recommended prior to demolition.</p> <p>Therefore, no objections are raised on heritage grounds, subject to a condition requiring archival recording of the cottage prior to demolition.</p> <p><u>Consider against the provisions of CL5.10 of MLEP2013:</u></p>		

Internal Referral Body	Comments
	<p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A</p> <p>Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? Yes</p> <p>Further Comments</p> <p>COMPLETED BY: Robert Moore, External Heritage Advisor/Janine Formica, Heritage Planner DATE: 5 January 2022</p>
Traffic Engineer	<p>Not supported.</p> <p>Proposal description: Demolition of the existing dwelling house and construction of a new three-storey residential flat building with basement car parking.</p> <p>The proposed development involves the demolition of existing structures on the site to facilitate the construction of a residential flat building comprising 5 × three-bedroom residential units.</p> <p>The existing dwelling has three enclosed garages accessing to/from Fairlight Street. The proposed development will provide a single entry point and enable all vehicles to enter and exit the site in a forward direction. Off-street parking is proposed for a total of 10 cars in a single-level basement car parking area at street level.</p> <p>The plans (Master Set) – Revision A, designed by DKO Architecture (NSW) Pty Ltd, dated June 2021, the Traffic and Parking Assessment report prepared by VARGA TRAFFIC PLANNING Pty Ltd dated 13 October 2021 have been reviewed by the Traffic team.</p> <p>Notes/comments on parking requirement, traffic impact and carpark design:</p> <ul style="list-style-type: none"> • <i>Manly DCP</i> applies to the subject site. According to the DCP, in LEP Residential Zones, the parking rate is as follows: <ul style="list-style-type: none"> o 1 resident parking space for each dwelling (irrespective of the number of bedrooms), plus o 0.2 resident parking spaces for each 2 bedroom dwelling, plus o 0.5 resident parking space for each 3 (or more) bedroom dwelling, plus o 0.25 visitor parking space for each dwelling (irrespective of the number of bedrooms). o The calculation of resident parking and visitors parking is to be individually rounded up to the next whole number.

Internal Referral Body	Comments
	<p>Application of the above rates to the proposed development would result in 8 residential parking spaces and 2 visitor parking space. Parking is provided in accordance with the provisions of Manly DCP, providing 8 resident and 2 visitor parking spaces within the basement level.</p> <ul style="list-style-type: none"> Bicycle parking stands are also required at a minimum rate of one (1) stand for every three car parking spaces, with a minimum provision of one (1) stand for each premise, i.e. three (3) bicycle stands for the proposed development. Bicycle parking within the storage area of the basement is provided. The parking spaces have not been dimensioned on the architectural plans. The plans should be accompanied by dimensioned parking spaces. The driveway at the property line is measured to be approximately 3.9 metres wide, reducing to about 3.5 meters wide at the entrance and then increasing to 6.1 inside the property. These plans should include dimensions for the driveway. It is noted that a low volume driveway carrying less than 30 vehicles per hour (two way) is anticipated for the development; however, given that the circulation aisle is more than 30m long for safety reasons and to prevent entering vehicles having to reverse back onto Fairlight Street, a waiting bay inside the carpark and traffic control measures requiring exiting vehicles to Give Way to entering traffic such as traffic light control should be included on the amended plans. A swept path analysis to confirm that forwards entry and exit to and from the site is possible from each parking space shall also be provided. The proposed driveway does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1. Given the use of the property frontage by pedestrians, it is considered that the plans shall be amended to ensure that compliant sightlines to pedestrians are provided. The proposal will generate minimal traffic during the peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. <p>The plans require amendment to address the concerns outlined above prior to further assessment</p>
Waste Officer	<p>Not supported.</p> <p>Waste Management Assessment Recommendation – Refusal</p> <p>The proposal does not meet Councils requirements. Specifically:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> The bin storage room is located in a secure basement carpark. <p>Residential waste storage room design and access</p> <p>As this is a multiple occupancy proposal Council will be providing a “wheel out / wheel in” service for the bins. The owners corporation / building occupants are not to place the bins at the kerbside for collection.</p> <p>Any doors fitted on the waste storage area, pathway and access must be:</p> <ol style="list-style-type: none"> Able to be latched in an open position for servicing with Unobstructed by any locks and security devices Openable in an outward direction of travel when taking <p>To prevent access from the bin storage area to the secure basement carpark, the applicant may choose to:</p> <ul style="list-style-type: none"> Include a solid wall between the bin room and carpark including a resident access door from the carpark that can be locked from the inside of the bin room. Residents could then access to the bin storage room via a key or swipe from the carpark to avoid any allegations towards collection staff having access to secure parts of the building. The proposed resident access door must open into the carpark, not into the passageway used for bin access. <p>To improve access to the bin storage area, the applicant may choose to:</p> <ul style="list-style-type: none"> Replace the double doors that access the bin storage area with a single 1200mm wide door hinged on the RHS and opening outwards. This door could then be latched against the proposed wall.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

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 plus basement car parking for the provisions of five 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 Review Panel (known as the Design Sustainability Advisory Panel - DSAP). The application was referred to the DSAP for input and advice on the design of the residential flat building. As detailed in the DSAP comments, the application is not supported by the Panel for a range of reasons including the scale of the building, the fit of the building within its context, the extent of the proposed excavation, poor amenity outcomes within the development and to adjoining properties and the proposed landscape outcome.

In this regard, the DSAP does not support the application and Council concurs with the conclusion of the Panel.

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 reflected in the planning controls contained within the Manly LEP and DCP. The proposal includes extensive non-compliances with the applicable controls, including significant breaches of the FSR, wall height, front and rear setback controls. Due to the excessive bulk associated with these non-compliances and the inadequate landscape design, the proposal does not respond and contribute the context and 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 proposal exceeds the scale and height appropriate to the existing and desired future character of the streetscape and surrounding area, as reflected by the extent of the proposed FSR and built form control non-compliances. The alignment and proportion of the building is also considered to be excessive for the number of units proposed. The proposed front setback breach and lack of landscape treatment at the site frontage is inconsistent with surrounding developments and does not

appropriately define the public domain or contribute to the character of the streetscape.

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 consisting of five apartments is appropriate for the site. However, the substantial internal dimensions of each of the five apartments are achieved through the variation to the FSR control and could not otherwise be achieved by a compliant scheme. Given the level of non-compliance with the planning controls and the excess parking demand generated by the development, it is considered that either the density or dimensions of the apartments proposed 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 include multiple aspects, however many windows throughout the building appear to be inoperable, limiting the effectiveness of natural ventilation. The proposal is technically non-compliant with the ADG requirements in relation to sunlight access and the means of achieving solar access at the eastern and western elevations create privacy concerns to adjoining properties. The proposal provides the minimum deep soil area at the rear of the site, with the basement/excavation footprint occupying the remainder of the site and preventing opportunities for additional deep soil zones and landscaping.

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 and provides for practical establishment and long term management.

Comment: The proposal does not appropriately integrate the landscape and built form components of the development. The proposed nil-front setback precludes the provision of landscaping within the front setback and the non-compliance in relation to the MDCP landscaped area control is inconsistent with the desired landscape character of the streetscape and neighbourhood. With the exception of the 7% deep soil area provided adjacent to the rear boundary, the remaining landscaping consist of on-slab landscaped areas that are not of sufficient dimension to support substantial planting to contribute to the privacy or amenity of the subject site and adjoining properties, particularly given the inadequate

separation distances proposed. The proposed landscape design does not promote social interaction as no communal open space area is provided as required by the ADG.

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 proposal consists of open plan apartments that are well in excess of the minimum dimensions specified by the ADG. However, these dimensions are achieved through a 24.1% variation to the FSR control that will result in an unreasonable level of bulk and adversely impact the amenity of neighbouring properties. The east-west split of the apartments affords views and outlook to the south from indoor and outdoor spaces, but somewhat compromises sunlight access, natural ventilation and internal layouts. The proposal is non-compliant with the solar access requirements of the ADG, with only three of the five apartments achieving the required 2 hours of sunlight access. The living spaces of each apartment include large windows at the eastern and western elevations, however, many of these windows are not appropriately designed for privacy and appear to be inoperable.

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 incorporates secure access points at the street frontage, however the built form within the front setback limits opportunities for passive surveillance of the street frontage as noted by the DSAP.

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 apartment mix is acceptable in the context of the site. Limited communal spaces are provided for social interaction amongst residents.

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

Comment: The proposed development does not appropriately respond to the existing and future local context, particularly with regard to the predominant pattern of building and landscape elements at the street frontage. Further, the garage facade design at the street frontage is repetitive and lacks articulation, with no provision of landscape treatment to minimise the resulting visual impact.

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 appropriate in the context of the surrounding locality. However, the siting and scale of the proposal does not achieve consistency with the with the existing and desired character of such developments, which is reflected in the level of non-compliance with the applicable planning controls.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Inconsistent. The proposed development does not respond to the streetscape due to the inappropriate siting of the garage and podium terrace. The proposed east-west split ensures that each of the apartments contains an east and/or north aspect. However, the design of the development is not considered to optimise or suitably regulate solar access within the apartments.

		<p>The rear open space areas of 26 and 32 Fairlight Street will receive adequate sunlight access throughout the day. However, no elevational shadow diagrams have been provided to demonstrate the level of impact to any living room windows of these 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>Inconsistent.</p> <p>The proposal provides an appropriate transition between the proposed development and the street frontage with regard to safety and security. However, the proposal will not enhance the amenity of the public domain or promote passive surveillance from within the apartments or associated private open spaces, as noted by the DSAP.</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>Inconsistent.</p> <p>The proposal does not incorporate any communal open space areas. Each of the apartments provide relatively large private open space areas, however it is considered that the inclusion of communal open space would be beneficial and could be achieved in this case.</p>											
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="2">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m				<p>Inconsistent.</p> <p>The development achieves the design criteria with a deep soil area of 7%. However, the proposal includes alteration of the existing ground levels within the deep soil area with associated retaining walls at the side boundaries and adjacent to</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)											
Less than 650m ²	-	7%											
650m ² – 1,500m ²	3m												

	<table><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>the rear boundary.</p> <p>The proposed design of the deep soil area does not allow for the retention of tree T27 located on 32 Fairlight Street or the provision of new significant tree planting.</p> <p>The basement car park extends beyond the front and rear of the building footprint, limiting further provision of deep soil zones.</p>								
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><td>Building height</td><td>Habitable rooms and balconies</td><td>Non-habitable rooms</td></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Inconsistent.</p> <p>The proposal contains various side boundary-facing living room and bedroom windows with side setbacks ranging from 2m to 3m at ground level and level 1, and from 3.2m to 3.8m at level 2.</p> <p>26 Fairlight Street contains an existing residential flat building with a western side setback of approximately 5.5m. No. 26 contains limited window openings at the western elevation, with open space at the rear and elevated terraces at the front that are partially screened by obscured glass. The western side setback of No. 26 consists of a driveway and is not capable of supporting screen planting.</p> <p>32 Fairlight Street contains an existing dwelling house with multiple windows at the eastern elevation that are set back 3m from the common boundary. The eastern side setback of No. 32 is mostly paved, with a small strip of landscaping</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		<p>adjacent to the boundary that contains existing small tree planting. Based on the depth and proximity of the proposed excavation, it is unknown whether this planting will be able to be maintained. Further, the minimal separation distances provided to the western boundary will likely reduce the future development potential of No. 32.</p> <p>It is noted that the existing developments at Nos. 26 and 32 do not provide 6m separation, and that full compliance with the control would unreasonably constrain the development given the limited width of the site. However, the proposal does not incorporate any screening measures to mitigate adverse privacy impacts resulting from these windows. Similarly, the proposed landscaping within the side setbacks of the subject site is limited to on-slab planters that are unlikely to be capable of supporting adequate screen planting.</p> <p>Based on the inadequate separation distances and lack of any alternative screening measures, the proposal is unsatisfactory with regard to visual privacy.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent.</p> <p>The proposed building entry and pedestrian access are accessible and easy to identify from the public domain.</p>
Vehicle Access	Are the vehicle access points designed and	Inconsistent.

	located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	The proposal does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1 to minimise conflicts between pedestrians and vehicles. The proposal has not demonstrated that vehicles can enter and exit the site in a forward direction. Further, the siting and design proposed garage entry design is incompatible with surrounding developments and does not create a high quality streetscape.
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>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent.</p> <p>The proposal includes compliant provision of car parking in accordance with the MDCP. Council's Traffic team raised no objection to the proposed car and bicycle parking provision.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> 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. 	<p>Inconsistent.</p> <p>Three of the five proposed apartments (60%) will receive 2 hours of sunlight to living rooms and private open spaces. Given the southerly aspect of the site, the available views to the south and the</p>

		overshadowing caused by existing developments located upslope to the north, a variation to the control may be supported. However, insufficient solar access diagrams have been provided to demonstrate the actual extent of direct sunlight access to the internal living rooms of the development in accordance with the design guidance.								
	<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. 	Consistent. 0% of the apartments will receive no direct sunlight access.								
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. 100% of the apartments appear capable of being naturally cross ventilated.</p> <p>Concern is raised that the proposal does not demonstrate how cross ventilation is achieved within each unit, noting that many of the east and west-facing windows appear to be inoperable. Further, the means of achieving cross ventilation in the dual aspect living areas is via large side-facing windows that will result in adverse privacy impacts.</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. 	Consistent. Each of the apartments are cross-through and dual aspect.								
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:									
	<table border="1"> <tr> <th colspan="2">Minimum ceiling height</th> </tr> <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</td> </tr> </table>		Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor
	Minimum ceiling height									
	Habitable rooms	2.7m								
	Non-habitable	2.4m								
For 2 storey apartments	2.7m for main living area floor									

	<table><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>		2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use					
	2.4m for second floor, where its area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent.</p> <p>Each of the five apartments achieve the minimum internal area for a three-bedroom apartment.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	<p>Consistent.</p> <p>The requirement is achieved.</p>										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<p>Consistent.</p> <p>The requirement is achieved.</p>										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<p>Consistent.</p> <p>The requirement is achieved.</p>										
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	<p>Consistent.</p> <p>The requirement is achieved.</p>										
	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.	<p>Consistent.</p> <p>The requirement is achieved.</p>										
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	<p>Consistent.</p> <p>The requirement is achieved.</p>										

	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: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><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></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	12m ²	2.4m	Consistent. The proposed level 1 and 2 apartments provide the minimum required private open space.
	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	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 proposed ground level apartments provide the minimum required private open space.															
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: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><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></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	Consistent. The proposal provides more than 10m ² of storage for each apartment between the basement storage cages and internally within the apartments. The application indicates that more than 50% of the required storage is provided internally within the apartments. However, the indicated storage locations appear to be within the laundries and study nooks. Based on the internal dimensions of the apartments and the storage volume provided in the basement, the requirement is achieved.					
	Dwelling Type	Storage size volume															
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
Acoustic Privacy	Noise sources such as garage doors, driveways,	Consistent.															

	service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	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 into the future and in the suitable locations within the building.	Consistent. The proposed apartment mix is acceptable in the context of the site.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Inconsistent. The elevation of the ground level apartments above the garage entry provides amenity and security for residents. However, no direct access is provided to the ground floor apartments and the podium terrace does not promote activity or casual surveillance at the street frontage.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Inconsistent. The building facade is well-articulated and generally consistent with the building lines of adjoining developments. However, the siting and design of the garage entry and wall at the front boundary is inconsistent with pattern of building and landscape elements in the streetscape. The street facade is repetitive, lacks articulation and does not incorporate landscape elements to contribute to the visual interest and character of the locality.
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	Consistent. The proposed roof design is compatible with the street and adjacent buildings. The roof incorporates skylights to

	use of the roof top.	improve solar access to the level 2 apartment and provides adequate area to accommodate future installation of PV panels. Communal open space is not proposed on the roof top and would not be considered appropriate in the context of the site.																				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Inconsistent. The proposed landscape design does not respond appropriately to the site and surrounds. Insufficient landscaped areas are proposed within the front setback and the dimensions and design of the deep soil within the rear setback are inadequate to support tree planting. The proposal's reliance upon on-slab planting minimises opportunities for deep soil planting and canopy trees. The overall landscape design is not satisfactory in providing privacy between buildings and mitigating bulk and scale.																				
Planting on Structures	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	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						Inconsistent. The proposed landscape design relies upon on-slab planter boxes, with the exception of the deep soil area within the rear setback. The planter boxes largely contain a minimum soil depth of 1m, but do not provide adequate soil area to support even small trees as proposed.
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																		

	<table><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	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		
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																			
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 1 apartment (20%) that incorporates 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. Signage must respond to the existing streetscape character and context.	Not applicable to the development.																				
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 proposal is supported by Council's Water Management, subject to recommended conditions. However, the proposed stormwater management design does not comply																				

		with the Water Management for Development Policy.
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?	Inconsistent. The proposal does not comply with Council's Waste Management 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 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. 1235088M_02 dated 14 October 2021).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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:	11m	10.974m	N/A	Yes
Floor Space Ratio	0.75:1 646.3m ²	0.93:1 801.8m ²	24.1%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
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

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.75:1 (646.3m ²)
Proposed:	0.93:1 (801.8m ²)
Percentage variation to requirement:	24.1%

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:

- *"A component of the additional floorspace (19m² for the foyer) is contained in a basement level that has no implications in regard to the size and scale of the building.*
- *In addition to the above, there is an absence of material negative impacts resulting from the proposed variation from the FSR standard."*

Comment:

The above environmental planning grounds relied upon by the applicant do not directly relate to any of the objects of the EPA Act and are therefore insufficient to justify contravening the development standard, particularly given that the extent of the variation sought in this case is 24.1% (155.5m²),

In this regard, the applicant's written request has not demonstrated that the proposed development satisfies the objects of the EPA Act.

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 Floor Space Ratio 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 bulk and scale of the proposal is excessive in relation to the desired streetscape character. The visual catchment includes developments of varying ages and typologies that do not all necessarily reflect the desired character of the locality. However, given that the proposal relates to a new development, a greater level of articulation and compliance are expected and achievable in this case. It is also considered that the excess gross floor area contributes to a greater car parking requirement that results in significant bulk at the street frontage.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed gross floor area achieved at Level 2 of the development in exceedance of the development standard contributes to adverse impacts to views from the adjoining properties to the north.

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

Comment:

As discussed under objective (a) above, the parking demand of the development associated with the non-compliant gross floor area precludes the provision of adequate landscaping on the site. As such, the development does not maintain an appropriate visual relationship with the existing character and landscape of the area.

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

Comment:

The development does not successfully minimise adverse impacts on the use and enjoyment of adjoining land and the public domain, specifically the proposal is considered to result in adverse visual impacts within the streetscape and does not maintain a reasonable level of amenity to the occupants of surrounding developments.

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

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013.

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 is consistent with the variety of housing types 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 development standard, the concurrence of the Director-General for the variation to the Floor Space Ratio 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*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: Were the application recommended for approval, conditions would be included in relation to the processing of excavated material and the quality of any fill.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks are considered to result in adverse impacts to the amenity of adjoining properties. The extent of the excavation footprint does not allow for appropriate landscaping to mitigate the visual bulk and privacy impacts of the development, and is anticipated to preclude the

retention of trees T27 and T37 on the adjoining property to the west.

(e) the source of any fill material and the destination of any excavated material

Comment: Were the application recommended for approval, conditions would be included in relation to the processing of excavated material and the quality of any fill.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as having high potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: The design of the development is such that it is not practical to incorporate measures that would minimise the impacts of the development.

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

Description of non-compliance

The submitted on-site stormwater detention (OSD) system is not designed in accordance with the requirements of the Clause 3.7 (a) Stormwater Management of MDCP 2013, where all development must comply with Northern Beaches Council's 'Water Management for Development Policy'. As such, the proposal is inconsistent with Clause 6.4 Stormwater Management of MLEP 2013.

6.9 Foreshore scenic protection area

The subject site is separated from the immediate foreshore area and the proposal will not adversely impact visual aesthetic amenity or views to and from Sydney Harbour, the Pacific Ocean, foreshore areas or other public places.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 861.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/150m ²	1 dwelling/172.34m ²	N/A	Yes
	Dwelling Size: 90m ²	> 90m ²	N/A	Yes
4.1.2.1 Wall Height	E: 9.5m	Basement: 3.7m	N/A	Yes
		L1 Living/Master: 8.1m	N/A	Yes

	W: 9.5	L1 Balcony: 8.1	N/A	Yes
		L1 Beds: 7.1m	N/A	Yes
		L2: 10.6m	11.6%	No
		L1 Master: 6.7m	N/A	Yes
		L1 Beds: 7.2	N/A	Yes
		L1 Dining: 7.3m	N/A	Yes
		L1 Kitchen: 7.5m	N/A	Yes
		L1 Living: 7.8m	N/A	Yes
		L2: 10.1m - 10.3m	8.4%	No
4.1.2.2 Number of Storeys	3	3	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.4m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages (East)	Basement: 1.23m	0m	100%	No
	L1 Living/Master: 1.93m - 2.7m	3m	N/A	Yes
	L1 Balcony: 2.7m	2.3m	14.8%	No
	L1 Beds: 2.37m	1.7m - 2.1m	28.3%	No
	L2: 2.97m - 3.53m	3.7m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (West)	L1 Master: 2.23m	3.1m	N/A	Yes
	L1 Beds: 2.4m	1.8m - 2.2m	25%	No
	L1 Dining: 2.43m	3m	N/A	Yes
	L1 Kitchen: 2.5m	2m - 3m	25%	No
	L1 Living: 2.6m	2m	23.1%	No
	L2: 3.37m - 3.43m	3.1m - 3.8m	8%	No
4.1.4.4 Rear Setbacks	8m	Basement: 3.6m	55%	No
		Building: 8.8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area 430.85m ²	67.2% 579.3m ²	N/A	Yes
	Open space above ground 40% of total open space	26.8%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space 173.79m ²	15.7% 90.8m ²	47.8%	No
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	3.6m	N/A	Yes
Schedule 3 Parking and Access	Residential: 8 spaces Visitor: 2 spaces	8 spaces 2 spaces	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X,

then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

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

viewed within the streetscape.

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

Comment:

The proposal does not complement the identified streetscape, which largely consists of open landscaped front setbacks with car parking located at or behind the front building line.

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

Comment:

The surrounding visual catchment includes examples of front walls and fences of moderate height. However, these properties generally include appropriate at-grade landscaping within the front setback. The proposed garage and front wall structure is not considered to be appropriate in this case and the lack of landscape treatment within the front setback does not respond to the character of the locality.

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.

3.1.1 Streetscape (Residential areas)

Description of non-compliance

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: The proposed bin storage room is integrated into the building design but is located within the front setback, which is not supportable.

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*

Comment: The proposal is inconsistent with the built form and character of the locality.

- ii) ensure the bulk and design of development does not detract from the scenic amenity of the*

Comment: The 0m-750mm front setback and resulting bulk of the garage entry and front wall will detract from the scenic amenity of the surrounding area when viewed from the streetscape and adjoining properties.

- iii) maintain building heights at a compatible scale with adjacent development particularly at th*

Comment: The non-compliant front setback and wall height breach at the building facade result in a scale that is incompatible with adjacent developments.

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.

Comment: The proposed front wall/podium exceeds the maximum permitted height under 4.1.10 and is inconsistent with the fencing characteristics of the adjoining properties and surrounding visual catchment.

b) Boundary fences or walls must not be erected where they would conflict with the local character.

Comment: The proposed front wall would conflict with the local character and is not supportable.

3.1.1.4 Garages, Carports and Hardstand Areas

a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:

i) its roof form, material choice and detailing by being subservient to the associated dwelling; a

ii) being compatible with the streetscape and the location in relation to front setback criteria.

Comment: The proposed garage entry and podium will dominate the street frontage and is incompatible with the prevailing front building line of the streetscape.

b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.

Comment: The proposed garage structure is excessive in bulk and scale is not considered to be a positive element of the streetscape.

The development is considered against the underlying Objectives of the control under Clause 3.1.

3.3.1 Landscaping Design

Description of non-compliance

The proposed landscape design does not respond appropriately to the character of the area. Specifically, the proposed landscaped areas are inadequate to support tree planting and do not maximise the residential amenity of the subject site, surrounding properties or the public domain. As such, the proposal does not comply with (a)(ii), (b)(i) or (b)(ii) of the 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 encourage appropriate tree planting and maintenance of existing vegetation.

Comment:

The proposed excavation footprint, building design and retaining wall locations do not facilitate appropriate compensatory tree planting or maintenance of any existing vegetation on the site.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

Comment:

The proposal includes the removal of 38 trees and is anticipated to significantly impact two trees on the adjoining property to the west. As such, the design of the development does not retain and augment existing landscape features and vegetation, and is not capable of supporting replacement planting of significant trees or vegetation.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objectives 1 and 2 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.3.2 Preservation of Trees or Bushland Vegetation

Description of non-compliance

The proposed basement alignment and excavation to the western boundary is in close proximity to two trees (T27 & T37) located within the adjoining property, 32 Fairlight Street.

The Arboricultural Impact Assessment recommends that the retention of T27 is not achievable based on the impact of development and whilst not providing a recommendation for removal of T37, notes that a tree root investigation is required to determine whether the tree can be retained.

No evidence of consent or agreement for the removal of T27 and T37 has been provided and Council does not support the removal of any existing tree or vegetation within adjoining properties, nor does it provide recommendation for any removal upon land not the subject of a development application.

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 protect and enhance the urban forest of the Northern Beaches.

Comment: The proposal includes the removal of all existing trees and vegetation on the site.

Objective 2) To effectively manage the risks that come with an established urban forest through professional management of trees.

Comment: The proposal has not adequately address the likely impacts to trees T27 and T37 located on the adjoining property, which are unlikely to be retained as a result of the development.

Objective 3) To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.

Comment: The proposed removal of all existing site vegetation and lack of adequate compensatory planting is inconsistent with this objective.

Objective 4) To protect and enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.

Comment: The proposal does not protect or enhance vegetation habitat for native plant and animal species.

Objective 5) To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long term.

Comment: The proposal does not retain any existing vegetation and the design of the development fails to promote the establishment of native canopy trees.

Objective 6) To protect and enhance the scenic value and character that trees and/or bushland

vegetation provide.

Comment: The proposal will result in a significant increase to the bulk of the built form and the proposed landscape design is inadequate to protect and enhance the scenic value and character of the locality.

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.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

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) ; or*
- b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.*

Comment: The proposal will result in minimal additional overshadowing of the rear private open space areas of Nos. 26 and 32 Fairlight Street, and complies with the control. The impact to the front terraces/balconies of the apartments at 26 Fairlight Street are south-facing and the likely impact to these areas is considered to be generally acceptable.

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:

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- 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 adjacent buildings have a north-south orientation and the control requires that the current level of solar access to living room windows within these properties is maintained for a minimum of 4 hours. The objection received from 32 Fairlight Street indicates that the dwelling contains three east-facing living room windows. Given the additional height and bulk of the proposal it is anticipated that the development will result in additional impact to these windows. However, the submitted shadow diagrams do not provide adequate detail to demonstrate that a compliant level of solar access is maintained.

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 provide equitable access to light and sunshine.

Comment:

The application has not provided sufficient shadow diagrams to demonstrate that the proposal will provide equitable access to sunlight.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal will maintain adequate sunlight access to the private open spaces within the development site and adjoining properties, taking into account the southerly aspect of the sites. It is not possible to determine the adequacy of sunlight maintained to the living spaces/habitable rooms of No. 32.

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

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

Comment:

The proposal is not considered to facilitate sunlight access to adjoining properties through appropriate modulation, particularly noting the excessive and unnecessary level 2 wall heights.

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.

3.4.2 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.

Comment: The proposed development includes large living room and bedrooms windows orientated to the eastern and western side boundaries that do not incorporate any screening or treatment to maintain the privacy of adjoining properties.

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 proposal includes windows in close proximity to both side boundaries that are not off-set from those of the adjacent properties, particularly the living room windows at the western elevation of apartments 1 and 3. The proposal will also allow overlooking opportunities of the private open space areas of the adjoining properties.

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 balcony and terrace areas are appropriately located and incorporate suitable blade wall and landscape screening.

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 proposed side boundary-facing windows are not appropriately located or designed for privacy and do not incorporate any screening measures to mitigate direct viewing. Further, the lack of landscaped area within the eastern and side setbacks limits the provision of substantial planting that may provide supplementary screening in lieu of adequate physical separation or alternative privacy measures.

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 light and air access afforded by the proposed windows at the eastern and western elevations is at the expense of the privacy of adjoining developments.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

As noted by the DSAP the proposal does not address the street in a manner that encourages passive surveillance of the street frontage from habitable rooms within the development.

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.

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:

Objections relating to view loss were received from 8 residents at 1 Berry Avenue, 2-3 Berry Avenue and 28 Woods Parade. As part of this assessment, view loss inspections of the following properties were undertaken:

- 2/1 Berry Avenue
- 3/1 Berry Avenue
- 4/1 Berry Avenue
- 4/2-3 Berry Avenue
- 7/2-3 Berry Avenue

View loss inspections of 28 Woods Parade were not undertaken, however photographs were included in a submission received from this property.

1 Berry Avenue

1 Berry Avenue adjoins the subject site to the north (rear). The available views include filtered water views of North Harbour, including land-water interface at North Head, South Head and in the vicinity of Reef Beach. The views are partial views as they are obscured by existing vegetation on the subject site.



Photo 1. Available views from 2/1 Berry Avenue. The pitched roof of the existing dwelling is visible in the centre of the photo.



Photo 2. Available views from 3/1 Berry Avenue. The pitched roof of the existing dwelling is visible in the centre of the photo.



Photo 3. Available views from 4/1 Berry Avenue. The pitched roof of the existing dwelling is visible in the centre of the photo.

2-3 Berry Avenue

2-3 Berry Avenue adjoins the subject site to the north-west. 7/2-3 obtains filtered water views of North Harbour. 4/2-3 obtains filtered water views from the lower level and expansive water views from the upper level, including land-water interface at Dobroyd Head, North Head and South Head. The views are partial and whole views depending on the location within the property.



Photo 4. Available views from 4/2-3 Berry Avenue lower floor balcony. The existing dwelling is not visible due to the vegetation in the foreground.



Photo 5. Available views from 4/2-3 Berry Avenue upper floor bedroom. The existing dwelling is not visible due to the building vegetation in the foreground.



Photo 6. Available views from 7/2-3 Berry Avenue. The existing dwelling is visible in the centre of the photo but is largely obscured by the vegetation in the foreground.

28 Woods Parade

28 Woods Parade is located to the west of the site beyond 2-3 Berry Avenue. The available views include water views of Manly Cove, including land-water interface at East Esplanade. The views are generally whole views but are somewhat disrupted by existing developments and vegetation to the east of the subject site.



Photo 7. Available views from 3C/28 Woods Parade. The pitched roof of the existing dwelling is visible in the centre of the photo.

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:

1 Berry Avenue

The affected views are available from the southern terraces of the apartments. The views are obtained across a rear boundary from a sitting or standing position.

2-3 Berry Avenue

The affected views are available from the balcony of apartment 7 and the balcony and bedroom of apartments 4. The views are obtained across a side and rear boundary from a standing position.

28 Woods Parade

The affected views are available from the bedroom and study. The views are obtained across a side

boundary.

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:

The height of the proposed building is 3.21m above the roof ridge of the existing dwelling, and projects into the existing view corridors to the east and west of the pitched roof form. However, in the absence of any detailed analysis of view loss or height pole templates of the development, it is not possible to accurately determine the extent of view loss resulting from the proposal.

Based on the view inspections undertaken, the overall impact of the proposal is anticipated to be minor, largely due to the extent to which the existing views are obstructed by vegetation. However, given the relevance of the non-compliances discussed below and the apparent lack of view loss analysis undertaken in the design, this minor impact is not considered to be acceptable. Further, it is noted that the proposal includes removal of all existing vegetation from the site, which would otherwise largely negate the view impacts of the proposal.

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 proposed non-compliances relevant to view loss are floor space ratio, wall height and side setbacks. The front and rear setback and landscaped area non-compliances occur at or below natural ground level and are not relevant to views. The side setback non-compliances at levels 2 and 3 make some contribution to the loss of view corridors through the site as viewed from the rear, but are relatively minor in extent. The primary contributors to the anticipated view loss are the significant FSR and wall height breaches, which result in a level of bulk at the upper levels beyond what is anticipated by the controls - the proposal includes an additional 155.5m² (24.1%) gross floor area along with 0.6m to 1m of wall height above the 9.5m control. With regard to these variations, it is noted that each of the apartments exceed the minimum 90m² internal area requirement by between 47m² and 89m² and that the level 2 penthouse apartment achieves ceiling heights of 3.4m to 4m.

In relation to the compliant building height, it is considered that there are more skillful design alternatives that would maintain a reasonable level of amenity to the level 2 apartment, while reducing the overall height of the building as discussed above.

The proposed internal areas and ceiling heights directly contribute to the proposed FSR and wall height breaches, the associated building bulk and loss of views from adjoining properties. Further, the Applicant has not undertaken any detailed analysis of view loss to demonstrate that the building design

has taken views into account. As such, the proposal is considered to be unacceptable in relation to the maintenance of views and is recommended for refusal.

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

3.6 Accessibility

The control requires that 25% of dwellings within residential accommodation containing 4 or more dwellings be provided as adaptable housing, being 1.25 (2) apartments in this case. The proposal includes only 1 adaptable dwelling (20%). Given that the development complies with the adaptable housing requirements of the ADG, the proposal is acceptable in this regard.

3.7 Stormwater Management

Description of non-compliance

The submitted on-site stormwater detention (OSD) system is not designed in accordance with the requirements of the Northern Beaches Council's 'Water Management for Development Policy'. The proposal is therefore non-compliant with 3.7(a) of the 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 manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.

Comment: The proposed stormwater design does not permit appropriate access to the OSD tank for maintenance and is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objective 4 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.8 Waste Management

Description of non-compliance

The proposed bin storage room is not designed in accordance with Council's Waste Management Design Guidelines as required by this 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 facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:

- *sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
- *adoption of design standards that complement waste collection and management services offered by Council and private service providers;*
- *building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
- *appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*

Comment: The design of the proposed bin storage room is not suitable to permit the collection and management of waste by Council or Council's waste contractors.

Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 4) To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.

Comment: The design of the proposed bin storage room is not suitable to permit the collection and management of waste by Council or Council's waste contractors.

Objective 5) To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.

Comment: Were the application recommended for approval, suitable conditions would be imposed

ensuring consistency with this objective.

Objective 6) To minimise any adverse environmental impacts associated with the storage and collection of waste.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 7) To discourage illegal dumping.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objective 2 and 4 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.9 Mechanical Plant Equipment

The proposed mechanical plant equipment is located within the building envelope and conditions relating to noise levels would be imposed were the application recommended for approval.

3.10 Safety and Security

Description of non-compliance

The proposal does not provide adequate sight lines at the basement garage entrance, contrary to 3.10.1(a)(iii). Further, the proposed podium planting structure obscures sight lines from habitable rooms to the street frontage, contrary to 3.10.2(B).

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 ensure all development are safe and secure for all residents, occupants and visitors of various ages and abilities.

Objective 2) To ensure that the design process for all development integrate principles of 'Safety in Design' to eliminate or minimise risk to safety and security.

Objective 3) To contribute to the safety and security of the public domain.

Comment:

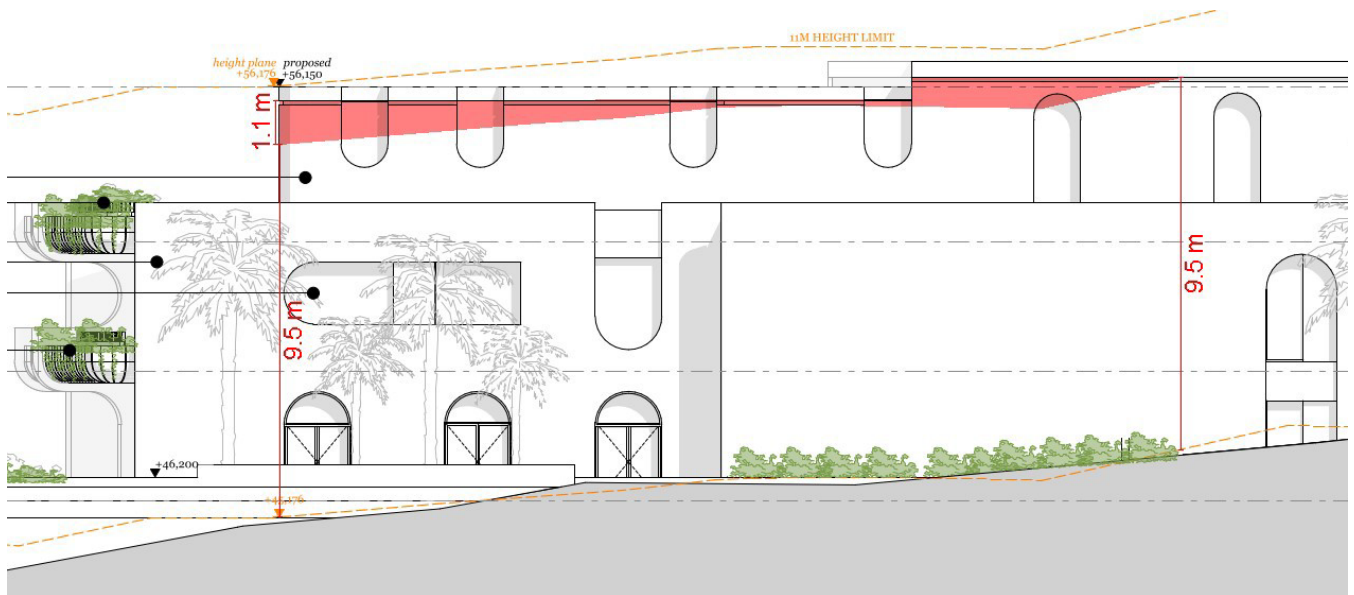
The non-compliant design of the development does not ensure the safety and security of residents, occupants, visitors or the public domain.

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.

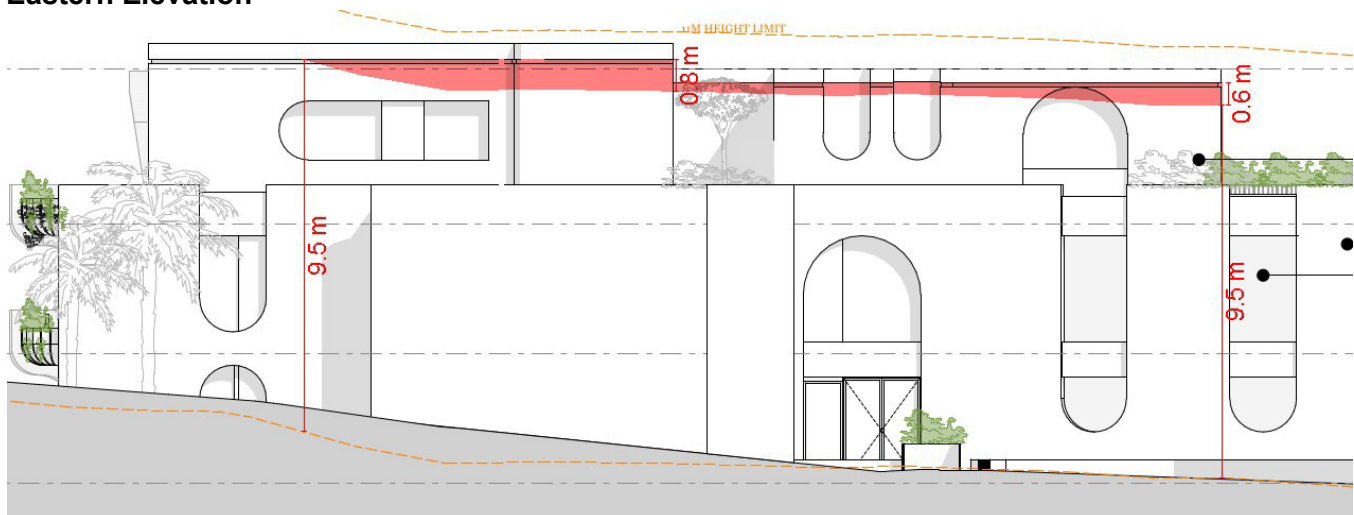
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

Clause 4.1.2.1 permits a maximum wall height of 9.5m for the site. The proposed Level 2 exceeds the control up to a maximum height of 10.6m at the eastern elevation and 10.3m at the western elevation. The extent of the wall height breaches are indicated on the below plans:



Eastern Elevation



Western Elevation

Merit consideration

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

(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 proposal complies with the height of buildings development standard, but not does adequately step with the topography to maintain compliance with the wall height control. The wall height breaches extend to the front edge of the eastern and western elevations, presenting additional bulk within the

streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed Level 2 wall height non-compliances result in an unnecessary and unreasonable level of bulk, particularly given the Level 2 ceiling heights of 3.4m at the front and 4m at the rear. Whilst these ceiling heights afford greater internal amenity, a reduction in the wall height breach and resulting visual bulk presented to the street and adjoining properties is readily achievable in this case.

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 proposed non-compliant wall heights contribute to the overall building height, which in turn results in view impacts from the surrounding properties to the north of the site.

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 proposed wall height is likely to contribute to additional overshadowing of adjoining properties. However, elevational shadow diagrams demonstrating the level of overshadowing of adjoining dwellings have not been provided.

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

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives 1(a), (b), (c) and (d) of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

See Clause 4.6 assessment.

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

Description of non-compliance

The proposal includes variations to the setback controls as follows:

Front

- The proposed 0m - 750mm front setback to the garage entry and podium wall is non-compliant with the 6m control.
- The proposal is also contrary to 4.1.4.1 (a), which requires that front setbacks relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.

Eastern Side

- The proposed 0m setback to the basement wall is non-compliant with the 1.23m requirement.
- The proposed 2.3m setback to the Level 1 wall and Level 2 balcony is non-compliant with the 2.7m requirement.
- The proposed 1.7m - 2.1m setback to the Level 1 Bedroom wall is non-compliant with the 2.37m requirement.

Western Side

- The proposed 1.8m - 2.2m setback to the Level 1 Bedroom wall is non-compliant with the 2.4m requirement.
- The proposed 2m - 3m setback to the Level 1 Kitchen wall is non-compliant with the 2.5m requirement.
- The proposed 2m setback to the Level 1 Living wall is non-compliant with the 2.6m requirement.
- The proposed 3.1m - 3.8m setback to the Level 2 wall is non-compliant with the 3.37m - 3.43m requirement.

Rear

- The proposed 3.6m setback to the Basement Garage is non-compliant with the 8m control.
- The proposal is also contrary to 4.1.4.4 (b), which requires that rear setbacks allow sufficient space for planting of vegetation including trees.

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 garage and wall structure at the front boundary does not maintain and enhance the existing streetscape and is inconsistent with the desired spatial proportions and landscape character of the street. The existing garage structure on the site is noted but is not considered to reflect the character of the surrounding visual catchment.

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 proposed front setback breach is inconsistent with the surrounding streetscape and does not provide adequate separation to adjoining development. The proposed setback non-compliances do not directly result in unreasonable privacy, solar access, view or traffic impacts, which are addressed separately in this report.

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

Comment:

The proposed variations to the front and rear setback controls are not considered to be appropriate in this case. The proposed side setback breaches are generally minor in extent, but the application has not demonstrated that they are reasonable in the site context.

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:

The proposed development is unable to incorporate sufficient tree planting and deep soil zones due to the front and rear setback breaches associated with the basement garage.

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 objectives 1, 2, 3 and 4 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed landscaped area of 15.7% (90.8m²) is non-compliant with the 30% control, resulting in a shortfall of 82.99m².

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 and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal includes the removal of all existing landscaping and vegetation from the site and does not seek to retain any existing site features.

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.

Comment:

The proposal includes a total of 62.7m² of soft landscaped area at the rear of the site. However, this area is disrupted by the proposed excavation and retaining walls with inadequate dimensions to support new tree planting.

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

Comment:

Due to the extent of the proposed basement excavation, the proposed landscaping across much of the site is limited to on-slab planters with a maximum depth of 1m. The proposed landscape design is inadequate to maintain and enhance the amenity of the site, streetscape or the surrounding properties.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Whilst a greater landscaped area would improved water infiltration, the proposal includes a stormwater design that seeks to manage stormwater on the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed landscape design is not anticipated to spread weeds or degrade surrounding private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal is not capable of supporting adequate wildlife habitat or corridors.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives 1, 2, 3 and 6 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

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

Description of non-compliance

The proposed garage entry and podium terrace above will result in excessive visual bulk within the streetscape, does not maintain the desired character of the locality and will dominate the street frontage. As such, the proposal is non-compliant with 4.1.6.1 (a) and (b).

The proposal does not include a swept path analysis to confirm that forwards entry and exit to and from the site is possible from each parking space, and therefore does not demonstrate compliance with 4.1.6.4 (a).

The proposed driveway does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1 and is therefore non-compliant with 4.1.6.4 (c).

Further, noting that the circulation aisle is more than 30m long, for safety reasons and to prevent entering vehicles having to reverse back onto Fairlight Street, a waiting bay inside the carpark and traffic control measures requiring exiting vehicles to Give Way to entering traffic such as traffic light control should be provided.

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 provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposal includes a compliant number of car spaces on site. However, it has not been demonstrated that the access to the basement car park is compliant with the relevant standards.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal includes a compliant number of car spaces on site.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposal does not demonstrate that the location and design of the driveway, parking spaces or

circulation areas are efficient, safe or convenient. Further, the proposed garage design is not appropriately integrated into the design of the development and will result in adverse visual impact within the streetscape.

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.

Comment:

The geotechnical investigation prepared in relation to the development does not anticipate site instability or impacts to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

Council raised no objection to the width of the proposed footpath crossing.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposal does not appropriately integrate access, parking and landscaping. The proposed built form at the street frontage causes excessive visual bulk and impervious surfaces that do not permit adequate landscape treatment within the front setback.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

N/A - The subject site is not located in a Centre.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objectives 1, 3, 5 and 6 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 Geotechnical Area G4 and a geotechnical investigation has been prepared in relation to the proposed development. The recommendations of the report would be incorporated into the conditions of consent were it recommended for approval.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposed excavation extends to both the eastern and western side boundaries, and beyond the rear (northern) building line. The proposed excavation is also within the structural root zone and tree

protection zone of trees T27 and T37, located on the adjoining property. The application has not demonstrated that the retention and long-term survival of these trees is possible. As such, the proposal is non-compliant with 4.4.5.1 (a), (b) and (d). Were the application recommended for approval, conditions would be imposed requiring the preparation of pre and post-construction dilapidation reports in accordance with 4.4.5.2 (b).

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 proposal does not limit the extent of excavation and or the height of retaining walls. The proposed excavation and the design and location of retaining walls do not allow for adequate planting to mitigate the visual and amenity impacts of the development

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$55,313 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,531,296.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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 request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The proposal seeks consent for demolition works and the construction of a residential flat building containing five apartments with basement car parking.

Council received 28 submissions in response to the advertising of the application. The concerns raised in the submissions are discussed in detail in this report.

The development proposes a floor space ratio of 0.93:1, resulting in a variation of 24.1% (155.5m²) to the 0.75:1 control.

The design of the proposed development is not considered to be suitable or appropriate within the context of the site. The key planning issues considered within the assessment are the variation to the floor space ratio development standard, various DCP built form non-compliances, inconsistencies with the provisions of SEPP 65 and the ADG, and the resulting bulk and scale, visual and amenity impacts to the public domain and surrounding properties.

The proposal is referred to the Northern Beaches Local Planning based on the number of submissions received and the proposed variation to the floor space ratio development standard.

Assessment of the application against the Manly LEP and DCP, SEPP 65 and the ADG finds that the development will result in adverse impacts to adjoining properties, the streetscape and surrounding locality, and proposes an unacceptable level of non-compliance with controls as discussed in this report.

Based on the assessment undertaken within 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 DA2021/2034 for the Demolition works and construction of a residential flat building on land at Lot 50 DP 705739,30 Fairlight Street, FAIRLIGHT, for the reasons outlined as follows:

1. Pursuant to Section 79C(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.
2. 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.
3. 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.
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 6.2 Earthworks of the Manly Local Environmental Plan 2013 and Clause 4.4.5 Earthworks (Excavation and Filling) of the Manly Development Control Plan.
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 6.4 Stormwater Management of the Manly Local Environmental Plan 2013 and Clause 3.7 Stormwater Management of the Manly Development Control Plan.
6. 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 3.1 Streetscapes and Townscapes of the Manly Development Control Plan.
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 Clauses 3.3.1 Landscaping Design and 3.3.2 Preservation of Trees or Bushland Vegetation of the Manly Development Control Plan.
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 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan.

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 3.4.2 Privacy and Security of the Manly Development Control Plan .
10. 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 3.4.3 Maintenance of Views of the Manly Development Control Plan .
11. 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 3.8 Waste Management of the Manly Development Control Plan.
12. 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 3.10 Safety and Security of the Manly Development Control Plan.
13. 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 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.
14. 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 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
15. 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 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.
16. 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.