

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1625
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Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 6 DP 31806, 38 Frenchs Forest Road SEAFORTH NSW 2092 Lot 5 DP 31806, 38 Frenchs Forest Road SEAFORTH NSW 2092 Lot 4 DP 31806, 38 Frenchs Forest Road SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to shop top housing
Zoning:	Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jameson Family Investments NSW Pty Ltd
Applicant:	The Trustee For Jameson Family Trust

Application Lodged:	20/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/10/2022 to 11/11/2022
Advertised:	28/10/2022
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 1.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 358,380.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of alterations and additions to the existing apartment within a shop top housing development. The works consist of converting the three bedroom unit to a four bedroom unit with access to a roof level terrace.

Application History

The application originally proposed a third storey addition including a new studio. The proposal resulted in a height and FSR breach and Council advised that this would not be supported. Amended plans were

provided that deleted the third storey and studio addition, instead providing a entertainment area and terrace on the top floor.

As the amendments resulted in a lesser environmental impact, the proposal was not required to be re-notified as per Council's Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 4.2.8.2 Setbacks

Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	<p>Lot 6 DP 31806 , 38 Frenchs Forest Road SEAFORTH NSW 2092</p> <p>Lot 5 DP 31806 , 38 Frenchs Forest Road SEAFORTH NSW 2092</p> <p>Lot 4 DP 31806 , 38 Frenchs Forest Road SEAFORTH NSW 2092</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments located on the corner of Frenchs Forest Road and Brook Road. The site is irregular in shape and has an area of 656m².</p> <p>The site slopes down from the south-west towards the north-east.</p> <p>the site is currently occupied by a two storey shop top housing development comprising six (6) commercial tenancies and a single residential unit on the first floor.</p>

The surrounding development consists of residential dwellings to the north and south. To the west of the site is a retail premises and to the east is an educational establishment.

Map:



SITE HISTORY

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

- Development Application No. 3740/90 for proposed hairdressing salon approved by Council on 14 September 1990.
- Development Application No. 261/95 for internal alterations to existing shop approved by Council on 29 January 1996.
- Development Application No. 42/08 for change of use from an office to a commercial grade food preparation kitchen refused by Council on 4 August 2008.
- Development Application No. 356/09 for change of use to take away food shop (pizza), fitout and signage approved by Council on 31 December 2009.
- Development Application No. 88/2013 for change of use to a café with signage and outdoor seating - Four brothers Café - Shop 4 approved by Council on 22 July 2013.
- Development Application No. 233/2014 for alterations and additions to an existing shop including amalgamation of two (2) shops with amended hours of operation, new windows and door, signage, awning and increase in parapet height - Bottle Shop approved by Council on 16 April 2015.
- Development Application No. 267/2015 for change of use to a gymnasium with fitout and one (1) car parking space - Units 7 and 8 approved by Council on 23 December 2015.
- Development Application No. 173/2017 for signage approved by Council on 29 September 2017.
- Complying Development Certificate CDC2018/0006 for change of use and fitout of a grocery shop approved by a Private Certifier on 21 December 2017.
- Complying Development Certificate CDC2021/1167 for change of use to a bakery, along with

associated internal fitout works approved by a Private Certifier on 19 November 2021.

- DA2021/2024 - Development Application for Alterations and additions to shop top housing. Approved 18 January 2022.
- Mod2022/0310 - Modification of Development Consent DA2013/88 granted for Change of use to a cafe with signage and outdoor seating. Approved 1 September 2022.
- DA2022/1254 - Development Application for the Installation of two (2) advertising panels. Approved 12 October 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	<p>See discussion on “Environmental Planning Instruments” in this report.</p> <p>The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B1 zone to a E1 zone. The proposed use will remain permissible in the new zone.</p>
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Building Assessment, Development Engineering, Building Height and Floor Space Ratio.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a</p>

Section 4.15 Matters for Consideration	Comments
	<p>condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/10/2022 to 11/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><u>Amended Development Comments</u></p> <p>The application has been further reviewed having regard to the amendments made to the original application and with respect to aspects relevant the Building Certification and Fire Safety Department.</p> <p>Although the amended proposal provides for the removal of the proposed "Studio" the BCA Report and Access Report prepared by Matt Shuter and Associates are still considered relevant to the proposal and are to be included in conditions of any Consent.</p> <p>Therefore there are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> <p><u>Original Comments</u></p> <p>After reviewing the plans and BCA report for this proposed development, I have some concerns with the comments made in the BCA report by Matt Shutter & Associates (MSA) dated 9/8/2022. The BCA report states that 'the proposed "Studio"- is not proposed to be used as a separate sole occupancy unit (and this report is based on the assumption that only one residential unit is proposed)". The SEE prepared by Tudor Planning & Design dated 14/9/2022 states that the Studio operates as one entire dual-key unit and this allows for intergenerational living between the core family (who are the owners of this property) and the grandparents. A view of the plans indicates that the proposed studio is designed as a separate sole occupancy unit and has use as a secondary dwelling. In this regard it is considered that the BCA Report should be reviewed on the basis that the Studio may determined to be a sole occupancy unit able to be used as a separate dwelling.</p> <p>This matter requires attention prior to determination of the DA.</p>
Environmental Health (Industrial)	<p><u>SUPPORTED - Subject to conditions</u></p> <p>Environmental Health has reviewed the proposed application for the alteration of a mixed-use building that will result in a shop-top style residential single occupancy unit. The applicant has provided an acoustic report, this report has been reviewed to ensure that it has taken into consideration surrounding noise impacts such as road noise, noise from adjacent commercial tenancies and ancillary plant and machinery, and the likely impact these noise sources are likely to have on the proposed residential premises.</p>

Internal Referral Body	Comments
	<p>The acoustic report provides recommendations to limit the impact of noise and vibration from external noise sources and from between adjoining premises.</p> <p>Additionally Environmental Health have considered as part of this proposal the need to ensure that service voids have been included to future proof against change-of-use of the ground floor tenancies.</p> <p>A review of the provided acoustic report finds its contents satisfactory and conditions are proposed with the below wording to incorporate acoustic report into the consent.</p> <p>The proposal is therefore supported subject to conditions.</p> <p>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</p>
NECC (Development Engineering)	<p>The proposal is for alterations to residential unit on the first floor and the construction and additional unit on the second floor. The subject site is in Zone 1 and the existing impervious area is greater than 60%. Hence OSD is required for the development in accordance with Clause 9.3.3.2 of Council's Water Management for Development Policy.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> <i>Stormwater drainage for the development in accordance with Clause 3.7. Stormwater Management.</i> <p>Additional Information Provided on 14/2/2023 The amended stormwater plans with the provision of OSD is satisfactory. No objections to approval subject to conditions as recommended.</p>
Strategic and Place Planning (Urban Design)	<p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent to, redevelop the residential apartment in the existing building, rebuilding it from a three bedroom unit to a new four bedroom unit plus one additional studio in the third storey that operates together as a dual-key unit, and associated civil engineering works. Council has previously granted consent to DA/2021/2024 for the alteration of the residential apartment in the existing building converting it from a three bedroom unit to a four</p>

Internal Referral Body	Comments
	<p>bedroom unit.</p> <p>Urban Design cannot support the proposal because of the following issues:</p> <ol style="list-style-type: none"> 1. The FSR has been exceeded. The proposed FSR of 1.067:1, is non-compliant with Council's Manly Local Environmental Plan 2013 (LEP) maximum floor space ratio development standard of 1:1. 2. The building height has been breached. The proposal has a 300mm non-compliance with Council's LEP 8.5m maximum height of building development standard. 3. The proposed reduced ceiling height (2.4m approx.) to the entry, dining and bedroom area of the lower apartment is not acceptable. 4. The surrounding streetscape comprises of generally one to two storey houses and buildings. The proposed three storey built form will not be consistent with the general streetscape and will set an undesirable precedent for future developments. <p>Additional comments (16 Feb 2023): The applicant has submitted amended drawings with the following changes made:</p> <ul style="list-style-type: none"> • The entry to the proposal is relocated on the first level and the dual key design has been deleted; • The internal apartment staircase provides access to the roof terrace, covered entertainment and storage area; • The second level studio/dual-key unit has been deleted. <p>The revised design breaches the FSR control by 1.8% (12sqm) but complies with the building height control. The covered entertainment/ storage area on the roof terrace is well located away from the building edges and therefore will not be obvious when viewed from the surrounding streets.</p> <p>The FSR breach is minor and the resultant built form is now considered to be acceptable and consistent with the general streetscape.</p>
Traffic Engineer	<p>The development proposal is to increase the size of the approved 4 bedroom shop top unit on level 1 at 38 Frenchs Forest Road and add a 1 bedroom studio apartment on a new level 2. No additional offstreet parking is proposed.</p> <p>The land is in a B1 Business zone and the parking requirements under the Manly DCP are therefore 1 parking space for each dwelling (irrespective of the number of bedrooms) and 0.16 visitor spaces for each dwelling. For the 2 residences the parking requirement is therefore 2 residential spaces and 0.36 visitor spaces (rounded up to 1). A total parking requirement of 3 spaces.</p> <p>As no additional parking is being provided the proposed development is therefore 1 space short of DCP requirements. It is noted that</p>

Internal Referral Body	Comments
	<p>Council has recently approved a 2P time restriction for the 5x90 degree angle parking bays on the Brook Road frontage of 38 French Forest Road. In addition there is a 1P restriction applying in the 4 x parallel parking bays on the sites Frenchs Forest Road frontage. These short term parking restrictions have been introduced to facilitate turnover of parking associated with the ground floor retail development at 38 Frenchs Forest Road however could also serve as visitor parking for residential visitors.</p> <p>Given the above the shortfall in parking is not opposed on traffic grounds and the development is supportable.</p> <p>Planner Note The proposal has been amended to delete the new level and studio apartment addition. Instead a rooftop terrace is proposed above the existing residential unit. Therefore, there is only one residential unit on the site which requires 1 parking space and 0.16 visitor spaces. A total of 2 spaces is required. The existing site provides 2 spaces and no changes are proposed to the existing parking arrangements.</p>
Waste Officer	Waste Management Assessment Recommendation - Supported

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or

mixed use development with a residential accommodation component if:

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

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

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

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

Whilst the works involve alterations and additions to a shop top housing development, the provisions within SEPP 65 do not apply as the building concerned is less than three storeys in height and does not contain at least four or more dwellings.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1336812S dated 5 September 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential and commercial land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Floor Space Ratio	FSR: 1:1 (656m ²)	FSR: 1.017:1 (667m ²)	1.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	1:1 (656m ² GFA)
Proposed:	1.017:1 (667m ² GFA)
Percentage variation to requirement:	1.8%

PROPOSED GFA

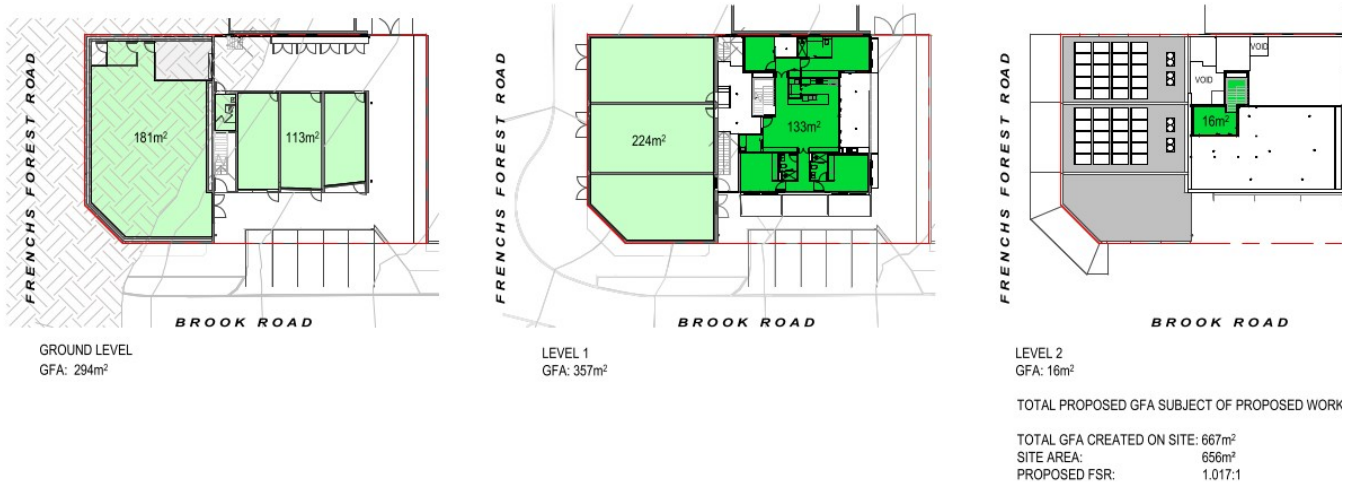


Figure 1 - Floor Space Ratio Calculations

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- The development is consistent with the objectives of the standard and does not create any adverse environmental impacts.
- Strict compliance with the development standard is unnecessary as the development meets the objectives of the LEP.
- The non-compliant GFA has no material impact on the bulk and scale of the proposal.
- The non-compliant GFA equates to 12m² which is equivalent to what was approved under DA2021/2024.
- The proposed development does not cause overshadowing or visual impacts to the streetscape and adjoining properties.
- The proposed development is consistent with the relevant objects specified within the EP&A Act 1979.

It is acknowledged that the FSR variation does not result in unreasonable overshadowing impacts or significant bulk and scale. The additional floor area is not immediately visible from the streetscape or public domain and therefore is not visually dominant. The proposal does not impact on any views obtained from public and private land. It is noted that the FSR non-compliance is consistent with that approved under DA2021/2024, and as such, a similar merit consideration can be applied in this instance. Therefore, the assessment finds that the applicant's written request is well-founded and supported in this instance.

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

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

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

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

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

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal retains the existing visual appearance of the built form when viewed from the street. The proposed terrace is not considered to create additional bulk and scale and the development is consistent with the existing and desired streetscape.

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

Comment:

The additional floor area is within the footprint of the existing building and does not impact on existing landscape and townscape features.

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

Comment:

The proposal maintains the visual relationship between the development and existing character of the area. A planter box is proposed along the northern edge of the second floor terrace to help retain the landscape character.

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

Comment:

The proposal does not impact on the use or enjoyment of adjoining land and the public domain.

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

Comment:

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

Zone objectives

The underlying objectives of the The underlying objectives of the B1 Neighbourhood Centre zone are:

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

Comment:

The proposed development when viewed from the street appears as a small-scale shop top housing development. The proposal retains the retail and business uses on the ground floor and also provides residential accommodation to meet the needs of the community.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 656m ²	Requirement	Proposed	% Variation*	Complies
4.2.8.2 Setbacks	Street Front Setbacks: Prevailing Building Line	Primary: 12.3m Secondary: 5.2m	N/A N/A	Yes Yes
	North: 8m (Ground Floor) - 8m plus 45 degree angle from 3m above ground level	Level 2 Terrace: 6.6m (Within Envelope)	17.5%	No
	West: Nil	3.6m	N/A	Yes
4.2.8.3 Landscaping	Private Open Space: 20m ² with	128.7m ²	N/A	Yes

	dimensions of at least 3m			
Schedule 3 Parking and Access	1 resident parking space for each dwelling (irrespective of number of bedrooms), and 0.16 visitor parking space for each dwelling.	2	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	No	Yes
4.2.8.3 Landscaping	Yes	Yes
4.2.8.4 Residential Density	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes

Detailed Assessment

4.2.8.2 Setbacks

Description of non-compliance

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

The proposed development maintains an existing non-compliant rear setback of 5.6m on the first floor. This variation was approved under DA2021/2024, and no changes are proposed to this element under this application.

The proposed terrace on the second floor has a rear setback of 6.6m which does not comply with the control.

Merit consideration

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

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

Comment

The proposal retains the small scale shop top housing development containing retail uses on the ground floor and a residential unit above. The businesses help provide services to meet the needs of the community and the residential unit is sympathetic to the surrounding development.

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

Comment

The proposal maintains the existing rear boundary setback and two storey built form. The proposed second floor terrace adjoins the access driveway to the subject site and does not immediately adjoin any residential dwellings. A planter box is proposed along the northern edge of the second floor terrace to help soften the development and provide screening the preserve the amenity of adjoining land.

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

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

The proposal has been reviewed and assessed by Council's Traffic Engineer deeming it acceptable subject to the recommended conditions.

The land is in a B1 Business zone and the parking requirements under the Manly DCP are therefore 1 parking space for each dwelling (irrespective of the number of bedrooms) and 0.16 visitor spaces for each dwelling. For the residence the parking requirement is therefore 1 residential spaces and 0.16 visitor spaces (rounded up to 1). A total parking requirement of 2 spaces.

The existing site provides 2 spaces for the unit and no changes are proposed to the existing parking arrangements.

It is noted that Council has recently approved a 2P time restriction for the 5x90 degree angle parking bays on the Brook Road frontage of 38 French Forest Road. In addition there is a 1P restriction applying in the 4 x parallel parking bays on the sites Frenchs Forest Road frontage. These short term parking restrictions have been introduced to facilitate turnover of parking associated with the ground floor retail development at 38 Frenchs Forest Road.

The proposal does not alter the existing parking facilities provided for the retail development, which are not serviced by any on site carparking, rather timed on street carparking. As such the proposed development does not reduce the availability of any on site car parking.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$3,584 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$358,380.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/1625 for Alterations and additions to shop top housing on land at Lot 6 DP 31806, 38 Frenchs Forest Road, SEAFORTH, Lot 5 DP 31806, 38 Frenchs Forest Road, SEAFORTH, Lot 4 DP 31806, 38 Frenchs Forest Road, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
001 Rev B - Site Analysis	1 February 2023	CMT Architects
010 Rev B - Site and Landscape Plan	1 February 2023	CMT Architects
020 Rev B - Demolition Plan - Ground Level	1 February 2023	CMT Architects
021 Rev B - Demolition Plan - Level 01	1 February 2023	CMT Architects
022 Rev B - Demolition Plan - Roof Level	1 February 2023	CMT Architects
100 Rev B - General Arrangement Plan - Ground Level	1 February 2023	CMT Architects
101 Rev B - General Arrangement Plan - Level 01 Proposed	1 February 2023	CMT Architects
102 Rev B - General Arrangement Plan - Level 02 Proposed	1 February 2023	CMT Architects
105 Rev B - General Arrangement Plan - Roof Plan	1 February 2023	CMT Architects
110 Rev B - General Arrangement - Building Elevations	1 February 2023	CMT Architects
111 Rev B - General Arrangement - Neighbouring Elevation	1 February 2023	CMT Architects
120 Rev B - General Arrangement - Building Sections	1 February 2023	CMT Architects
121 Rev B - General Arrangement - Building Sections	1 February 2023	CMT Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
D1 Rev E - Site and Ground Floor Stormwater Drainage Plan	13 February 2023	LMW Design Group P/L
D2 Rev C - On Site Detention Details	13 February 2023	LMW Design Group P/L
D3 Rev E - First Floor Stormwater Drainage Concept Plan and Details	13 February 2023	LMW Design Group P/L
D4 Rev D - Roof Terrace Stormwater Drainage Concept Plan and Details	13 February 2023	LMW Design Group P/L
D5 Rev D - Roof Stormwater Drainage Concept Plan and Details	13 February 2023	LMW Design Group P/L

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1336812S	5 September	The L.C Trust Luis

	2022	Contigiani
Access for People with Disabilities	9 August 2022	Matt Shuter + Associates
Acoustical Report	10 August 2022	Koikas Acoustics Pty Ltd
BCA Compliance Assessment	9 August 2022	Matt Shuter + Associates

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

c) The development is to be undertaken generally in accordance with the following:

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

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

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

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work

relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether

the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall

notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,583.80 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$358,380.00.

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

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the

Subdivision Certificate (whichever occurs first).

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Construction Traffic Management Plan**

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

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and

type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed

- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site adjacent to Seaforth Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

8. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Upgrade and Access Compliance Assessment Report prepared by Matt Shuter and Associates, dated 9/8/2022, Ref. MSA2178 _ Rev 04, is to be considered, as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

9. **Access for People with Disabilities**

Access to and within the building is to be provided for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the Design Compliance Report prepared by Matt Shuter and Associates dated 9/8/2022, Ref No. MSA2178DDA-Rev 03 is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

10. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by LMW Design Group, drawing number 1805.20 -D1, 1805.20-D2, dated 13/2/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

11. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

12. **Acoustic Report Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that recommendations within the following sections of the acoustic report by Koikas Acoustics dated 10 August 2022 (4550R20210420pd38FrenchesForestRdSeaforth_DAv2) have been implemented/incorporated into the design of the premises.

- Section 5.2.3 - Glass Windows and Doors
- Section 6.1 – Recommended Partition Floor/Ceiling
- Section 6.1.1 – Additional Recommendations/information

Reason: To protect acoustic amenity of surrounding premises.

13. **Mechanical Ventilation - Detailed Plans**

Where Mechanical ventilation is required to be altered or modified on the premises, prior to any Construction Certificate (CC) being issued, detailed plans must be submitted to and approved by the Principle certifier that demonstrate compliance with the following:

Australian Standard (AS) 1668.2 “The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings”; and

Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

14. **Compliance with Standards**

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

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

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

15. **Sydney Water "Tap In"**

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

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

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

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

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

16. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Work Zones and Permits

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

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

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

18. Road Occupancy Licence

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. Road Reserve

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

Reason: Public safety.

20. Implementation of Construction Traffic Management Plan

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

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

21. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

22. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

23. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

24. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches

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

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

25. Mechanical Ventilation certification

Where Mechanical ventilation is required to be altered or modified in the food premises (such as altering the discharge location or height) it must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings" Prior to any Occupation Certificate (OC) being issued, certification is to be provided by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the modified or altered mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

26. Acoustic Report Certification

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with recommendations within the following sections of the acoustic report by Koikas Acoustics dated 10 August 2022 (4550R20210420pd38FrenchesForestRdSeaforth_DAv2).

- Section 5.2.3 - Glass Windows and Doors
- Section 6.1 – Recommended Partition Floor/Ceiling
- Section 6.1.1 – Additional Recommendations/information
- Section 6.1.3 – Verification of Acoustical performance

Any recommendations made by the qualified and experienced person(s) must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

The updated acoustic assessment is to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect acoustic amenity and surrounding premises.

27. **Fire Safety Matters**

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

Reason: Statutory requirement of the Environmental Planning and Assessment Regulation 2021.

28. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

29. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

Signed



Olivia Ramage, Planner

The application is determined on 28/03/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments