

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2019/1126 |
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|---|---|
| Responsible Officer: | Thomas Burns |
| Land to be developed (Address): | Lot 4 DP 233249, 43 Pittwater Road MANLY NSW 2095 |
| Proposed Development: | Alterations and additions to a dwelling house |
| Zoning: | Manly LEP2013 - Land zoned B2 Local Centre |
| Development Permissible: | No |
| Existing Use Rights: | Yes |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Pamela Doreen Preece |
| Applicant: | Anne Preece |

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| Application Lodged: | 11/10/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 28/10/2019 to 11/11/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 38,500.00 |
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an attached dwelling house. Specifically, the application proposes the following works:

- The demolition of the existing wall on the ground floor at the rear (west) of the dwelling;
- A rear extension on the ground floor of the dwelling and the construction of new bi-fold doors.

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 - Zone B2 Local Centre

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.11 Active street frontages

Manly Local Environmental Plan 2013 - 6.13 Design excellence

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

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

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|-----------------------------------|---|
| Property Description: | Lot 4 DP 233249 , 43 Pittwater Road MANLY NSW 2095 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the western side of Pittwater Road, Manly.</p> <p>The site is regular in shape with a frontage of 3.65m along Pittwater Road and a maximum depth of 28.383m along the northern side boundary. The site has a surveyed area of 103.6sqm.</p> <p>The site is located in the B2 Local Centre zone and accommodates a two (2) storey attached dwelling house. The subject dwelling house is identified as Heritage Item No. I199 "Group of commercial and residential buildings" under the provisions of the MLEP 2013. Furthermore, the subject site is located within the "Pittwater Road Conservation Area" under the provisions of the MLEP 2013.</p> <p>The site is generally flat and contains a small lawn area within the front yard and a bricked paved area within the rear yard. Moreover, the site contains two (2) small trees within the rear yard and small outbuilding within the rear north-western corner.</p> |

The site is mapped as containing 'Acid Sulfate Soils Class 4' under the provisions of the MLEP 2013. Furthermore, the site is mapped as being located within the 'Active Street Frontages' area under the provisions of the MLEP 2013.

The majority of the site is mapped as being located within the 'Medium Risk Flood Precinct', whereas a small portion within the rear yard is mapped as being located within a 'Low Risk Precinct' under Council's provisions.

Detailed Description of Adjoining and Surrounding Development

Adjoining and surrounding development is characterised by similar two (2) storey attached dwelling houses, commercial developments and shop top housing.

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council records has revealed no recent applications relevant to this Development Application.

Site Visits

A site visit was undertaken on 28 October 2019.

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 | None applicable. |
| 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)(iia) – 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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a Site Survey and Owner's Consent.</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 has been addressed via a condition of consent.</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 matter has been addressed via a condition of consent.</p> <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 has been addressed via a condition of consent.</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 clause is not relevant to this application.</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</p> <p>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> |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| | <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 the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | No submissions were received during the Notification Period. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 4.65 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has not provided evidence in the form of a planning approval confirming that the use of the land for the purposes of an attached dwelling commenced as a lawful purpose prior to the coming into force of Manly Local Environmental Plan 2013 on 19 April 2013. However, the Heritage Impact Statement submitted with this application (prepared by Northpoint Heritage dated 09 October 2019) contains various photographs of the existing dwelling and adjoining heritage items dating back to 1906.

Furthermore, the Statement contains a subdivision plan of Pittwater Road during 1967, which depicts the existing dwelling and the adjoining dwelling houses. Whilst the application does not explicitly contain any planning approvals of the subject dwelling, the above-mentioned information confirms the dwelling's prolonged existence on the subject site prior to the coming in force of Manly Local Environmental Plan 2013 on 19 April 2013. Having regard to the prolonged existence of the dwelling, it can be assumed that a planning approval has been granted for the dwelling on the subject site between 1906 and the coming in force of Manly Local Environmental Plan on 19 April 2013. However, Council's records do not contain any historical approvals from the early 20th century for the site.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

As noted above, the dwelling's prolonged existence on the site leads Council to believe that a planning approval has been issued for the existing dwelling. However, such approved would pre-date Council's records. As identified on the land use table of the Manly Local Environment Plan 2011, development for the purposes of a dwelling house is prohibited in the B2 Local Centre zone. However, having regard to the information entailed within the Heritage Impact Statement, it can be assumed that the use of the land was lawfully approved by Council prior to coming in force of Manly Local Environmental Plan on 19 April 2013.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Any planning approval issued for the dwelling likely pre-dates Council's records. As such, there is insufficient information to determine whether any approved works commenced within one year of the Development Consent.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, the information entailed within the Heritage Impact Statement confirms that the whole of the area of the land was physically used for the purpose of a dwelling house and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed extension will be constructed to a maximum height of 3.39m above the existing ground level and will contain a floor space ratio of 0.6:1 (gross floor area 62sqm). Whilst the proposal varies the prescribed rear boundary setback control, the proposed extension will provide a rear building line that is consistent with the adjoining properties.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposed development in terms of its bulk and scale is consistent to that of the adjoining structures.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed development is not likely to give rise to unreasonable amenity impacts on adjoining properties, specifically having regard to privacy and solar access.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal

principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposed development will provide an acceptable level of internal amenity within the subject site.

Conclusion

Whilst Council's records does not contain evidence of any planning approvals consenting to development for the purposes of a dwelling house, the Heritage Impact Statement submitted with this application provides photographic evidence of the existing dwelling occupying the site circa 1906. Therefore, it can be assumed that the use of the dwelling was approved under a previous Environmental Planning Instrument and therefore, is a lawful use. Subsequently, the use can be retained under the Manly Local Environmental Plan 2013.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

| Internal Referral Body | Comments |
|---|---|
| Environmental Health (Acid Sulphate) | <p>General Comments</p> <p>The site is classed Acid Sulfate Soil Class 4. However the footings are 450mm deep so well less than 1 metre.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> |
| NECC (Stormwater and Floodplain Engineering – Flood risk) | The proposed development is a small extension to a room at the rear of the existing dwelling. Subject to conditions, the development is compliant with Council's flood prone land development controls. |
| Strategic and Place Planning (Heritage Officer) | <p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>This application has been referred to Heritage as it is a listed heritage item and is in the Pittwater Heritage Conservation Area. The building is a part of the heritage item "I199 - Group of Commercial and Residential Buildings" listed in Schedule 5 of Manly LEP 2013.</p> |

| Internal Referral Body | Comments | |
|------------------------|---|----|
| | Details of heritage items affected | |
| | Details of the heritage item and Pittwater Road Conservation Area, as contained within the Manly Heritage inventory, are: | |
| | <i>1199 - Group of Commercial and Residential Buildings</i> | |
| | <u>Statement of significance:</u> | |
| | <p>The item is a group of unusual early Twentieth Century terraced two storey residences with shops at each end.</p> <p>Listed due to its originality and uniqueness of concept, layout and mixture of materials. Significance in contribution to streetscape and in relationship to late 19th century development locally.</p> | |
| | <u>Physical description:</u> | |
| | <p>The subject dwelling is part of the group of 8 terraced buildings comprising 6 terraced two storey houses (originally rendered at ground floor level and timbered at first floor level) with rendered two storey (projecting as one storey shops) buildings at each end.</p> <p>Bullnose verandah roofs to residences have reversed bullnose up to sill level on first floor. Projecting 'gable end' of roof forms pediment over central pair - 41&43 Pittwater Road. Other significant elements include; barge boards to end buildings, rendered pediments over shopfronts, window hoods over first floor windows, Italianate render decoration to ground floor of residences.</p> | |
| | <i>Pittwater Heritage Conservation Area:</i> | |
| | <u>Statement of significance:</u> | |
| | <p>The street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> | |
| | <u>Physical description:</u> | |
| | <p>The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions. The streetscape provides 19th century atmosphere due to its scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two storey residential cottages, with occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.</p> | |
| | Other relevant heritage listings | |
| | Sydney Regional Environmental Plan (Sydney Harbour | No |

| Internal Referral Body | Comments | | |
|---|--|----|--|
| | Catchment) 2005 | | |
| | 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 | | |
| | The proposal seeks consent for a small ground floor extension to the rear of the existing building. The extension proposes rear alignment with the adjacent property at 45 Pittwater Road extending the existing wall and skillion roof consistent with existing form, materials and finishes. It is believed that there will not be a significant impact upon the heritage item or the conservation area. | | |
| | Therefore no objections raised to this application on heritage grounds. | | |
| | Consider against the provisions of CL5.10 of MLEP. | | |
| | Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes | | |
| | Further Comments | | |
| COMPLETED BY: Oya Guner, Heritage Advisor | | | |
| DATE: 28 November 2019 | | | |

| 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 (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? | No |
| 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: | 15m | 3.39m | - | Yes |
| Floor Space Ratio: | FSR: 2:1 | FSR: 0.6:1 (62sqm of gross floor area) | - | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings | Yes |
| 4.4 Floor space ratio | Yes |
| 4.5 Calculation of floor space ratio and site area | Yes |
| 5.10 Heritage conservation | Yes |
| 6.1 Acid sulfate soils | Yes |
| 6.4 Stormwater management | Yes |
| 6.11 Active street frontages | Yes |
| 6.12 Essential services | Yes |
| 6.13 Design excellence | Yes |
| 6.16 Gross floor area in Zone B2 | Yes |

Detailed Assessment

Zone B2 Local Centre

The application proposes alterations and additions to an existing attached dwelling house. Attached dwelling houses are not permitted within the B2 Local Centre zone. Nevertheless, the dwelling house is assessed against the Objectives of the B2 Local Centre zone as follows:

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

Comment:

The application proposes alterations and additions to an existing attached dwelling, of which has occupied the subject site for over a century. In this regard, the dwelling is considered to be a relevant community use that contributes to an attractive and unique streetscape, thereby meeting the needs of people who live, work in and visit the local area.

- To encourage employment opportunities in accessible locations.*

Comment:

This Objective is not relevant to this application.

- To maximise public transport patronage and encourage walking and cycling.*

Comment:

The subject site contains no off-street parking spaces, nor does the application propose any off-street parking. Therefore, the proposed development will maximise public transport patronage and encourage walking and cycling.

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

Comment:

Adjoining development is predominantly characterised by residential land uses. Therefore, the proposed development is consistent with development within the immediate locality.

Having regard to the above assessment, it is considered that whilst the existing use is not permissible within the B2 Local Centre zone, the proposed development is consistent with the relevant Objectives of the zone.

6.1 Acid sulfate soils

The site is mapped as containing 'Acid Sulfate Soils Class 4' under the provisions of the MLEP 2013. The application does not propose works more than 2m below the natural ground surface, therefore the application complies with the requirements of this Control.

6.11 Active street frontages

The site is mapped as being located within the 'Active Street Frontages' area under the provisions of the MLEP 2013. Clause 6.11(3) of the MLEP 2013 stipulates that development consent must not be granted for the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage. The application proposes alterations and additions to an existing attached dwelling. Therefore, the application is not required to provide an active street frontage.

6.13 Design excellence

The proposed works are confined to the rear of the property. As such, the proposal will have negligible impacts on the streetscape.

6.16 Gross floor area in Zone B2

Clause 6.16(3) of the MLEP 2013 stipulates that development consent must not be granted for the erection of a building on land located within the B2 Local Centre zone unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as a commercial premises. The application proposes alterations and additions to an existing attached dwelling. Therefore, the application is not required to provide 25% of the gross floor area for commercial purposes.

Mainly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 103.6sqm | Requirement | Proposed | % Variation* | Complies |
|--|--------------------|-----------------|-------------------------|-----------------|
| | | | | |

| | | | | |
|--|---|----------------------|--------|---|
| 4.1.2.1 Wall Height | North: 6.7m (based on gradient 1:27.5) | 3.15m | - | Yes |
| | South: 6.7m (based on gradient 1:27.5) | 2.98m | - | Yes |
| | East: 6.5m (based on 0) | no change | N/A | N/A |
| | West: 6.5m (based on gradient 0) | 3.15m | - | Yes |
| 4.1.2.3 Roof Height | Height: 2.5m | 0.41m | - | Yes |
| | Pitch: maximum 35 degrees | less than 35 degrees | - | Yes |
| 4.1.4.1 Street Front Setbacks | Prevailing building line | Unchanged | N/A | N/A |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | North: 1.05m (based on wall height 3.15m) | 0m | 100% | No |
| | South: 0.99m (based on wall height 2.98m) | 0.91m | 8.08% | No |
| 4.1.4.4 Rear Setbacks | 8m | 6.98m | 12.75% | No |
| Schedule 3 Parking and Access | Attached Dwelling (1 bedroom): 0.6 spaces | 0 spaces | 100% | No - no parking spaces currently provided |

***Note:** The application proposes works to an existing residential dwelling within the B2 Local Centre zone. As such, The application has been assessed against the relevant requirements of both *Section 4.1 Residential Development Controls* and *Section 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)* of the MDCP 2013.

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 |
| 3.2 Heritage Considerations | Yes | Yes |
| 3.3.1 Landscaping Design | 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 |
| 3.5.1 Solar Access | Yes | Yes |
| 3.5.3 Ventilation | Yes | Yes |
| 3.5.7 Building Construction and Design | Yes | Yes |
| 3.5.8 Water Sensitive Urban Design | Yes | Yes |
| 3.7 Stormwater Management | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.8 Waste Management | Yes | Yes |
| 3.10 Safety and Security | Yes | Yes |
| 4.1 Residential Development Controls | Yes | Yes |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) | Yes | Yes |
| 4.1.3 Floor Space Ratio (FSR) | Yes | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres) | Yes | Yes |
| 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor | No | Yes |
| 4.2.5 Manly Town Centre and Surrounds | Yes | Yes |
| 4.2.5.1 Design for Townscape | Yes | Yes |
| 4.2.5.4 Car Parking and Access | No | Yes |
| 4.4.1 Demolition | Yes | Yes |
| 4.4.2 Alterations and Additions | Yes | Yes |
| 5 Special Character Areas and Sites | Yes | Yes |
| Schedule 1 – Maps accompanying the DCP | Yes | Yes |
| Schedule 2 - Townscape Principles | Yes | Yes |

Detailed Assessment

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

Side Boundary Setbacks

Description of non-compliance

Clause 4.1.4.2 of the MDCP 2013 stipulates that dwellings must be setback one third of the proposed wall height from side boundaries. The proposed wall height on the northern elevation is 3.15m, whereas the proposed wall height of the southern elevation is 2.98m. Therefore, the policy requires the dwelling to be setback as follows:

- 1.05m from the northern side boundary; and
- 0.99m from the southern side boundary.

The proposed development will be setback 0m from the northern side boundary and 0.91m from the southern side boundary. As a consequence, the application fails to comply with the Control. It is noted that the existing dwelling is currently setback 0m from the northern side boundary and 0.91m from the southern side boundary respectively.

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

Comment:

The proposed development will be sited at the rear of the property, therefore will have no impact on the streetscape.

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 extension will maintain the existing ridge height of the dwelling at the rear of the property. Therefore, no unreasonable overshadowing impacts are anticipated to arise as a result of the proposal. Furthermore, no additional windows are proposed on the southern elevation of proposal, therefore privacy will be maintained between the subject site and southern adjoining property (41 Pittwater Road). Given that the proposed development will be sited at the rear of the property, the proposal will not impact road visibility or traffic conditions along Pittwater Road.

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

Comment:

The proposed development does not alter the siting and orientation of the existing dwelling house on the subject site.

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 subject site does not contain any significant landscape features and does not adjoining any Open Space Lands or National Parks.

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

Comment:

The subject site is not bushfire prone.

Having regard to the above assessment, it is considered that the relevant Objectives of the Control have been achieved. Therefore, the application is supported on merit.

Rear Boundary Setbacks

Description of non-compliance

Clause 4.1.4.4 of the MDCP 2013 stipulates that all development is to be setback at least 8m from the rear boundary. The application proposes a rear boundary setback of 6.98m, which fails to comply with the 8m requirement. Notwithstanding, the policy further states that rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss. The proposed development will maintain a rear setback that is consistent with the northern and adjoining properties. In this regard, the reduced setback is considered acceptable as the proposed development will not result in adverse overshadowing, privacy or view loss impacts. Therefore, the application is supported on merit.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Description of non-compliance

Schedule 3 of the MDCP 2013 stipulates that attached dwelling houses within the B2 Local Centre zone are to provide 0.6 residential parking space for each one (1) bedroom dwelling. The site does not contain any off-street parking facilities, nor does the application propose any off-street parking. As a consequence, the proposed development fails to comply with the Control.

Merit Assessment

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

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Comment:

Whilst no off-street parking is proposed, the subject site is located within the Manly Town Centre and is well service by public transport. Given the adjoining properties are devoid of off-street parking facilities, the non-compliance is considered acceptable in this regard.

Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within business areas.

Comment:

The proposed development will not generate conflicts between pedestrians and vehicles within the locality.

Having regard to the above assessment, it is considered that the relevant Objectives of the Control have been achieved. Therefore, the application is supported on merit.

4.2.5.4 Car Parking and Access

A detailed assessment is provided under Clause 4.2.4 of the MDCP 2013.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

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, 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1126 for Alterations and

additions to a dwelling house on land at Lot 4 DP 233249, 43 Pittwater Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|------------------|-----------------|
| Drawing No. | Dated | Prepared By |
| Sheet / | 01 November 2019 | George Abdallah |
| Sheet 2/2 | 01 November 2019 | George Abdallah |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|-------------------|---------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Flood Management Report | 15 September 2019 | Pittwater Data Services Pty Ltd |

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:

| Waste Management Plan | | |
|-----------------------|-----------------|-------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 11 October 2019 | Anne Preece |

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. 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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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.

3. 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) 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 a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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 2008
 - (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

4. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority 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

5. Flooding

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 6.33m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level of 6.33m AHD must have residual current devices installed cut electricity supply during flood events.

Floor Levels – F2

The underfloor area of the dwelling below the 1% AEP flood level of 5.83m AHD is to be designed and constructed to allow clear passage of floodwaters. The underfloor perimeter of the dwelling is to have a minimum of 50% open area below the 1% level

Fencing – H1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open for passage of flood waters - All new fencing on the property must be design with a minimum of 50% open area between the 1% flood level of 5.83m AHD and natural ground level, to allow flood waters to pass through.

Recommendations

The development must comply with all recommendations outlined in:

- The Flood Management Report prepared by Pittwater Data Services dated 15 September 2019.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

6. 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 Certifying Authority prior to the issue of the Construction Certificate.

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

7. 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 Certifying Authority 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. Acid Sulfate Soil Management

Any new information which comes to light during , excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soil must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.

Reason: To ensure potential Acid Sulfate Soil is appropriately managed.

9. Survey Certificate

A survey certificate prepared by a Registered Surveyor is required at the following stages of construction:

(a) Commencement of perimeter walls columns and/or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to the concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

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

10. **Waste Management Confirmation**

Prior to the issue of the Final Occupation Certificate, evidence / documentation must be submitted to the Certifying Authority confirming that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

Signed



Thomas Burns, Planner

The application is determined on 13/12/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments