

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0591
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 799776, 71 Whistler Street MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Watershed Architects

Application Lodged:	20/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/05/2024 to 10/06/2024
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 17.3%
Recommendation:	Approval

Estimated Cost of Works:	\$ 960,000.00
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Executive Summary

The application seeks consent for demolition works and construction of a dwelling house at 71 Whistler Street, Manly.

The subject site is within the vicinity of a heritage item listed under Schedule 5 of Manly Local Environmental Plan (**MLEP**) 2013 as '*Item 12 - Stone Kerbs - Manly municipal area*'. The existing curb that adjoins the subject site is proposed to be partially demolished to allow for a new driveway access to the subject site. The nature of the works are considered 'sensitive development' and as such, the application is referred to the Northern Beaches Local Planning Panel (**NBLPP**) for determination.

Four (4) submissions were received in objection in response to the notification of the application. The resident submissions raised concerns related to - Bulk and scale (Height and FSR); Privacy;

Construction Impacts; insufficient information; Finishes and Materials and Streetscape.

The application proposes a variation to the Floor Space Ratio (**FSR**) development standard under clause 4.4 of the MLEP 2013. The 4.6 request for the non-compliance with FSR standard arises due to an undersized allotment. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly DCP for undersized allotments.

A detailed assessment has been undertaken within this report regarding the amenity impacts on the immediately adjoining residential development and the assessment finds the reasonable retention of amenity for these properties.

On the balance, the assessment finds that the proposal is acceptable for the site and concludes with a recommendation that the NBLPP, as the consent authority, grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition of existing structures and construction of a dwelling house with a single hardstand parking space to the front of the site.

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 R3 Medium Density Residential
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 799776 , 71 Whistler Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Whistler Street, Manly The site is regular in shape with a frontage of 5.2m along Whistler Street and an average depth of 32.53m. The site has a surveyed area of 173.9m². The site is located within the R3 Medium Density Residential zone and accommodates a dwelling house. The subject site is relatively flat with split fall to the front and rear boundaries from the centre of the site. The site is located in proximity to heritage items <i>12 All stone kerbs</i> (Manly municipal area). Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development.

Map:



SITE HISTORY

A search of Council’s records has revealed that there are no recent or relevant applications for this site.

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

APPLICATION HISTORY

Following lodgement of the Development Application, Council staff recommended that a Interim Heritage Order (IHO) be placed on the subject site, due to the dwelling meeting several criteria for consideration as heritage item. The IHO would protect the building from being demolished for a period of 6 Months. The matter was listed for consideration at the Northern Beaches Council meeting on 30 July 2024. The Council voted against the recommendation.

Amended Plans

Following a preliminary assessment of the application Council wrote to the applicant on 7 August 2024 outlining concerns that would not allow for Council to support the application in its current form.

The issues raised included:

- Bulk and Scale
- Front setback non-compliance
- Internal Referral - Heritage
- Internal Referral - Flooding

The applicant lodged amended plans and additional information to address concerns raised on 2 September 2024. The proposed amendments can be summarised as follows:

- Increased front setback to third floor 0.4m;
- Increase front setback to first floor balcony 0.4m;
- Reduction of height and pitch of roof with maximum height reduced 0.83m; and
- Reduction of width of driveway to maintain at least 1.6m of Kerb.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in a reduced development. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan. Notwithstanding this the amended plans were sent to the neighbouring properties to review.

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	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <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 bulk and scale and heritage. <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. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <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. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact

Section 4.15 Matters for Consideration	Comments
	in the locality considering the character of the proposal. (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.
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	See discussion on “Notification & Submissions Received” in this report.
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

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 application has been publicly exhibited from 27/05/2024 to 10/06/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Richard John Whyte	12 / 93 - 95 North Steyne MANLY NSW 2095
Mr Peter John Nass Mrs Kim Cheryl Nass	69 Whistler Street MANLY NSW 2095
Mr Mark Andrew Bateman	126 Pittwater Road MANLY NSW 2095
Mr Danny John Carter	122 Pittwater Road MANLY NSW 2095

The following issues were raised in the submissions:

- **Bulk and Scale**
- **Privacy**
- **Construction Impacts**
- **Insufficient information**
- **Finishes and Materials**

- **Streetscape**

The above issues are addressed as follows:

- **Bulk and Scale**

A number of submissions raised concerns with the bulk and scale of the proposed development, noting the building height and Floor space ratio

Comment:

Following public exhibition, the design was amended including a reduction in height of 1.1 metres. The bulk and scale of the amended development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are appropriate in this residential context and satisfy the requirements and objectives of the MLEP 2013 and DCP 2013. All relevant provisions of MLEP 2023 and MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

Specifically in relation to building height, the proposed development is compliant with the 11m height control for the site. Neighbouring properties along Pittwater Road have noted in their submission that recent development along Pittwater Road has been restricted to two storeys. However, these properties along Pittwater Road are subject to the lower 8.5m Height of Buildings development standard.

- **Privacy**

Concern was raised about privacy impacts (acoustic and visual) from the proposed building particularly to outdoor living areas and living room windows of adjoining properties.

Comment:

A detailed assessment has been undertaken against clause 3.4.2 (Privacy and Security) of the MDCP. The proposal results in satisfactory privacy outcomes.

- **Construction Impacts**

The submissions raised concerns that the proposed development will have impacts on vehicular access for neighbouring properties

Comment:

Significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions have been included as part of recommendation to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours.

- **Finishes and Materials**

The submissions raised concern regarding the finishes and materials proposed.

Comment:

The finishes and materials proposed for the development are consistent with the established character of the area. Council's Heritage officer raised no concern with the finishes and materials proposed.

- **Insufficient information**

The submissions raised concerns that insufficient information has been provided to allow for a full assessment of the development application.

Comment:

Adequate information has been provided by the applicant to allow for a thorough assessment of the development application.

- **Streetscape**

The submissions raised concerns that the proposed development will have any impact on the established streetscape.

Comment:

The proposed development is consistent with the scale of existing development within the streetscape and is compatible with the desired character of the area.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<i>Supported, with conditions</i> This Development Application is to seek consent for the demolition of the existing dwelling and the construction of a new two and three storey dwelling at the subject site. The application has been assessed in consideration of the <i>Coastal Management Act 2016</i> and State Environmental Planning Policy (Resilience & Hazards) 2021. It has also been assessed against requirements of the Manly LEP and DCP. <i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.

Internal Referral Body	Comments
	State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Watermark Planning dated April 2024, the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Watermark Planning dated April 2024, the DA satisfies requirements under the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.

Internal Referral Body	Comments
NECC (Development Engineering)	<i>Supported, with conditions</i> Upon review of the lot size and width, it has been determined that an absorption system cannot comply with the Water Management for Development Policy's requirement for setbacks from adjoining properties. Discharge of stormwater to the street is hence recommended. Development engineering raises no further objections to the proposed development, subject to conditions.
NECC (Flooding)	<i>Supported, with conditions</i> The proposal is for the demolition of the existing dwelling and construction of a new three storey dwelling. The works include the construction of a garage and new fencing. The site is within the Medium Risk Flood Planning Precinct. The Flood Management Report, prepared by Northern Beaches Consulting (06/05/2024), justified a varying Flood Planning Level for different points on the site. The flood characteristics are as follows: • Flood Planning Level: 6.45m AHD • 1% AEP Flood Level: 5.95m AHD • Probable Maximum Flood (PMF) Level: 6.07m AHD • PMF Life Hazard Category: H1 - H2 The FPL at the rear of the property is 6.45m AHD. Council agrees with the proposed freeboard of 300mm within the location of the proposed entryway & laundry, the FPL at that location is 6.25m AHD. Subject to the following conditions, the proposal complies with Section 5.4.3 of the Manly DCP or Clause 5.21 of the Manly LEP.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<i>Supported, with conditions</i> The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item listed under Schedule 5 of MLEP 2013. <i>Item I2 - Stone Kerbs - Manly municipal area</i>
	Details of heritage items affected
	<i>Item I2 - Stone Kerbs - Manly municipal area</i> <u>Statement of Significance</u> Stone kerbs are heritage listed. <u>Physical Description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.
	Other relevant heritage listings

Internal Referral Body	Comments		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
Consideration of Application			
Revised Comments - Plans 02/09/2024 Upon reviewing the updated plans, it has been noted that the proposal has not yet addressed a key heritage issue. Therefore, the proposal must meet the following conditions prior to the issuance of the Construction Certificate: - The design must ensure the retention of 1.6m of stone kerb after the driveway construction. This is to be achieved as per the engineer's referral condition below: <i>The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993. In order to minimise the loss of heritage kerb, the vehicle crossing shall be constructed as a combined vehicle crossing with the existing vehicle crossing to 69 Whistler Street. Provide 3 metre width on the kerb line plus a 600 mm wing to the north. Provide 3 metre width on the property boundary, clear of any obstructions.</i> <i>Note, driveways are to be in plain concrete only.</i> <i>The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.</i> <i>A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.</i> - In accordance with the Council resolution from the meeting held on 30 July 2024, the applicant must engage a heritage expert to prepare a detailed report documenting and photographing the existing building. This report must be submitted to Council for inclusion in the public record, in			

Internal Referral Body	Comments
	line with the guidelines set forth by the NSW Heritage Council. Therefore the proposal is supported subject to the fulfillment of these two conditions. <u>Consider against the provisions of CL5.10 of WLEP.</u> 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

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, with conditions</i> 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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1737110S dated 23 February 2024).

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 2 – Coastal Management

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposal will not have cause any adverse impacts on the matters listed under 2.11(1)a) above. Council is satisfied that the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and

Division 5 General

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

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

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

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:	11m	9.3m	-	Yes
Floor Space Ratio	FSR: 0.75:1 (130.43sqm)	FSR: 0.879:1 (153sqm)	17.3%	No

Compliance Assessment

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

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R3 Medium Density Residential

Proposed Use	Permitted or Prohibited
Dwelling House	Permitted with consent

The underlying objectives of the R3 Medium Density Residential zone:

- To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The application seeks consent for construction of a new dwelling house, a residential use.

- To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposed dwelling house contributes the mix of development within the medium density zone.

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

Comment:

N/A

- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The redevelopment of the subject site will allow for a modern development of the site without compromising the established character of the area.

- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination*

Comment:

N/A

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.75:1 (130.43sqm)
Proposed:	0.879:1 (153sqm)
Percentage variation to requirement:	17.3%

(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 proposed third storey is articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the 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:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard:	Floor space ratio
Requirement:	0.75:1 (130.43sqm)
Proposed:	0.879:1 (153sqm)
Percentage variation to requirement:	17.3%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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) is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 was considered by the Applicant. The Applicant relies on the 'First Way' test, arguing that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Applicant provides justification for the proposed development against each objective of the FSR development standard, arguments that are generally concurred with, including:

- *The new dwelling remains compatible with the built form in the locality and complies with the building height and number of stories controls. The resulting bulk and scale is of a lesser or consistent scale with surrounding properties and privacy and solar access are retained for both the subject site and adjoining dwellings*
- *The subject site is an undersized lot, comprising an area of 173.9m² and qualifies for an exception to FSR provided by the Manly DCP. In this regard the DCP permits an FSR calculation based on a 250m² lot size, which equates to 187.5m². As noted above, the proposed gross floor area is 156.2m² and therefore complies with the exception permitted by the DCP.*
- *The proposed development is visually appropriate for the locality and remains consistent with other dwellings in Whistler Street. The design of the new dwelling is consistent with other dwellings in the locality and in this regard, the underlying intent of this objective has been satisfied, despite the numerical departure.*
- *The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy.*

(b) 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.’

The Clause 4.6 Request argues, in part:

"Context

- The area surrounding the subject site is characterised by 1, 2 and 3 storey residential dwellings and 4-9 storey residential flat buildings with a wide variety of Gross Floor Areas.*
- The dwelling proposes a compliant building height and has been designed to provide an FSR compliant with the DCP control for undersized lots, Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:*
 - DA2023/0085, 49 Alexander Street Manly, FSR Variation 28.36%,*
 - DA2022/2013, 15 Pine Street Manly, FSR Variation 41.9%,*
 - DA2022/1216, 69 Ernest Street Balgowlah Heights, FSR Variation 20%,*
 - DA2022/1209, 8 Allenby Street Clontarf, FSR Variation 29%,*
 - DA2021/2661, 33 Beatrice Street Clontarf, FSR Variation 7.7%,*
 - DA2022/1289, 9 Lower Beach Street Balgowlah, FSR Variation 28.2%,*
 - DA2021/2390, 29 Monash Crescent Clontarf, FSR Variation 37.1%.*
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).*

Future Development

- The proposed development will allow for a new dwelling house, with onsite carparking to be provided on the site,*
- This represents an efficient use of an existing residential lot, with all services readily available,*
- The built form proposed is consistent with other buildings in the locality and does not result in any unreasonable impacts to neighbouring properties,*
- The proposed GFA of 153m² results in an FSR of 0.9:1 (a variation of 22.57m² or 17.3% in relation to the LEP control), however results in a compliant FSR of 0.62:1 in relation to the DCP controls for undersized lots,*
- The proposed works will not hinder any future development of the lot demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).*

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*

Natural Environment

- The development does not require the removal of any native trees,*
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.*
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.*

Social and Economic Welfare

- *The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying CI1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.*

Appropriate Environmental Planning Outcome

- *The new dwelling is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council."

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development is an upgrade of an ageing development and that the new building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(g) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the FSR development standard is acceptable and it is reasonable that flexibility to the standard be applied.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map.

The proposed works do not proposed works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metre below the natural ground surface. Therefore, no further assessment is required.

6.2 Earthworks

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

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

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

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (f) the likelihood of disturbing relics*

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

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

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

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment: On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.9 Foreshore scenic protection area

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

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal

activities.

Comment:

The proposed development has considered the matter listed above, the proposed development will not have any unreasonable impacts upon the foreshore scenic protection area.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The services listed above will be available for the proposed development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 173.9sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 150sqm	1	-	Yes
4.1.2.1 Wall Height	South: 9m	8.2m	N/A	Yes
	North: 9m	8.3m	N/A	Yes
4.1.2.2 Number of Storeys	3	3	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
	Pitch: maximum 35 degrees	30 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Parking space - 0m Ground floor - 5.2m First floor balcony - 3.6m	N/A	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	South - 2.73m (based on southern wall height)	0m - 0.9m	up to 100%	No
	North - 2.76m (based on northern wall height)	Nil setback	100%	No
	Windows: 3m	0.9m	70%	No
4.1.4.4 Rear Setbacks	8m	Deck - 5.6m Rear wall - 8m	30%	No

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 50% of site area	25% (44.5sqm)	N/A	No
	Open space above ground 25% of total open space	14.1% (6.3sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	60% (26.8sqm)	N/A	Yes
	1 native trees	0 trees	100%	No
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	2.8m	N/A	No
4.1.10 Fencing	1m or 1.5m with 30% transparency	1.6m	60%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 space	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 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
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

Clause 4.1.10 of the Manly DCP requires front fences be a maximum height of 1m or 1.5m with 30 percent transparency.

The proposed front fence has a maximum height of 1.6m, non-compliant with the relevant control.

Merit consideration:

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

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

Comment:

The proposal is not considered to cause unreasonable visual impact upon the streetscape, particularly considering the prevalence of front fences in the surrounding area.

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

Comment:

As above, the proposed front fence will appropriately, and positively, complement the identified streetscape of Nield Avenue.

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

Comment:

As detailed above, the proposed front fence is appropriate in the context of the subject site and locality. In this instance, soft landscaping alternatives are not required.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Concerns were raised from the adjoining neighbours to the rear of the site Nos 122 and 126 Pittwater Road, Manly about the potential visual privacy impacts from the proposed first floor rear facing bedroom 3 window. Concern is raised that the window will have a direct line of site to living areas and windows of these adjoining properties.



Figure 1 - Location of 122 and 126 Pittwater Road highlighted in red.

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed window in question is orientated to the rear boundary and setback 8m from the rear property boundary. The significant physical separation proposed between and noting that the associated room use is not a living area, the resulting privacy impacts is not deemed to be unreasonable in this residential setting.



Figure 2 - Image taken from existing ground floor of the subject site to the rear of the property.

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

Comment:

The proposed windows will allow increased natural light and air to access the proposed dwelling, without unreasonably compromising privacy for neighbouring properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the passive surveillance of the street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

MDCP provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area C' on the MLEP 2013 Lot Size Map, meaning that, based on an actual lot size of 173.9sqm, calculation of the floor space ratio can be made as if the lot size were 250sqm.

As such, the floor space ratio of the proposed development is 0.612:1, which complies with the maximum permitted 0.75:1 floor space ratio.

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013). In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

Clause 4.1.4.1 of the MDCP requires development to be setback 6.0 metres from the front boundary line or maintain the prevailing building line. The proposed at grade parking will have a nil (0m) setback to the front property boundary and the first floor balcony is setback 3.6m from the front property boundary.

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes multiple variations to the numeric requirement at all level to the northern and southern elevations. The clause requires the first floor northern wall be setback 2.76m at the highest point. The application proposes a setback of 0m, non-compliant with the numeric control. The clause requires the first floor southern wall be setback 2.63m. The application proposes a setback of 0m - 0.9m, non-compliant with the numeric control. This represents a variation up to 100%.

Clause 4.1.4.2 requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed window altered along the eastern setback 0.9m from the side property boundary, will be non-compliant with the numerical control.

Clause 4.1.4.4 of the MDCP requires any part of the building to be setback 8m from the rear property boundary. The proposed ground floor deck is setback 5.6m, while the rear wall is setback 8m. The non-compliant deck represents a 30% variation to the numeric control.

Merit consideration:

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

Objective 1) To 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 proposal provides suitable design for privacy with suitable physical separation and screening (subject to conditions). The proposal also complies with the requirements Sunlight Access under the DCP and provides open corridors to surround the development to assist in the provision of equitable amenity.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal provides suitable design for privacy with suitable physical separation and screening (subject to conditions). The proposal also complies with the requirements Sunlight Access under the DCP and provides open corridors to surround the development to assist in the provision of equitable amenity.

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

Comment:

Flexibility to allow the numerical non-compliance with the setback controls is warranted given the size of the site and consistency with the established character of the street, and the lack of unreasonable amenity impact including sufficient physical separation from neighbouring living spaces.

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:

Adequate planting is provided across the site.

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

Comment:

The subject site is not located in a bush fire zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located in residential open space area 1. As such at least 50% of the site area is to be open space of which at least 35% is to be landscaped area.

The proposal provides 51.3% (167.2m²) total open space and does not meet the required 55%. The proposal complies with landscaped area providing 73.4% (122.8m²).

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal requires the removal of two small trees which are identified as exempt species and will be replaced with proposed planting. The trees to be retained throughout the site will endure minimal impacts as expressed in the Arboricultural Impact Assessment. The proposed plantings will provide landscape features that support the biodiversity qualities of the site

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

Comment:

The proposal provides ample soft landscaped areas in excess of the requirement. The proposal includes the addition of plantings as detailed on the Landscape Plan. The proposal appropriately maintains the existing vegetation and bushland across the site.

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

Comment:

The proposal incorporates rumpus rooms on the first floor that face north which receive ample sunlight. The proposal does not result in unreasonable levels of solar access to the adjoining properties. The balconies at the northern front of the first floor are of a small size in order to maintain a reasonable level of privacy to the site and surrounding properties. The reduced size of these balconies results in a lesser provision of total open space but is acceptable given the retention of privacy and amenity.

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

Comment:

The proposed development provides sufficient soft landscaped areas to maximise water infiltration and minimise stormwater runoff.

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

Comment:

The proposed development is not likely to cause the spread of weeds and the degradation of private and public open space.

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

Comment:

The proposed development is not likely to affect any existing wildlife habitat and potential for wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$9,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$960,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 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.

PLANNING CONCLUSION

This proposal, for demolition works and the construction of a new dwelling house has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the nature of the works being considered 'sensitive development'.

When assessed against the MLEP 2013 and MDCP 2013, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The new works are sympathetic of the heritage character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.4 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2024/0591 for Demolition works and construction of a dwelling house on land at Lot 1 DP 799776, 71 Whistler Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA04	F	Demolition Plan	Watershed Architects	7 August 2024
DA05	F	Site and Roof Plan	Watershed Architects	7 August 2024
DA06	F	Ground Floor Plan	Watershed Architects	7 August 2024
DA07	F	First Floor Plan	Watershed Architects	7 August 2024
DA08	F	Second Floor Plan	Watershed Architects	7 August 2024
DA09	F	Section AA	Watershed Architects	7 August 2024
DA10	F	Section BB	Watershed Architects	7 August 2024
DA11	F	Section CC	Watershed Architects	7 August 2024
DA12	F	Elevations - East	Watershed Architects	7 August 2024
DA13	F	Elevation - South	Watershed Architects	7 August 2024
DA14	F	Elevation - West	Watershed Architects	7 August 2024
DA15	F	Elevation - North	Watershed Architects	7 August 2024
DA17	F	Landscape Plan	Watershed Architects	
DA20	F	Sediment and Erosion Control	Watershed Architects	7 August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 1737110S	-	Bonnefin Consulting	23 February 2024
Flood Management Report	B	NB Consulting Engineers	6 May 2024
Geotechnical Report	J5155A	White Geotechnical Group	6 May 2024
Waste Management Plan		-	-

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

(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. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a **dwelling house**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

dwelling house means a building containing only one dwelling.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. 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.

5. **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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of 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.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) 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

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$9,600.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$960,000.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

7. Security Bond

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Building components and structural soundness

B1 - All new development below the Flood Planning Level shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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.

9. Floor levels

C1 - New floor levels within the development shall be set at or above the relevant Flood Planning Level.

C3 - The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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.

10. **Car parking**

D5 - The floor level of the proposed garage shall be set at or above the 1% AEP flood level of 5.95m AHD.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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.

11. **Fencing**

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level. Openings shall be a minimum of 75mm x 75mm.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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.

12. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the street.

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

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

13. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

14. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993. In order to minimise the loss of heritage kerb, the vehicle crossing shall be constructed as a combined vehicle crossing with the existing vehicle crossing to 69 Whistler Street. Provide 3 metre width on the kerb line plus a 600 mm wing to the north. Provide 3 metre width on the property boundary, clear of any obstructions.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

15. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways. The design shall consider the use of reflective strips on the extremities on any structures within the combined vehicle crossing to 69 and 71 Whistler Street.

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

Reason: Compliance with this consent.

16. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

17. **Extent of Works**

All works are to be located wholly within the subject site. No approval is given for works on adjoining properties.

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

Reason: To ensure compliance with the terms of this consent.

18. Retention of 1.6 meters of stone kerb

The design must ensure the retention of 1.6 meters of stone kerb located towards the front of the property, as per the engineer's referral condition below.

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1N in accordance with Section 138 of the Roads Act 1993. In order to minimise the loss of heritage kerb, the vehicle crossing shall be constructed as a combined vehicle crossing with the existing vehicle crossing to 69 Whistler Street. Provide 3 metre width on the kerb line plus a 600 mm wing to the north. Provide 3 metre width on the property boundary, clear of any obstructions.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with

Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the preservation of the heritage listed item.

19. Photographic Archival Recording of the subject site including the building proposed to be demolished

In accordance with the Council resolution from the meeting held on July 30, 2024, the applicant must engage a heritage expert to prepare a detailed report that documents and photographs of the existing site including the building and other site elements proposed to be demolished. This report must be submitted to the Council for inclusion in the public record, following the guidelines set forth by the NSW Heritage Council.

Reason: For heritage preservation, to document the building's condition and features visually, supporting accurate future restoration and conservation efforts.

20. 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.

21. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

22. Boundary Fencing

No consent is given for any boundary fencing.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the Dividing Fences Act 1991

23. 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: Nos. 69 and 73 Whistler Street, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

25. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

26. 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.

27. Removing, Handling and Disposing of Asbestos

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

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

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

28. Survey Certificate

A survey certificate prepared by a Registered Surveyor 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 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 Principal Certifier.

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

approved plans.

29. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To maintain the existing profile of the nature strip/road reserve.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

30. Certification of Works as Executed

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Openings are provided under floor areas where required for the free passage of flood waters
2. Openings are provided in fencing where required for the free passage of flood waters

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

31. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

32. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

33. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

34. **Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

35. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.