

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0888
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 25 SP 3035, 25 / 37 - 38 East Esplanade MANLY NSW 2095 Lot 46 SP 3035, 25 / 37 - 38 East Esplanade MANLY NSW 2095 Lot 48 SP 3035, 25 / 37 - 38 East Esplanade MANLY NSW 2095 Lot 72 SP 3035, 25 / 37 - 38 East Esplanade MANLY NSW 2095
Proposed Development:	Alterations and additions to a Residential Apartment
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Graeme John Maclaren Joong Mee Maclaren
Applicant:	Graeme John Maclaren

Application Lodged:	10/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/07/2023 to 31/07/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 91.93%
Recommendation:	Approval

Estimated Cost of Works:	\$ 917,667.16
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a Residential Apartment. Specifically, the proposal relates to Unit 25, that is located across Level 7 and Level 8 of the existing shop top housing development.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation greater than 10% to Clause 4.3 Height of buildings development standard of Manly Local Environmental Plan. The height of buildings development standard is 15 metres, with the proposal presenting a maximum height of 28.79 metres, resulting in a variation of 91.93%.

There were no objections raised for the proposed development.

Critical assessment issues included the variation to Clause 4.3 Height of buildings of Manly Local Environmental Plan 2013.

The 4.6 request for the non-compliance with height standard arises from the proposed addition to Level 8 of the building which is above the maximum height limit of the LEP. The proposed works are however located beneath the existing maximum height of the existing shop top housing development. Therefore, there is no further breach to the maximum height of buildings on the site.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of Alterations and additions to a residential unit within an existing shop top housing development.

Specifically the works related to Unit 25 which is is the top floor unit that is located across two levels (Level 7 and Level 8).

The proposed works comprise of the following:

- Partial demolition including walls and staircase;
- Internal reconfiguration to Level 7 to create 3 bedrooms, bathroom, media room, study, nook and family room. Bed 1 will include a WIR and ensuite.
- Level 8 proposes creating a new open plan living/dining/kitchen space with a WC and powder room. This will open out to the existing deck area which will include a new BBQ;
- Addition of pergola to cover part of the top level terrace;
- New internal stair and private lift provides access to each floor of the apartment; and
- Planter box with seating to top level terrace.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and

- relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

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

Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2

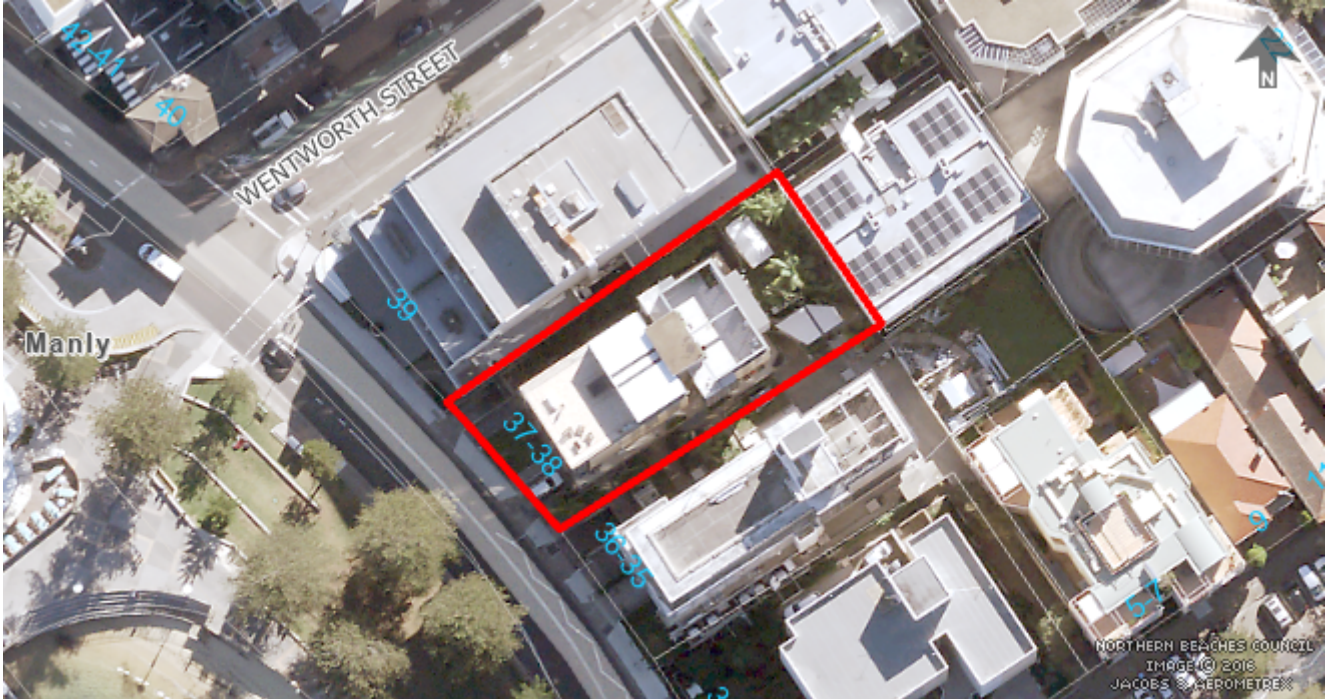
Manly Development Control Plan - 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre

SITE DESCRIPTION

Property Description:	Lot 25 SP 3035 , 25 / 37 - 38 East Esplanade MANLY NSW 2095 Lot 46 SP 3035 , 25 / 37 - 38 East Esplanade MANLY NSW 2095 Lot 48 SP 3035 , 25 / 37 - 38 East Esplanade MANLY NSW 2095 Lot 72 SP 3035 , 25 / 37 - 38 East Esplanade MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-eastern side of East Esplanade. The site is regular in shape with a frontage of 20.635 metres along East Esplanade and a depth of 48.655 metres. The site has a surveyed area of 994.9m². The site is located within the E1 Local Centre zone from MLEP 2013 and accommodates a shop top housing development currently on the site. The site is generally flat and does not include any significant level changes. The site does not contain any significant vegetation. There are no details of any threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by

shop top housing developments, and residential flat buildings. The subject site is in proximity to Manly Wharf, and Manly Corso.

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 the preliminary assessment of the application, Council requested additional information on 22 August 2023 in relation to Clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013, and Clause 3.4.1 Sunlight Access and Overshadowing of Manly Development Control Plan 2013. Further information was requested from Council's Urban Designer in relation to privacy screening.

On 30 August 2023, the applicant provided amended plans that detailed the following changes:

- Clarification of proposed FSR;
- Hourly shadow diagrams, and hourly elevational shadow diagrams;
- Increased height of balustrade to 1.35 metres including opaque glass; and
- Addition of privacy screen along south-east elevation.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 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 recommended 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, as the works do not represent a substantial refurbishment of an existing residential flat building pursuant of SEPP 65. <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 Clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013, Clause 3.4.1 Sunlight Access and Overshadowing of Manly Development Control Plan 2013, and further information was requested from Council's Urban Designer in relation to privacy screening. <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 recommended 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 recommended condition of consent.

Section 4.15 Matters for Consideration	Comments
	<u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.
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 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact 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 development application has been publicly exhibited from 17/07/2023 to 31/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>Supported - subject to conditions.</i>

Internal Referral Body	Amended Plans		
	The amended application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of previous conditions of approval . <u>Original Comments</u> The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.		
Strategic and Place Planning (Heritage Officer)	<i>Supported - without conditions.</i>		
	HERITAGE COMMENTS		
	Discussion of reason for referral		
	This application has been referred as it is in the vicinity of a number of heritage items: <i>Item I143 - Park Reserve, East Esplanade</i> <i>Item I246 - Street trees, Wentworth Street</i> <i>Item I2 -All stone kerbs</i>		
	Details of heritage items affected		
	Details of these heritage items in the vicinity, as contained within the Heritage Inventory, are: <i>Item I143 - Park Reserve, East Esplanade</i> Belongs to similar treatment as West Esplanade as early cultural landscape to emphasise arrival by ferry. <i>Item I246 - Street trees, Wentworth Street</i> Listed for its aesthetic importance to the streetscape. <i>Item I2 -All stone kerbs</i>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	

Internal Referral Body	Comments
	Consideration of Application This application is for internal alterations and additions to an existing 2 level residential apartment, which include making changes to the existing top floor level to make it a livable part of the unit. The heritage items in the vicinity are landscape items, which will not be visually or physically affected by the proposed works. Amended plans were submitted on 21 August 2023 which proposed minor changes, which do not change the impact of the works on the adjacent landscape heritage items. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A
Strategic and Place Planning (Urban Design)	<i>Supported - subject to conditions.</i> This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment. The Development Application DA2023/0888 seeks consent for alterations and additions at 25 / 37 - 38 East Esplanade MANLY NSW 2095. The proposed changes include: • Partial demolition including walls and staircase. • Internal reconfiguration to level 7 to create 3 bedrooms, bathroom, media room, study-nook, and family room, and a walk-in wardrobe & en-suite to bedroom 1. • On Level 8 a new open plan living/dining/kitchen space with a WC and powder room is proposed. This will open out to a deck area which will include a new BBQ. • A new pergola to cover part of the top-level terrace. • A new internal stair and private lift provides access to each floor of the apartment. • A planter box with seating to the top-level terrace.

Internal Referral Body	Comments
	Use of the enclosed entertaining space as formalised habitable space and reconfigurations to the existing apartment layout. The applicant submitted revised drawings illustrating the inclusion of privacy measures and retractable solar shading & privacy devices. Urban Design raise no objection to the proposed development subject to a recommended condition.
Waste Officer	<i>Supported - subject to conditions.</i> Waste Management Assessment - Amended Plans (submitted (30/8/23) Supported, subject to conditions Waste Management Assessment Supported, subject to conditions

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

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

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

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

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

As the proposed development is for the alterations and additions to an existing residential apartment, it is considered that the proposed works are minor and thereby does not constitute substantial redevelopment.

Therefore, as per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A497544_02 dated 04 July 2023).

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 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	15m	28.79m	91.93% (13.79m)	No
Floor Space Ratio	FSR: 3:1 (2,984.7m ²)	FSR: 1.908:1 (1914.7m ²)	-	Yes
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000m ² per premises	Commercial GFA: unaltered Max sqm per premises: unaltered	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	N/A
6.12 Essential services	Yes
6.13 Design excellence	Yes

Clause	Compliance with Requirements
6.14 Requirement for development control plans	Yes
6.16 Gross floor area in Zone B2	N/A

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	15.0m
Proposed:	29.79m
Percentage variation to requirement:	91.93% (13.79m)

The proposed variation to the maximum height of buildings is detailed in Figure 1. It is important to note that the existing shop top housing development is non-compliant with the height of buildings development standard. Notwithstanding, the proposed works are located below the existing maximum height of the existing development.

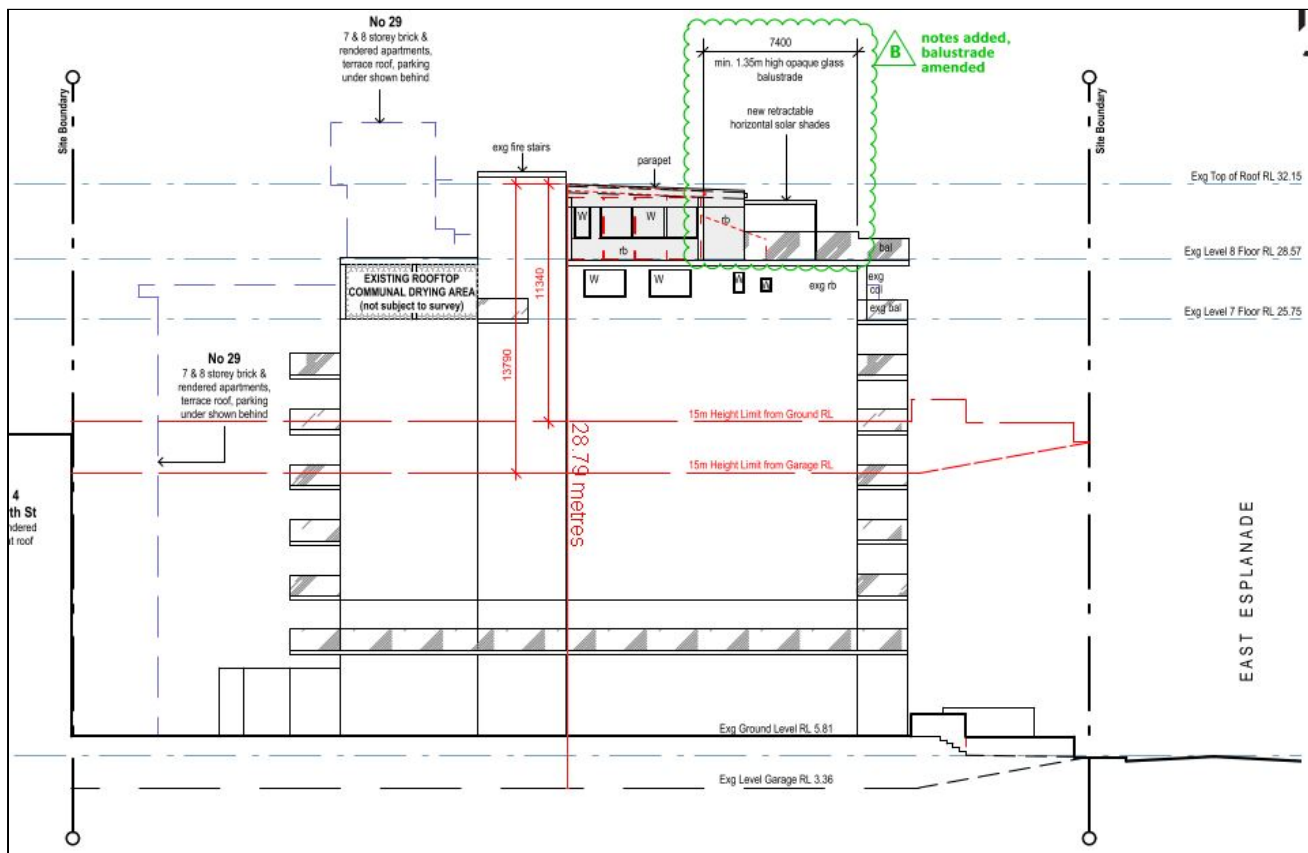


Figure 1. North-West Elevation (demonstrating Height of Building Variation)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard,

has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are

achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The existing development is significantly non-compliant with the 15m development standard with the proposed works associated with the top floor apartment. The entire top floor apartment sit above the 15m control.*
- *The proposed works to level 8 to convert the enclosed entertainment space to kitchen/living/dining area maintains the existing roof height of that level with a minor addition of*

floor space and an open pergola. This level will remain recessed from the edge of the front façade ensuring it remains indiscernible from the street.

- The bulk and scale of the development is largely maintained with only a small addition of 21m² of GFA to the top level. The works do not contribute to any unreasonable bulk and scale concerns. It is noted that the building is significantly under the 3:1 FSR control which is the main driver of bulk and scale.*
- The works seek to utilise existing spaces to facilitate the new works and do not substantially change the existing built form. In that regard, the amenity outcomes with adjoining apartments does not substantially change either in relation to view sharing, privacy and overshadowing.*
- The proposed works will still sit lower than the existing maximum height of the building measured to the top of the lift shaft and stairwell.*

To insist upon strict compliance with the building height standard would prevent any works occurring to the existing building above the height standard and in circumstances where existing FSR is below the maximum prescribed standard would prevent the orderly and economic use and development of the land".

It is agreed that the written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify contravening the development standard. It is therefore considered that the proposed variation is consistent with the objectives of the zone, and the objectives of the control. Therefore, the written request is considered acceptable, and the proposed variation is supportable.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E1 Local Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP

2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposal presents a technical non-compliance as the development will retain the prevailing maximum height of development. The proposal will provide for an appropriate building height, and roof form that is consistent with the topographic landscape. It is considered that the location of the proposed works will not result in any discernible impact to the streetscape of the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposal is more than compliant with Clause 4.4 Floor Space Ratio of Manly Local Environmental Plan 2013 that aims to mitigate any unreasonable bulk and scale. Therefore, it is considered that the proposal will provide for an acceptable bulk and scale.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal sits higher than the adjoining apartment buildings, and as such it is considered that there will be no adverse impacts to views as a result of the proposed works.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal is compliant with Clause 3.4.1 Sunlight Access and Overshadowing of Manly Development Control Plan that will ensure that adequate sunlight access is provide to adjoining sites.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is located in the E1 Local Centre Zone, and as such is not located in a recreation or environmental protection zone. Therefore, this objective is not relevant.

Zone objectives

The underlying objectives of the E1 Local Centre zone are:

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

Comment:

The proposal relates to an existing residential unit, and as such will not alter the existing retail, business, or community uses.

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

Comment:

The proposal relates to an existing residential unit, and therefore there are no changes to the local commercial development.

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

Comment:

The proposal will retain the existing use, and will not result in any changes to the existing local centre.

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

Comment:

The proposal does not result in any changes to the existing ground floor of the building.

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

Comment:

The proposal is located on Level 7 and Level 8, and as such will not result in any changes to the street frontage.

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

Comment:

The proposal will result in a consistent scale to neighbouring land uses, and it is considered that the urban form is appropriate.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 994.9m²	Requirement	Proposed	% Variation*	Complies
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m (common boundary)	>6m	-	Yes
	8m (rear boundary)	>8m	-	Yes
Schedule 3 Parking and Access	0.6 resident parking space for each Studio or one bedroom dwelling, plus 1 resident parking space for each 2 bedroom dwelling, plus 2 resident parking spaces for each 3 or more bedroom dwelling, and plus 0.16 visitor parking space for each dwelling (irrespective of number of bedrooms)	25 spaces - unaltered	-	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	N/A	N/A
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.8 Development on Sloping Sites	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	N/A	N/A
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	N/A	N/A
4.2.5.4 Car Parking and Access	N/A	N/A
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Under Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties the following applies:

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);

b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

Comment:

As the orientation of the allotment is considered to be orientated closest to east-west orientation Clause 3.4.1.2(a) applies. The applicant has provided hourly elevation shadow diagrams that demonstrate the adjoining windows of the top floor unit along the northern elevation of No.35-36 East Esplanade MANLY will receive at least 2 hours of solar access to the northern windows from 9am to 3pm on the winter solstice. Therefore, the proposal is compliant with Clause 3.4.1.2 of Manly Development Control Plan 2013.

3.4.2 Privacy and Security

Description of non-compliance

Council's Urban Designer raised initial concerns surrounding privacy as a result of the proposed pergola, and use of the deck on Level 8.

The comments from Council's Urban Designer are located under the Internal Referral Section of the report.

The applicant provided amendments to the Master Plans as a result of the initial comments from Council's Urban Designer. As a result, the applicant included an increased balustrade to 1.35m including opaque glazing, and the provision of a privacy screen along the south-eastern edge of the pergola.

Council's Urban Designer has recommended a condition for Privacy Screening for the south-eastern, and north-western sides of the outer edge of the proposed pergola.

It is considered that the amendments made by the applicant, and the recommended condition from Council's Urban Designer will ensure the proposal will provide an acceptable level of privacy, that is considered to be an improvement to the existing privacy.

Merit consideration:

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

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

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

Comment:

As per the recommended condition for Privacy Screening, the proposal will ensure appropriate design for privacy. The proposal will mitigate direct viewing between outdoor living areas of adjacent buildings

through the implementation of opaque glazing to the balustrades, and privacy screening.

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:

As per the recommended condition for Privacy Screening, the proposal will ensure increased privacy, without compromising access to light, and air. The proposal will ensure the views from habitable rooms and private open space are appropriately retained.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not result in any adverse impacts to neighbourhood security.

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

The proposed development includes a variation to the maximum height of buildings development standard. This variation is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of Manly Local Environmental Plan 2013.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

Description of non-compliance

The required front, side, and rear setbacks are as per the established building line / townscape principles.

The proposal does not result in any changes to the existing setbacks contained by the footprint of the existing Unit 25 on both Level 7, and Level 8.

Merit consideration

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

- ***Objective 1) To ensure unobstructed access between the private and public domain.***

Comment:

The proposal is located on Level 7, and Level 8, and as such will not result in any obstructions to the existing access between the private and public domain.

- ***Objective 2) To maintain the existing streetscape of building to the boundary.***

Comment:

The proposal will not be visible from the existing streetscape of building to the boundary, and as such the existing streetscape will be maintained.

4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions

to height in LEP Zone B2 in Manly Town Centre

The proposed development includes a variation to the maximum height of buildings development standard. This variation is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of Manly Local Environmental Plan 2013.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,177 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$917,667.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

This proposal, for Alterations and additions to a Residential Apartment has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to variation greater than 10% to Clause 4.3 Height of buildings development standard of Manly Local Environmental Plan 2013.

There were no objections raised for the proposed development.

The critical assessment issues included the variation to Clause 4.3 Height of buildings of Manly Local Environmental Plan 2013. It is considered the variation is supportable, and the Clause 4.6 written requested is acceptable.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0888 for Alterations and additions to a Residential Apartment on land at Lot 25 SP 3035, 25 / 37 - 38 East Esplanade, MANLY, Lot 46 SP 3035, 25 / 37 - 38 East Esplanade, MANLY, Lot 48 SP 3035, 25 / 37 - 38 East Esplanade, MANLY, Lot 72 SP 3035, 25 / 37 - 38 East Esplanade, 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
DA01	A	Site Analysis	Hobbs Jamieson Architecture	1 June 2023
DA05	A	Proposed Plan - Unit 25 Level 7	Hobbs Jamieson Architecture	1 June 2023
DA06	B	Proposed Plan - Unit 25 Level 8	Hobbs Jamieson Architecture	28 August 2023
DA07	B	Proposed Roof Plan	Hobbs Jamieson Architecture	28 August 2023
DA09	B	Proposed South-West Elevation (Street View)	Hobbs Jamieson Architecture	28 August 2023
DA10	B	Proposed North-West Elevation	Hobbs Jamieson Architecture	28 August 2023
DA11	B	Proposed South-East Elevation	Hobbs Jamieson Architecture	28 August 2023
DA12	B	Proposed North-East Elevation	Hobbs Jamieson Architecture	28 August 2023

DA13	B	Proposed Section A-A	Hobbs Jamieson Architecture	28 August 2023
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A497544_02	Efficient Living Pty Ltd	4 July 2023
BCA Report	BCA-6523556	Beyond Certification	6 April 2023
External Finishes - Front View - DA16	B	Hobbs Jamieson Architecture	28 August 2023
External Finishes - Rear View - DA17	B	Hobbs Jamieson Architecture	28 August 2023
Waste Management Plan	-	No Author	n.d.

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	21 July 2023
	Ausgrid Referral Response - Clearance Guide	21 July 2023

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties,

shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,176.67 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 \$917,667.16.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Compliance Report prepared by Beyond Certification, dated 26/4/2023, Report No.BCA-6523556, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate.

Details demonstrating compliance are to be provided to the Certifier, prior to the issue of a Construction Certificate.

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

9. Privacy Screening

The applicant has proposed a retractable vertical privacy screen to the south-east (facing 35-36 East Esplanade, Manly) on the sides of the new pergola (awning). The retractable vertical privacy screening on the south-east of the pergola (awning) must allow filtered sunlight to pass through it to the neighbouring property at 35-36 East Esplanade, Manly, and be sufficiently opaque to provide visual privacy for occupants and neighbours with an openness factor of ~5%.

A retractable vertical (drop awning/ roll-up awning/roller blind or similar) privacy screen shall also be provided to the north-west (facing 39 East Esplanade, Manly) on the sides of the new pergola (awning).

All retractable vertical privacy screens are to be retracted when the upper deck area (deck 2) is unoccupied.

Reason: 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; mitigating direct viewing between windows and/or outdoor living areas of adjacent

buildings in accordance with Manly DCP. To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space in accordance with Manly DCP.

10. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

11. 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.

12. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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.

13. 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.

14. Structural Integrity

An accredited structural engineer shall certify that the structural integrity of the existing building or common areas shall not be compromised or impacted by the proposed development.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

DURING BUILDING WORK

15. **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.

16. **Demolition Works - Asbestos**

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

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

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

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

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

17. **Survey Certificate**

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

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

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

18. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.

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

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **Fire Safety Matters**

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

22. **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.

Note: The following Standards and Codes applied at the time of determination:

(a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage

(b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage

(c) National Plumbing and Drainage Code.

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

23. **Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled.