

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

**WEDNESDAY 3 APRIL 2024**

Beginning at 12:00pm for the purpose of considering and determining matters included in this agenda.



**Peter Robinson**  
**Executive Manager Development Assessment**

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 3 April 2024

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 20 March 2024 .....	3
<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS .....</b>	<b>5</b>
4.1	DA2023/1128 - 27 Redman Road, DEE WHY - Demolition works and construction of a Residential Flat Building.....	5
4.2	DA2023/0646 - 121 Narrabeen Park Parade, MONA VALE - Demolition works and construction of a dwelling house. ....	104
<b>5.0</b>	<b>NON PUBLIC MEETING ITEMS .....</b>	<b>167</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. These applications do not satisfy that criterion.	
5.1	DA2023/1507 - 5/150-152, 6/150-152 & 8/150-152 Ocean Street, NARRABEEN - Alterations and additions to a Residential Flat Building. ....	167
5.2	DA2023/1405 - 6/21 Cavill Street, QUEENSCLIFF - Alterations and additions to a residential flat building. ....	210

## **ACKNOWLEDGEMENT OF COUNTRY**

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

### **1.0 APOLOGIES & DECLARATIONS OF INTEREST**

Nil

### **2.0 MINUTES OF PREVIOUS MEETING**

#### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 20 MARCH 2024**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 20 March 2024 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

**ITEM 4.1      DA2023/1128 - 27 REDMAN ROAD, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING.**

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2023/1128 for the Demolition works and construction of a Residential Flat Building on land at Lot 73 DP 7413, 27 Redman Road, DEE WHY for the reasons for refusal set out in the Assessment Report.

<b>REPORTING MANAGER</b>	<b>Steve Findlay</b>
<b>TRIM FILE REF</b>	2024/188551
<b>ATTACHMENTS</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan &amp; Elevations</a> <a href="#">↓3 Clause 4.6</a> <a href="#">↓4 Design &amp; Sustainability Advisory Panel Report</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1128
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<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot 73 DP 7413, 27 Redman Road DEE WHY NSW 2099
<b>Proposed Development:</b>	Demolition works and construction of a Residential Flat Building
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Thi Kim Van Nguyen
<b>Applicant:</b>	MacKenzie Architects International

<b>Application Lodged:</b>	28/08/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	05/09/2023 to 19/09/2023
<b>Advertised:</b>	05/09/2023
<b>Submissions Received:</b>	18
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 20%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 3,081,476.00
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and the construction of a residential flat building comprising 4 apartments.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the development breaching the 11.0m building height development standard by more than 10% (up to 20%) and the number of submissions being in excess of 10 (18 submissions received).

The subject site is a "sandwich site", which is heavily constrained due to the environmental features and conditions relating to the natural watercourse which dissects the site through the middle, the high

hazard flooding impacts and the steep topography of the site. This effectively splits the site into two parts, each of which has its own challenges for the architect, project planner and flooding engineer.

This site has been the subject of numerous prelodgement and development applications for a residential flat building, based on its R3 Medium Density zoning, which is the highest use of the site in this zone. The medium density development of this site is problematic and challenging for many reasons that are detailed within this report, which requires a very considered, nuanced and balanced form and scale of development that is highly responsive and tailored to the natural constraints of the site and its narrow width.

The resident submissions raised issues including; flood impacts; impacts on unique environmental features (natural waterfall, the creek and rock outcrops and riparian land); impacts to native wildlife, biodiversity and threatened species; tree removal; amenity impacts (solar access, visual and acoustic privacy, visual impacts); stormwater; construction impacts; traffic and parking and geotechnical impacts.

Critical assessment issues include building height, flooding, impacts on natural environmental features, bulk and scale, side and front setbacks, side boundary envelopes, amenity impacts (particularly solar access), inconsistencies with SEPP 65 and the ADG, insufficient parking, unresolved stormwater management, and insufficient information. An assessment of these issues has found that the application cannot be supported in its current form.

The internal and external referral bodies, including; the Design and Sustainability Advisory Panel (DSAP), Development Engineering, Traffic Engineering, Flooding, Riparian Lands and Creeks, have all raised fundamental concerns with the application.

The assessment of the application has found that the proposal, in its current form cannot be supported, as it fails to satisfy a number of provisions under the Warringah LEP 2011, the Warringah DCP 2011, and State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65) and the associated Apartment Design Guide (ADG).

The current application has not sufficiently addressed and struck the right balance of development, which is acknowledged and understood to be a complex task. The current proposal has not sufficiently addressed the natural watercourse that burdens the site. The critical flooding constraints have also not been adequately addressed, with the design involving an unreasonable encroachment over and within the channel. Council's Flood Officer has reviewed the proposal and is not satisfied that the development complies with flood planning controls. As such, it is considered that the proposal does not reasonably respond to the environmental context of the site.

Additionally, the proposed development is non-compliant with a number of the key built form planning controls which determine the bulk, scale and density of the development and how it satisfies the desired future character of the area. The non-complaint building height, in conjunction with non-compliant front and side setbacks and side boundary envelopes, contributes to the proposal having an excessive building bulk and scale, particularly as viewed from the street and the adjoining property to the east.

The scale, design and form of the building would also result in unreasonable residential amenity impacts to apartments on the adjoining property to the east, particularly in relation to solar access and visual bulk.

The Clause 4.6 variation request in relation to building height is not considered to be well founded and is not supported.

On balance, the assessment of the application concludes that, whilst the proposal has some merit, the extent to which it does not adequately address the natural constraints and planning controls, results in a recommendation for refusal, as detailed in the body of this report and in the conclusion and recommendation.

Therefore, the NBLPP should refuse the application for the reasons within the recommendation.

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for demolition works and construction of a residential flat building development.

Specifically, the development comprises of the following:

- Demolition of an existing structures
- Excavation and groundworks
- Site preparation works including the removal of trees
- Construction of a three-storey residential flat building containing 4 x 3 bedroom apartments with ground floor level parking containing 4 x car spaces

The development has been designed as two separate modules, in response to a watercourse, riparian corridor and stormwater channel located centrally to the site, with a communal connecting pathway linking the lobby of each module.

The development includes tree removal and landscaping works.

### **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**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - 5.21 Flood planning  
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B5 Side Boundary Setbacks  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - B9 Rear Boundary Setbacks  
 Warringah Development Control Plan - C2 Traffic, Access and Safety  
 Warringah Development Control Plan - C3 Parking Facilities  
 Warringah Development Control Plan - C4 Stormwater  
 Warringah Development Control Plan - C6 Building over or adjacent to Constructed Council Drainage Easements  
 Warringah Development Control Plan - C7 Excavation and Landfill  
 Warringah Development Control Plan - C8 Demolition and Construction  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D9 Building Bulk  
 Warringah Development Control Plan - D10 Building Colours and Materials  
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation  
 Warringah Development Control Plan - E6 Retaining unique environmental features  
 Warringah Development Control Plan - E8 Waterways and Riparian Lands  
 Warringah Development Control Plan - E10 Landslip Risk  
 Warringah Development Control Plan - E11 Flood Prone Land

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 73 DP 7413 , 27 Redman Road DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Redman Road, at the intersection of Burne Avenue and Redman Road. The site has a frontage to Redman Road of 15.24m and a depth of 60.96m and has a total area of 923.2m<sup>2</sup>.</p> <p>The site has a fall of approximately 10m from the north-western corner (rear) of the site to the southern street frontage, and a cross fall of 3m from the central west portion of the site to the central east portion. The site has a riparian corridor (watercourse) running north-west to south-east is located across the central portion of the site associated with a drainage / overland flow path (stormwater channel) and waterfall.</p> <p>The site currently contains a single storey dwelling house and carport at the front of the lot, and is densely vegetated at the rear portion of the site, with a number of trees located across the site along the side boundaries and within the rear portion of the site. The site has a large riparian corridor (watercourse/waterfall) running though the centre.</p>

	<p>The site is located in a High Risk Flood Planning Precinct, Landslip Hazard Area and the site is classified as Riparian Land.</p> <p>The site is located within the R3 Medium Density Residential zone of the Warringah Local Environmental Plan 2011 and a 'Residential Flat Building' is permitted with consent in the zone.</p> <p>The adjoining development consists of:</p> <ul style="list-style-type: none"> <li>• 29 Redman Road, Dee Why (west) – 3 storey residential flat building</li> <li>• 25 Redman Road, Dee Why (east) – 4 storey residential flat building</li> <li>• 7 Redfern Parade, Dee Why (north-east) – Single dwelling</li> <li>• 10 Redfern Parade, Dee Why (north-west) – Single dwelling</li> </ul> <p>The surrounding locality is characterised by a range of residential development types within the vicinity of the site including a mixture of residential flat buildings, dwelling houses and commercial premises.</p> <p>The broader locality includes larger mixed-use development and medium density residential to the east towards the Dee Why Local Centre and low density residential development to the west of the site.</p>
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Map:



## SITE HISTORY

## PREVIOUS HISTORY OF SITE AND APPLICATIONS

The land has been used for residential purposes (dwelling-house) for an extended period of time.

A search of Council's records has revealed the following relevant history:

**PLM2013/0066**

Pre-lodgement for demolition works and construction of a Residential Flat Building. The concluding comments noted:

- *The proposal does not comply with all of the built form controls applicable to the site and is therefore considered to be an overdevelopment of the site. There is also inadequate setbacks provided to the front and rear boundaries to allow adequate landscaping to address the visual impact of the proposed building size, mass, and bulk.  
The proposed development is found not to be sympathetic to the sensitive character of the location and its interface with low density residential development surrounding the site in terms of the setback provided to the rear boundary*
- *The proposed development is found not to be sympathetic to the sensitive character of the location and its interface with low density residential development surrounding the site in terms of the setback provided to the rear boundary.*
- *The development is found to be inconsistent with the Clause E8 – 'Waterways and Riparian Lands' under the WDCP 2011 and Warringah Council's Protection of Waterways and Riparian Lands Policy given the distance of the proposed development with the Creek.*

**DA2016/1143**

Development Application for demolition works and construction of a residential flat building:

- Construction of eight (8) residential units, across two (2) buildings
- Car parking facilities for five (5) spaces

The application was withdrawn following fundamental planning and environmental concerns raised by Council.

**DA2018/1670**

Development Application for demolition works and construction of a residential flat building:

- Construction of six (6) residential units, across two (2) buildings
- Car parking facilities for ten (10) spaces

The application was withdrawn following fundamental planning and environmental concerns raised by Council.

**PLM2019/0290**

Pre-lodgement for the construction of a 4 unit Residential Flat Building.

The notes included the following important responses from the referrals:

**Flooding:** *The risk to property and risk to life is severe as a result the applicant must undertake comprehensive flood modelling to assess the impact of the proposed development on flooding and demonstrate that the site can be safely developed.*

**Urban Design:**

- *The proposal is constrained with a stormwater channel that might require maintenance access clearances which could affect the design of the bridge connecting the two halves of the building area. Construction of the development whilst keeping the stormwater channel open needs to be demonstrated.*
- *The proposed built form is in the form of two distinct building blocks connected by a pedestrian bridge. A setback of 3.0m from the side boundaries and 6.0m from the front and rear boundaries have been proposed. Solar access to the proposal and surrounding residences are already limited due to site contours and existing mature trees. The DCP requires 4.5m setbacks to the side boundaries which should be adhered to especially on the top floor to allow as much sun penetration as possible to the next door apartments. Solar analysis plans are to be submitted to demonstrate solar access compliances*
- *More details to support the proposed 'green wall' on metal screens will be required*

**Coastal:**

*Clause E6 of the WDCP2011 requires a number of design solutions to be explored, including (relevant to the proposed development);*

*Suggestion:*

- o *Choosing parts of the site to develop where features are not present*
- o *Minimising on-site disturbance*
- o *Locating buildings to take advantage of environmental features*
- o *Utilising construction methods that limit impact on sloping/ difficult sites e.g. pole or "lighter on ground" construction*
- o *Implementing a soil and water management plan to limit impact*

The advice to the applicant was as follows:

*The proposal is not acceptable in its current form and requires redesign, and further information, prior to submission. This includes:*

- *Responding to the issues raised by Council's Development Engineer, Stormwater Assesses officer, Urban Design officer and Coastal Officer.*



- *Reduction in the bulk of the top storey along with increased setbacks*
- *Further information in regard to sunlight access and a response to any overshadowing impact.*

## HISTORY OF CURRENT APPLICATION

27 November 2023

Council wrote to the applicant in the form of a *Request for Information* (RFI), raising concerns primarily in relation to height, bulk and scale, setbacks, ADG, Flooding, impacts to natural features/waterways, traffic and parking and insufficient information.

No response was received.

## 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	Warringah Development Control Plan 2011 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)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter may be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant sections of this report. In summary, they have been found to be unsatisfactory and form grounds for refusal of the application.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality and would positively contribute to the housing supply of apartments in the LGA.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered to be unsuitable for the size and scale of 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	<p>This assessment has found the proposal to be contrary to a number of critical planning and other controls under the WLEP 2011, WDCP 2011, SEPP 65 and the ADG, and will result in a development which will negatively impact on the watercourse, be susceptible to flooding, be inconsistent with the desired future character and be contrary to the expectations of the community.</p> <p>On balance, despite the benefits of delivering some additional housing units, the development, as proposed, is not considered to be consistent with maintaining the public interest.</p>

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

**BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 05/09/2023 to 19/09/2023 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 process council is in receipt of 18 submission/s from:

<b>Name:</b>	<b>Address:</b>
Ms Tanya Ann Ida Grayson Ms Tanya Catelli	2 / 25 Redman Road DEE WHY NSW 2099
Mr Samuel Larcher	5 / 25 Redman Road DEE WHY NSW 2099
Jay Shankar	5 / 29 Redman Road DEE WHY NSW 2099
Peter Frank Bloom	9 / 25 Redman Road DEE WHY NSW 2099
Ms Anna Maria Dutka	8 / 25 Redman Road DEE WHY NSW 2099
Ms Lisa Helen Grant	3 / 25 Redman Road DEE WHY NSW 2099
Ms Christine-Henrietta Boeswirth	1 / 18 Redman Road DEE WHY NSW 2099
Phillipa Clare Hastings	6 Wasdale Street WHEELER HEIGHTS NSW 2097
Cicy Shankar	5 / 29 Redman Road DEE WHY NSW 2099
Mr Ralph William Scott	3 / 25 Redman Road DEE WHY NSW 2099
Mr Daniel Stephen Packer	7 / 25 Redman Road DEE WHY NSW 2099
Lobsang Gyatso	7 / 17 Sturdee Parade DEE WHY NSW 2099
Dror Baraam	8 / 25 Redman Road DEE WHY NSW 2099
Perry Grayson	2 / 25 Redman Road DEE WHY NSW 2099
Justinias Tabokas	3 / 29 Redman Road DEE WHY NSW 2099
Albert Bodiongan	6 / 29 Redman Road DEE WHY NSW 2099
Dr Annette Patricia Sammut	33 Burne Avenue DEE WHY NSW 2099
Ms Marjorie Evelyn Janz	3 / 23 Redman Road DEE WHY NSW 2099

The following issues were raised in the submissions:

- *Flood impacts*
- *Impacts to native wildlife, biodiversity and threatened species*
- *Amenity impacts – solar access, visual and acoustic privacy, visual impacts*
- *Tree removal*
- *Traffic and parking*
- *Impact on unique environmental features (natural waterfall, the creek and rock outcrops) and riparian land*
- *Damage to adjoining property during construction and construction impacts*
- *Landslip/Geotechnical concerns*

- *Asbestos*
- *Aboriginal heritage impacts*
- *Stormwater*
- *Property value*
- *Safety concerns regrading building over waterway*
- *Site is not suitable for medium density zoning or a residential flat building*

The above issues are addressed as follows:

- **Flood impacts**

Comment:

Multiple submissions were received concerned with the potential flooding impacts associated with the development.

A detailed assessment of flooding impacts can be found within the flood officers comments in the referral section of this report.. In summary, the documents submitted with the application do not contain sufficient information for Council's flood officer to be satisfied the development complies with relevant flood controls within WLEP and WDCP. As such, the the proposal has not adequately demonstrated that the development would not have an adverse flood impact. This will form a reason for refusal of the application.

- **Impacts to native wildlife, biodiversity and threatened species**

Comment:

The development and associated documentation has been assessed by Council's Biodiversity Team, who raised no objections, subject to conditions. As such, Council is satisfied that the proposal would not result in unreasonable impacts to native wildlife, biodiversity and threatened species.

- **Amenity impacts – solar access, visual and acoustic privacy, visual impacts**

Comment:

The submissions raised concerns that the development will harm the amenity of adjacent and nearby properties.

This assessment report has considered amenity impacts under the respective clauses. This report concludes that the application should be refused on the basis of overshadowing and visual bulk and scale. The proposal is not considered to have unreasonable noise or privacy impacts.

- **Traffic and parking**

Comment:

The submissions raised concerns that the proposal provides insufficient number of off-street parking spaces, which will result in parking and traffic issues.

Council's Traffic Engineers have raised this as a concern and this has been included as a reason for refusal. Please refer to the referral comments prepared by Council's Traffic Engineers for further details.

- **Impact on unique environmental features (natural waterfall, the creek and rock outcrops) and riparian land**

Comment:

This matter has been addressed within clause E6 *Retaining unique environmental features* and E8 *Waterways and Riparian Lands* of WDCP and within Council's Riparian Lands and Creeks Officer referral response. In summary, the proposed development is not considered to appropriately respond to the creekline that dissects the site, with unreasonable encroachment over and within the flow channel. Additionally, the construction impacts on the rock chute feature has not been adequately assessed. Furthermore, it is considered that the proposed development has not adequately considered design solutions to conserve and enhance the unique environmental features of the site. This will form a reason for refusal of the application.

- **Damage to adjoining property during construction and construction impacts**

Comment:

As outlined throughout this report, the subject site is heavily constrained due to the topography and natural watercourse (with rock shelves and waterfalls) traversing the site. The rear of the site is largely inaccessible due to these natural features. Insufficient details have been provided with the application in relation to construction and demolition processes to address these natural constraints and to mitigate construction risks. This will form a reason for refusal of the application. If suitable information was received, conditions could be imposed requiring dilapidation surveys establish a pre-development condition report of adjoining properties.

- **Landslip/Geotechnical concerns**

Comment:

A "geotechnical desktop study" report has been prepared by JK GEOTECHNICS. This report addresses plans dated 30/09/2022. The plans with the Development Application are dated 07/07/2023. In this regard, there is a deficiency in the documentation.

Furthermore, this geotechnical report specifies that the report provides preliminary comments and recommendations based on a "desktop study" and that further geotechnical investigations are required. Given the sensitive nature and constraints of the site, a complete geotechnical investigation is required be carried out and submitted. As such, insufficient information has been provided to demonstrate that the proposal will not have unreasonable geotechnical impacts.

This will form a reason for refusal of the application

- **Asbestos**

Comment:

Concern was raised with potential impacts associated with asbestos removal. If approved, conditions of consent could be imposed to ensure asbestos material arising from the demolition process is removed and disposed of in accordance with relevant safety standards and regulations and that 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.

- **Aboriginal heritage impacts**

Comment:

The proposal was referred to the Aboriginal Heritage Office who raised no objection to the proposed works. If approved, a conditions may be imposed requiring that if any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Office.

- **Stormwater impacts**

Comment:

Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer have raised concerns with the potential impact of the development on Council's drainage infrastructure, namely the open channel traversing the site and associated stormwater impacts. Comments from Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer are provided in full above in section 'Internal Referrals'. This will form a reason for refusal of the application.

- **Impacts to property value**

Comment:

This is not a planning consideration under the *Environmental Planning and Assessment Act 1979*.

- **Safety concerns regrading building over waterway**

Comment:

The submissions raised concerns that with the safety of the pedestrian walkway during flood events.

Council's Riparian Lands and Creeks Officer has raised concerns with the location of this pedestrian walkway noting "*The pedestrian bridge is located in a high vulnerability area with high flood levels, high velocities and high turbulences zone. Uncertainty remains on the flow impacts to the pedestrian crossing due to minimum clearance between the rock shelf and the crossing.*"

Further comments from Council's Riparian Lands and Creeks Officer and Flood Officer are provided in full above in section 'Internal Referrals'. This will form a reason for refusal of the application.

- **Site is not suitable for medium density zoning or a residential flat building**

Comment:

The site is zoned as R3 medium density zone and a residential flat building is permitted with consent. The rezoning of the site is not a consideration under this application and any proposal for a permitted use, including a residential flat building, will be considered under the relevant planning controls.

## REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><b>Not Supported</b></p> <p>The application was referred to the Design Sustainability Panel (DSAP) for feedback, comments and advice on 28 September 2023. In the minutes of the DSAP meeting, the DSAP concluded that <i>"The Panel does not support the proposal in its current form. A complete redesign and substantial reduction in the floor area would be required to incorporate the recommendations of the panel"</i>.</p> <p>The comments of the Panel are detailed below:</p> <p><b>General</b></p> <p>The proposal went to PLM2019/0290.</p> <p>Urban design recommended:</p> <ul style="list-style-type: none"> <li>· <i>the "4.5m setbacks to the side boundaries which should be adhered to especially on the top floor to allow as much sun penetration as possible to the next door apartments. Solar analysis plans are to be submitted to demonstrate solar access compliances."</i></li> <li>· <i>More details to support the proposed 'green wall' on metal screens will be required.</i></li> </ul> <p>Coastal officer recommended:</p> <ul style="list-style-type: none"> <li>· <i>Choosing parts of the site to develop where features are not present</i></li> <li>· <i>Minimising on-site disturbance</i></li> <li>· <i>Locating buildings to take advantage of environmental features</i></li> <li>· <i>Utilising construction methods that limit impact on sloping/ difficult sites e.g. pole or "lighter on ground" construction</i></li> </ul> <p>Advice to the applicant was that <i>"The proposal is not acceptable in its current form and requires redesign, and further information, prior to submission. This includes:</i></p> <ul style="list-style-type: none"> <li>· <i>Responding to the issues raised by Council's Development Engineer, Stormwater Assets officer, Urban Design officer and Coastal Officer.</i></li> <li>· <i>Reduction in the bulk of the top storey along with increased setbacks</i></li> <li>· <i>Further information in regard to sunlight access and a response to any overshadowing impact</i></li> </ul> <p>In this submission:</p>

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	<p>Solar access diagrams have been submitted which demonstrate that solar access is reasonably maintained to adjoining dwellings balconies and living spaces. Detailed analysis needs to ensure this design will not impact on the minimum requirements required by the DCP.</p> <p>Green wall details have not been provided.</p> <p>The Panel is concerned that the recommendations of the coastal officer do not appear to have been comprehensively addressed. On-site disturbance has not been minimised but arguably should be. Lighter (low-impact) construction methods should be employed over the whole site and not just the front half. The environmental features of the site should be given prominence in the configuration and outlook of individual dwellings.</p> <p><b>Strategic context, urban context: surrounding area character</b></p> <p>The site contains a unique environmental feature in terms of a natural watercourse with rock shelves, waterfalls and rock pools. The arborist report indicates the site contains locally native canopy trees including Cheese Tree, Magenta Lilly Pilly and a Sydney Red Gum. The Natural Environment team comments that <i>“the waterway and associated stormwater infrastructure is likely to provide habitat for native wildlife, including water dragons and microbats.”</i></p> <p>The site is subject to <i>DCP 2011 E8 Waterways and Riparian Lands</i> which has the objectives to <i>“protect, maintain and enhance the ecology and biodiversity of waterways and riparian land”</i> as well as to <i>“encourage development to be located outside waterways and riparian land”</i> and <i>“avoid impacts that will result in an adverse change in watercourse or riparian land condition.”</i></p> <p><i>DCP 2011 E6 Retaining unique environmental features</i> applies to the land and its objectives are to <i>“conserve those parts of land which distinguish it from its surroundings”</i>. It requires development to be designed to address any distinctive environmental features of the site and to respond to these features through location of structures, outlook, design and materials.</p> <p>When viewed from the street the site provides a significant relief from its highly urbanised context due to the existing canopy trees, some of which are locally native. In this context the 4.5m required setbacks offer the opportunity to replace tree canopy lost in the development and thereby respond appropriately to the existence of a significant remnant natural feature and <i>“conserve those parts of land which distinguish it from its surroundings”</i>.</p> <p>Because the buildings are required to provide a substantial central open space over the natural features of the site, some reduction in mandatory</p>



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	<p>setback controls might be justified (as long as these variations have no unreasonable amenity impacts on neighbours).</p> <p>It is acknowledged that to develop the site the provision of car parking is required and this will require encroachment at the lower level into those setbacks, however the Panel is of the view that a viable carparking arrangement can be provided with a minimum 1.5m open to the sky landscape setback on the western boundary. The zero setback and carpark wall on the western boundary is not supported.</p> <p>The recommendations below are intended to conserve and enhance those parts of site which distinguish it from its urban context.</p> <p><b>Recommendations</b></p> <ol style="list-style-type: none"> <li>1. Provide a minimum 1.5m setback, landscaped and open to the sky at the car parking area on the western boundary.</li> <li>2. Provide minimum 4.5m setbacks and/or elevated/offset structures to retain locally native trees where possible. This includes trees referred to in the Arboricultural Impact Assessment as Tree 8 <i>Angophora costata</i>, Tree 12 <i>Syzygium paniculatum</i> and Trees 13-15 <i>Glochidial ferdinandi</i></li> </ol> <p><b>Scale, built form and articulation</b></p> <p>Building separation: The separation between buildings on the site is approximately 10.5m and does not comply with the required 12m separation. Under ADG 2F gallery access should be treated as habitable space with separation measured from the exterior edge of the circulation space.</p> <p>Height non-compliance: The site is steeply sloping and the eastern building exceeds the height limit by 2m, but the area of non-compliance does not result in unreasonable overshadowing to adjacent dwellings. In its context, when viewed from the street the height non-compliance does not result in excessive bulk.</p> <p>Side boundary setbacks: Reductions in side boundary setbacks to achieve open space over the natural water feature and rock shelves might be justified except for the following locations where detrimental impacts are unacceptable;</p> <ul style="list-style-type: none"> <li>· As stated above (<b>Strategic context, urban context: surrounding area character</b>) the zero setback to the carpark wall on the western boundary is not supported on the basis of visual bulk when viewed along and from the boundary interface, the loss of landscape visual continuity along the boundary to the natural features and the loss of landscaped area adjacent to the boundary. The Panel has the view that landscape disturbance can be minimised by re arranging the carpark layout, waste room, lifts and stairs.</li> </ul>

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	<p>· The eastern façade of the northern building has two bedrooms with primary windows facing the boundary (Bedroom 2 and Bedroom3) with 25 Redman Road. Privacy screening to prevent a direct line of sight is proposed as an alternative to providing a 4.5m setback required by the DCP or 6m required by ADG 3F Visual Privacy. Site Analysis A302 A does not identify where habitable windows are in 25 Redman Road west façade and the C&amp;A Surveyors survey information submitted does not provide any information about openings in this façade.</p> <p><b>Recommendations</b></p> <p>3. Building separation: The separation between buildings requires appropriately designed privacy screening to the lift lobby and stairs to be acceptable. Alternatively, the eastern building is to be setback to provide a full 12m separation.</p> <p>4. Side boundary setbacks:</p> <p>· Refer Recommendation 1 above.</p> <p>· Provide a minimum 4.5m setback to Bedroom 2 and Bedroom3 windows to achieve DCP setback compliance and to contribute to the acoustic privacy objectives of ADG 4H Acoustic Privacy. The ADG 6m setback to a boundary can be reduced to 4.5m after appropriate screening design is submitted based on analysis of habitable windows proposed and existing habitable windows in 25 Redman located within direct lines of sight as set out in ADG Figure 3F.6.</p> <p>· Provide a minimum 4.5m setback to the eastern building to the extent necessary to enable the retention of Tree 8 <i>Angophora costata</i> in conjunction with other measures deemed necessary by the arborist which might include offset structural supports. The 4.5m setback in this location will enable enhancement of the bushland setting when viewed along the entry path from the street.</p> <p><b>Access, vehicular movement and car parking</b></p> <p>Car park arrangement: Car parking is acceptable in principle from a vehicular movement perspective but an alternate layout that enables the provision of a minimum 1.5m built form setback on the western boundary is recommended.</p> <p>Address and pedestrian entry: The address and entry sequence to the eastern building is convoluted and does not provide a direct line of sight to the street which can be improved.</p> <p><b>Recommendations</b></p> <p>5. Car park arrangement: Consider a car parking layout that rotates parking through 90 degrees to achieve a 1.5m built form setback. Car</p>

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	<p>manoeuvring areas for reverse movement that encroach the 1.5m setback should be provided as permeable pavement open to the sky.</p> <p>6. Address and pedestrian entry: Consider relocating the bridge so that a direct line of sight from street entry point to apartment lobby entry is achieved.</p> <p><b>Landscape</b></p> <p>The panel notes that the Natural Environment Referral Response – Biodiversity states that <i>“the waterway and associated stormwater infrastructure is likely to provide habitat for native wildlife, including water dragons and microbats.”</i></p> <p>The Panel notes that the Landscape Referral accepts that Tree 8 <i>Angophora costata</i> “will be impacted upslope in their structural root zones which has the potential to destabilise the tree.” The Panel considers that with increased setbacks and the structure being changed to a “pole” construction as well as the site being underlain by bedrock that retention of Tree 8 be considered.</p> <p>The site currently supports a generous amount of canopy and vegetative cover which should be maintained through retention and replenishment.</p> <p>The Ecology report by Narla Environmental writes the following :</p> <p><i>“Landscaping within the Subject Property should incorporate species representative of the local community being the Smooth-barked Apple – Red Bloodwood Open Forest on Enriched Sandstone Slopes around Sydney and the Central Coast.”</i></p> <p><b>Recommendations</b></p> <p>7. Existing locally native canopy trees should be retained wherever possible. Refer Recommendation 2 above in <b>Strategic context, urban context: surrounding area character.</b></p> <p>8. Replenishment tree planting shall be implemented providing both canopy and habitat for local fauna.</p> <p>9. The landscape documentation package should be reviewed and ensure that a generous portion of the proposed plant schedule form part of the <i>Red Bloodwood Open Forest on Enriched Sandstone Slopes around Sydney and the Central Coast.</i></p> <p><b>Amenity</b></p>

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	<p>The apartment planning and layouts provide good resident amenity except for where bedroom primary windows are screened to provide visual privacy where separations to boundary do not comply with ADG controls.</p> <p><b>Recommendations</b></p> <p>10. Carefully design privacy screening as noted above in Recommendation 4.</p> <p><b>Façade treatment/Aesthetics</b></p> <p>The façade treatment based on a rendered finish in a light colour with a graphic pattern unrelated to its context is not supported due to the natural setting and the long-term durability of light painted renders. Cement render and paint finish is not recommended. Materials that mimic natural materials such as fake wood grain on aluminium are not encouraged.</p> <p><b>Recommendations</b></p> <p>11. The use of natural materials that blend with the colours and textures of the natural landscape should be provided. Materials will integral finishes such as face brick, prefinished, integral colour square edged, compressed fibre cement (CFC) panels, metal cladding including zinc and copper panels or integrally coloured acrylic textured coatings with longer term warranties are options to be considered.</p> <p><b>Sustainability</b></p> <p>There are some great features on this design with regards to sustainability:</p> <ul style="list-style-type: none"> <li>· Only 4 parking spaces which is appropriate for this location which has great public transport connectivity</li> <li>· Bike parking has been included</li> <li>· Great cross ventilation of all apartments</li> <li>· Northern orientation to all the apartments</li> </ul> <p>However, there are some things that could be improved:</p> <ul style="list-style-type: none"> <li>· Protection of the water way does not appear to have given enough space. Providing more space between the buildings to give the water way more protection will be a better outcome.</li> <li>· There is no rainwater tank or recycling of rainwater to the apartments. Could be connected to toilet flushing and/or laundry, or at the very least to the landscaping. This will avoid the need to provide washing machines and would allow better showerheads</li> <li>· Gas is a legacy asset given the move to electrification and net zero in the industry. Remove the gas and replace with electric systems</li> </ul> <p><b>Recommendations</b></p>

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	<p>12. Remove gas from the site - use induction cooktops and heat pump hot water systems</p> <p>13. Provide solar panels on the roof and direct connect to the apartments to offset their individual energy use</p> <p>14. Provide rainwater tanks connected to toilets and/or laundry</p> <p><b><u>PANEL CONCLUSION</u></b></p> <p><b>The Panel does not support the proposal in its current form. A complete redesign and substantial reduction in the floor area would be required to incorporate the recommendations of the panel.</b></p> <p>Planner Comments: The applicant has not responded with any changes to the proposal</p>
Building Assessment - Fire and Disability upgrades	<p><b>Supported - Subject to conditions</b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>
Environmental Health (Industrial)	<p><b>Supported - Subject to conditions</b></p> <p>This application is seeking consent for the construction of a residential flat building development containing 4 x 3 bedroom units with ground level car parking containing 4 x parking spaces.</p> <p>An acoustic report has been prepared which provides recommendations to address potential noise impacts. Suitable noise conditions will be applied. Environmental Health recommends approval subject to conditions.</p>
Landscape Officer	<p><b>Supported - Subject to conditions</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65); and the Apartment Design Guide (ADG),</li> <li>• Warringah Local Environmental Plan 2011 and the following Warringah</li> </ul>

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	<p>Development Control Plan 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting; E1 Preservation of Trees or Bushland Vegetation; D8 Privacy; D9 Building Bulk; D13 Front Fences and Front Walls.</p> <p>The Arboricultural Impact Assessment (AIA) identified 19 trees of which 10 trees (1, 4, 5, 6, 9, 10, 11, 17, 18 and 19) within the property boundaries are exempt and as such can be managed or removed at the discretion of the applicant without consent. Tree 6 has recently failed and fallen into the stormwater channel/creek. Tree 3 is located adjacent to the neighbouring wall which is shown to be retained. The existing hardstand adjacent to tree 3 will be removed and replaced with landscaped area and additionally the front building will be suspended above the existing ground level (as shown on East Elevation drawing A202). Tree 3 shall be retained and protected during the works. The removal of tree 4 shall be under supervision of the Project Arborist. Trees 7 and 8 will be impacted upslope in their structural root zones which has the potential to destabilise the trees, and as such should the application be approved in its current form their removal will be required. Section C (drawing A202) shows majority of the rear building suspended above the existing ground level which if constructed on piers may allow for the retention of tree 8. The base of tree 12 is approximately 2 metres from the existing dwelling which under Council's exempt tree circumstances, if within 2 metres, would be exempt. Tree 14 will be retained and trees 2, 13, 15 and 16 (outside the property boundaries) will be retained and must be protected during works.</p> <p>Landscape Referral supports Council's Biodiversity team regarding native species selections. Screen planting in side setbacks shall be installed in accordance with the requirements outlined in the conditions of consent. The Landscape Plan is referencing an Arborist Report from 2016 whereas tree 27 no longer exists and the available space can be used for native tree planting. Replacement tree planting shall be native and in accordance with the conditions of consent. All on slab landscaping shall meet the ADG minimum soil depth requirements.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported - subject to conditions</b></p> <p>The proposal has been assessed against Warringah DCP Clause E2 Prescribed Vegetation and part of Clause E6 Retaining Unique Environmental Features.</p> <p>Given the highly urbanised location of the site, it is unlikely to comprise part of a significant wildlife corridor. However, the waterway and associated stormwater infrastructure is likely to provide habitat for native wildlife, including water dragons and microbats. It is assumed that assessment of the proposal against flooding, riparian and stormwater management objectives will be addressed by the relevant referral bodies.</p> <p>Existing locally native canopy trees should be retained wherever possible, and this matter is deferred to the Landscape referrals team.</p> <p>Desktop assessment and a site inspection indicate that the majority of</p>

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	<p>existing vegetation on the site is composed of weedy and exotic species, with some locally native canopy trees remaining. In particular, the weed infestation in the north of the site is likely to be acting as a source of weed propagules encroaching into surrounding areas.</p> <p>As such, the Biodiversity referrals team can support the proposal, subject to conditions to:</p> <ul style="list-style-type: none"> <li>• control the extensive weed growth on site</li> <li>• provide replacement planting with appropriate locally native species</li> <li>• require pre-clearance surveys by a suitably qualified ecologist</li> <li>• provide microbat roosting habitat under the new footbridge; and</li> <li>• restrict artificial outdoor lighting.</li> </ul>
NECC (Development Engineering)	<p><b>Not Supported</b></p> <p>The proposed development is in Region 2. On-site detention is not required as the site is flood prone. A geotechnical report has been provided. I have reviewed the stormwater management and master plans. Concern is raised regarding the encroachment of the building envelope onto Council's drainage infrastructure, namely the open channel traversing the site. The following comments from Council's Stormwater Assets team are reproduced to guide the required amendments:</p> <ol style="list-style-type: none"> <li>1. All structures are to be located clear of any Council pipeline, pit, channel or easement and comply with minimum horizontal and vertical clearances. <u>The minimum vertical height shall be 5.0 metres and minimum horizontal clearance shall be a minimum of 3.0 metres or the pipe/channel diameter plus 2 metres.</u></li> <li>2. Sufficient vertical and horizontal clearance through the property to allow for machinery access to the public drainage system would also be required. The minimum vertical clearance shall be 3.5 metres and horizontal clearance shall be 3.5 metres on straight sections with increases provided as necessary on vertical and horizontal curves.</li> <li>3. To demonstrate compliance with Warringah Council's Development Control Plan 2011 and Northern Beaches Council's Water Management policy PL 850 Water (Section 6- Building Over or Adjacent to Council Drainage Systems and Easements), it is recommended that the following details are submitted with any application: <ul style="list-style-type: none"> <li>▪ Accurately locate, confirm dimensions including depth and plot to scale Council's public drainage system and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system should be provided);</li> <li>▪ If the applicant proposes to use a CCTV pipeline survey to confirm the location of the pipeline, it is recommended that the survey is carried out in accordance with Council's guideline attached;</li> </ul> </li> </ol>

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	<ul style="list-style-type: none"> <li>▪ All structures are to be located clear of any Council pipeline, pit or easement and comply with minimum vertical and horizontal clearances;</li> <li>▪ Footings of any structure adjacent to an easement, pipeline or channel are to be designed in accordance with the above-mentioned policy; and</li> <li>▪ Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance with Council's policy are to be submitted.</li> </ul> <p><b>4. Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specifications (Section 6):</b></p> <p><a href="https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/building-over-or-adjacent-constructed-council-drainage-systems-and-easements-technical-specification.pdf">https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/building-over-or-adjacent-constructed-council-drainage-systems-and-easements-technical-specification.pdf</a></p>
NECC (Flooding)	<p><b>Not Supported</b></p> <p>The development proposal is for construction of four residential units with ground level car parking. There are to be two built forms linked by a pedestrian bridge. Part of the proposed development is located over the top of the floodway and riparian vegetation which run through the middle of the property. There is a large waterfall in the middle of the property.</p> <p>The flood affectation on this property is high hazard, with a flood life hazard category of H6. The risk to property and risk to life is severe and Council must be certain that the site can be safely developed and therefore that the modelling is completely representative of all aspects of the post-development environment, prior to issuing consent.</p> <p>The Overland Flow Study (OFS) by Martens (Aug 2023) is based on results for the 1% AEP flood event from a TUFLOW hydraulic model prepared specifically for the DA. The PMF event was not modelled. The flow results were slightly higher than those from Council's SWMM hydraulic model, but it is expected that the TUFLOW model should be capable of more accurate results as it has higher resolution with a topographic grid of 0.5m, compared with 2m in Council's SWMM hydraulic model. It is also based on IFD data from AR&amp;R 2019 rather than from AR&amp;R 1987.</p> <p>The proposed development has been partially assessed against Clause 5.21 of the Warringah LEP and Part E11 of the Warringah DCP. Further information is required before it can be fully assessed.</p> <p>The proposed development does not comply with much of Clause 5.21 of the WLEP, including:</p> <p><i>'(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the</i></p>



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	<p><i>consent authority is satisfied the development -</i></p> <ul style="list-style-type: none"> <li><i>(a) is compatible with the flood function and behaviour on the land, and</i></li> <li><i>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</i></li> <li><i>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</i></li> <li><i>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</i></li> <li><i>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses'.</i></li> </ul> <p>The development does not comply with Controls E1 and A1 of Part E11 of the WDCP, which state that:</p> <p>E1: <i>'If the property is affected by a Flood Life Hazard Category of H3 or higher, then Control E1 applies and a Flood Emergency Assessment must be included in the Flood Management Report.</i></p> <p><i>If the property is affected by a Flood Life Hazard Category of H6, then development is not permitted unless it can be demonstrated to the satisfaction of the consent authority that the risk level on the property is or can be reduced to a level below H6 or its equivalent.</i></p> <p><i>Where flood-free evacuation above the Probable Maximum Flood level is not possible, new development must provide a shelter-in-place refuge where:</i></p> <ul style="list-style-type: none"> <li><i>a) The floor level is at or above the Probable Maximum Flood level; and</i></li> <li><i>b) The floor space provides at least 2m<sup>2</sup> per person where the flood duration is long (6 or more hours) in the Probable Maximum Flood event, or 1m<sup>2</sup> per person for less than 6 hours;</i></li> <li><i>c) It is intrinsically accessible to all people on the site, plainly evident, and self-directing, with sufficient capacity of access routes for all occupants without reliance on an elevator; and</i></li> <li><i>d) It must contain as a minimum: sufficient clean water for all occupants; portable radio with spare batteries; torch with spare batteries; and a first aid kit.'</i></li> </ul> <p>A1: <i>'Development shall not be approved unless it can be demonstrated in a Flood Management Report that it has been designed and can be constructed so that in all events up to the 1% AEP event:</i></p> <ul style="list-style-type: none"> <li><i>(a) There are no adverse impacts on flood levels or velocities caused by alterations to the flood conveyance; and</i></li> <li><i>(b) There are no adverse impacts on surrounding properties; and</i></li> <li><i>(c) It is sited to minimise exposure to flood hazard.</i></li> </ul> <p><i>Major developments and developments likely to have a significant impact on the PMF flood regime will need to demonstrate that there are no adverse impacts in the Probable Maximum Flood'.</i></p> <p>Adverse impacts are defined in Part A.8 of the WDCP, and mean that the proposed development:</p> <p><i>'Will result in less than 0.02m increase in the 1% AEP</i></p>

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	<p><i>Will result in less than a 0.05m increase in the PMF</i>  <i>Will result less than a 10% increase in PMF peak velocity</i>  <i>Will have no loss in flood storage or flood way in the 1% AEP'.</i></p> <p><u>Control E1</u>  Fig FL07 shows that for the proposed case, the southern building is located directly over the top of the H6 zone, with a support column located within the H6 zone itself. The H6 hazard zone is defined in AR&amp;R as "unsafe for vehicles and people. All building types considered vulnerable to failure". It would also have the potential to cause erosion, reduction in bank stability and destruction of riparian vegetation. The proposed development does not comply with Control E1 of the WDCP and Clause 5.21 of the WLEP. All buildings, including any support structures and earthworks, must be located outside of the H6 hazard zone.</p> <p>In addition, both buildings are affected by H3 and above and flood-free evacuation above the PMF is not possible, so appropriate shelter-in-place refuge must be available and accessible to all people on site. The OFS has not demonstrated that shelter-in-place refuge is available for the two lower units. It states that 'All proposed habitat building floor levels are above the 1% AEP flood level, and the higher floors are expected to be above the PMF level...Reliable access to the upper levels via internal stairs will be available if vertical evacuation is required'. A stairwell is not a suitable shelter-in-place refuge. The TUFLOW model has been created and the 1% AEP flood modelled, but there are no results for the PMF event so the PMF level is not known. The PMF event needs to be modelled, with results and mapping provided, and appropriate shelter-in-place refuge must be demonstrated and identified on the plans.</p> <p>Much of the property is affected by floodway. In order to assess compatibility with flood function, hydraulic category mapping for the 1% AEP event needs to be provided, along with an explanation of the methodology for mapping the floodway.</p> <p><u>Control A1</u>  Fig FL08 shows the water level afflux in the 1% AEP event for the proposed condition. Despite what is written in the text of the OFS, Fig FL08 shows that there are adverse impacts on both 29 Redman Rd and 25 Redman Rd. ie, there are areas on these properties where the water level would increase by more than 0.02m, and this is noncompliant with Control A1.</p> <p>Flood waters leaving the site have the potential to impact on the majority of the Dee Why CBD, and works on the site could potentially impact on flooding not just for neighbouring properties but also for many properties downstream. Mapping for water level afflux is required to be extended to at least as far down as 21 Redman Rd. Impact mapping is also required for the PMF event to demonstrate that there are no adverse impacts on other properties, ie that there are no increases in water level of more than 0.05m in the PMF and no increases in velocity of more than 10%.</p>

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	<p><u>Flood Modelling</u></p> <p>Clarification is required regarding the adopted level of blockage in the modelling. Blockage levels are important because they can impact the resultant flood levels and can make a difference to the adverse impact mapping. The methodology for determining blockage must be the same for both existing and proposed cases.</p> <p>For the existing case, "all pits and pipes in the study area have conservatively been assumed to be 50% blocked", and "conservative structure blockages of 50% were adopted for each" of the sections of the existing driveway crossings (OFS, S4.4.1). However for the proposed case, "Structure blockage of 10% was adopted as per the assessment procedure in Australian Rainfall and Runoff". It is unclear what blockage has been modelled for the driveway and culvert at the downstream end of the site. This should be 50% and needs to be specifically confirmed.</p> <p>It is noted that the derivation of blockage provided in Attachment D for the proposed front building assumes a Debris Mobility classification of Low, which results in a Debris Potential of Low and an inlet blockage of 0%. However, from Section 6.4.4.3 of AR&amp;R Book 6, it is considered that the Debris Mobility should be classified as Medium. The Low classification is for 'low rainfall intensities and large, flat source areas' with 'main debris source areas well away from streams', which is certainly not the case here. Based on this, the Debris Potential should then have been determined as Medium not Low, which would result in the inlet blockage being determined as 10% not 0%. The OFS states in Attachment D that it has 'conservatively adopted a 10% blockage' for the building, however this assessment does not consider 10% to be conservative, especially where there is not much height of open space below structures.</p> <p>Further explanation is required regarding the modelling of blockage. A sensitivity analysis should be undertaken for the 1% AEP and PMF events with blockage of 50% under all structures and for all drainage infrastructure. If the modelling of blockage is not considered to be satisfactory, re-modelling may be required.</p> <p>In addition to what is noted above, the following information is also required before the development can be further assessed.</p> <ul style="list-style-type: none"> <li>• Mapping for the adopted Manning's roughness values, for both existing and proposed cases.</li> <li>• Comment on the quality of the survey and creation of the DEM within the model, as there do not appear to be many individual elevation points on the survey. For instance, what detail was included in the creation of the DEM, how have terrain levels below the pool of water below the waterfall been modelled, how have the support columns been represented in the model, what dimensions have been modelled for drainage infrastructure, how has the buttressed flood wall along the western boundary of 25 Redman Rd been modelled, etc</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Comment on how the waterfall and sedimentation trapping pond and device have been modelled and the accuracy of the modelling in this vicinity.</li> <li>• Details of what landscaping has been included in the modelling, including any structures required for accessing the north of the creek for maintenance, etc.</li> <li>• Details of fencing, eg openings, levels, and how it has been modelled.</li> <li>• Details regarding whether all electrical components for the lifts are above the FPL.</li> </ul>
NECC (Riparian Lands and Creeks)	<p><b>Not Supported</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Protection of Waterways and Riparian Land Policy;</li> <li>• Northern Beaches Water Management for Development Policy (WM Policy), and;</li> <li>• Relevant LEP and DCP clauses;</li> </ul> <p>The development application seeks consent for construction of a multi-residential building.</p> <p>The proposed development is recommended for refusal on the basis that the development does not satisfy Council's planning controls, in particular:</p> <p><b>Protection of Waterway and Riparian Lands Policy</b></p> <p>Section 3.1 – Protection of Waterway and Riparian Land</p> <p>a) Natural ecological processes of waterways and riparian land shall be maintained and enhanced to the greatest extent possible by:</p> <ul style="list-style-type: none"> <li>• supporting natural flow regimes</li> <li>• minimising bank erosion and promoting naturalistic bank protection works when stabilisation is necessary (i.e. soft engineering outcomes);</li> <li>• preventing alteration of watercourses (includes piping, channelling, relocation or removal);</li> <li>• improving plant communities through natural area restoration;</li> </ul> <p>c) Piped or channelised watercourses shall be reinstated to more natural forms where possible.</p> <p>Section 3.2 – Protection of Life and Property</p> <p>a) Appropriate riparian setback distances shall be incorporated into new development to avoid damage to public and private property.</p> <p>b) Development shall be sited and designed to maintain the stability of watercourse bed and banks.</p> <p>c) Risks to life and property shall be minimised by observing floodplain development controls.</p> <p>Section 3.3 - Development</p> <p>d) Development within waterways and riparian land should be avoided. Where a waterway has not yet been identified on Council's Waterways and Riparian Land Map, the riparian land widths are to be applied from relevant</p>

Internal Referral Body	Comments
	<p>State guidelines. These can be found in Attachment 1.  A Waterway Impact Statement is to demonstrate to Council the development will either enhance, or as a minimum, will not adversely affect ecological function or limit opportunities to reinstate the area in the future to the greatest possible extent.</p> <p><b>Warringah Development Control Plan 2011</b>  Clause E8 - Waterways and Riparian Lands  Objectives</p> <ul style="list-style-type: none"> <li>• Protect, maintain and enhance the ecology and biodiversity of waterways and riparian land.</li> <li>• Encourage development to be located outside waterways and riparian land.</li> <li>• Avoid impacts that will result in an adverse change in watercourse or riparian land condition.</li> <li>• Minimise risk to life and property from stream bank erosion and flooding by incorporating appropriate controls and mitigation measures.</li> <li>• Maintain and improve access, amenity and scenic quality of waterways and riparian lands.</li> <li>• Development on waterways and riparian lands shall aim to return Group B and Group C creeks to a Group A standard (as described in Warringah Creek Management Study, 2004) through appropriate siting and development of development.</li> </ul> <p>Clause E6 - Retaining unique environmental features on site  Objectives  To conserve those parts of land which distinguish it from its surroundings.  Requirements  1. Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.  2. Development should respond to these features through location of structures, outlook, design and materials.</p> <p><b>Warringah Local Environmental Plan 2011</b>  clause 5.21 - Flood Planning  (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p> <p><b>Detailed Response</b></p> <p><b>Creek stability</b>  The proposed development is carrying a risk of creek bed and bank erosion in relation to:  <i>-Pile Locations</i>  The proposed piles in the main flood channel are respectively near the toe of the chute in the western corner, and in the centre of flow path.  The proposed two piles will impact the bed with a degree of erosion and associated scour holes. Debris are likely to accumulate on the piles with increased risk of obstruction, flow redirection and additional scouring at piles</p>

Internal Referral Body	Comments
	<p>foundation.</p> <p><i>-Engineered creek design</i></p> <p>The geotechnical report provided indicates that the structures footings will be under high hydraulic loading with consequently the need to engineer the creek channel.</p> <p>No creek design has been provided for assessment.</p> <p><b>Retaining unique environmental features on site</b></p> <p>The site features comprise the waterfall (bedrock steps) and natural pool (including the sediment deposit), which are considered unique environmental features within the Dee Why Lagoon Catchment.</p> <p>The following elements are impacting the general distinctive features of the site:</p> <ul style="list-style-type: none"> <li>- proposed building is covering a large part of the existing creek pool and channel;</li> <li>- piles are placed in the channel.</li> </ul> <p>The constructability and associated impact on the rock chute feature has not been adequately Assessed, including an access ramp to the Northern side that is likely required.</p> <p>A large section of the creek will be completely covered by the building. No solar access will be possible and no vegetation will be able to establish.</p> <p>Clause E6 of the WDCP2011 requires design solutions to be explored, including (relevant to the proposed development):</p> <ul style="list-style-type: none"> <li>• Choosing parts of the site to develop where features are not present;</li> <li>• Minimising on-site disturbance;</li> <li>• Locating buildings to take advantage of environmental features;</li> <li>• Utilising construction methods that limit impact on sloping/ difficult sites eg. pole construction;</li> <li>• Implementing a soil and water management plan to limit impact.</li> </ul> <p>It is considered that the proposed development has not adequately considered these design solutions to conserve and enhance the unique environmental feature.</p> <p><b>Protection of Life and Property</b></p> <p>The pedestrian bridge is located in a high vulnerability area with high flood levels, high velocities and high turbulences zone.</p> <p>Uncertainty remains on the flow impacts to the pedestrian crossing due to minimum clearance between the rock shelf and the crossing.</p> <p>Access for maintenance of the area under the building will extremely difficult with an increase risk of blockage and impacts on flow in a critical area.</p> <p>NECC Riparian Land and Creeks is not supporting the application for the following reasons:</p> <ul style="list-style-type: none"> <li>• Intensive engineered creek design will not be supported</li> <li>• Construction over the creek riparian corridor and instream features (creek energy dissipation pool) is not supported.</li> <li>• Proposed building A overhang and supporting piles are not supported.</li> </ul>

Internal Referral Body	Comments
NECC (Water Management)	<p><b>Supported - subject to conditions</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Relevant LEP and DCP clauses; and</li> <li>• Northern Beaches Water Management for Development Policy</li> </ul> <p>The development must install a filtration device that removes organic matter and coarse sediments from stormwater prior to discharge from the land. Water sensitive urban design measures must be integrated into the built form.</p> <p>NECC Water Management has no objection to the proposal, subject to conditions.</p>
Road Reserve	<p><b>Supported</b></p> <p>No objection to proposed driveway and pedestrian access proposal subject to assessment by Council's Development Engineering Team</p>
Traffic Engineer	<p><b>Not Supported</b></p> <p>The development proposes demolition of the existing dwelling on the site and construction of 4 x 3 bedroom apartments with offstreet parking for 4 vehicles and 4 bicycles.</p> <p>The following comments are made with respect to traffic and parking issues:</p> <p><u>Traffic Generation</u></p> <p>The development will result in increased numbers of vehicle movements to and from the property however as detailed in the traffic report lodged with the development application the net increase from the site will only equate to two vehicle trips in peak hours.</p> <p>This level of traffic generation will not impact significantly on the surrounding road network.</p> <p><u>Parking</u></p> <p>The property lies outside the Dee Why Town centre but within land surrounding the town centre that has an R3 medium density residential zoning. The applicable parking rates are therefore those apply to unit development under the Warringah DCP. i.e 1.5 spaces per dwelling for a 3</p>

Internal Referral Body	Comments
	<p>bedroom apartment with visitor parking required at a rate of 1 space per 5 apartments. The four units would therefore require 4 x 1.5 = 6 residential spaces and 1 visitor space, a total of 7 parking spaces. Even if parking rates for the Dee Why Town Centre were used the development would still require 5.6 residential spaces and 1 visitor space.</p> <p>The development proposal as it stands is therefore deficient in terms of its level of offstreet parking. Despite the proximity of the development to public transport on Pittwater Road (the development is sited 460-470 m from the north and southbound Dee Why B-Line bus stops). It is considered unlikely that all residents living in a 4 x 3 bedroom apartments would own only 1 vehicle and accordingly, the development would result in an intensification of on-street parking demands in the vicinity. This part of Dee Why already suffers from high parking occupancy with vacant unrestricted parking in Redman Road and Burne Ave often difficult to find.</p> <p>The development plans should be revised to provide additional off-street car parking to support the parking needs of the residents</p> <p>Under the Warringah DCP, the development also requires bicycle parking of 1 per dwelling plus 1 space for visitors i.e a total of 5 bicycle parking spaces. the developer only proposes 4 and is therefore deficient in terms of bicycle parking numbers as well.</p> <p>Although there is no requirement for motorcycle parking under the DCP. The provision of offstreet parking spaces for motorcycles should also be considered to provide for alternate modes of transport.</p> <p><u>Vehicle Access and carpark design</u></p> <p>The development plans show the property accessed from a single width driveway leading to a ground floor parking area. The parking area appears capable of allowing for the turning of parked vehicles to enable forwards entry and exit from the site via a 3 point turn however this should be confirmed by swept path plots for a B85 vehicle. Sightlines to and from vehicles entering and exiting the carpark will be good and noting the low number of vehicle movements a single width driveway is not opposed.</p> <p>The driveway is shown graded at 10.4% between the footpath and the carpark. As2890.1 clause 3.3 requires that the grade be no more than 5% across the property line and no more than 2.5% across the footpath. An amended driveway profile between the kerb alignment at the carpark shall be provided demonstrating compliance with the standard.</p>
Waste Officer	<p><b>Supported - subject to conditions</b></p> <p>Waste Management Comments Supported, subject to conditions.</p>



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. If approved, these recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

#### 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.

The proposed development is for the erection of a three (3) storey residential flat 'housing' development for the provisions of four (4) self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

## DESIGN REVIEW PANEL

Northern Beaches Council has an appointed *Design and Sustainability Advisory Panel* (DSAP). Please refer to the DSAP's comments and Council's response within the relevant section of this report.

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

#### Comment:

As detailed throughout this report, the subject site is heavily constrained due to natural environmental features and conditions, including a natural watercourse which traverses the site, high hazard flooding and the steep topography of the land. The proposed development does not appropriately respond to

the creekline that dissects the site, with unreasonable encroachment over and within the flow channel. Council's Flood Officer has also reviewed the proposal and is not satisfied that the development complies with relevant flood planning controls. As such, it is considered that the proposal does not reasonably respond to the environmental context of the site.

The proposed development is also non-compliant with a number of the key built form planning controls which guide the bulk and scale of the building and the desired future character of the area. The non-complaint building height, in conjunction with non-compliant front and side setbacks and side boundary envelope contribute to the excessive building bulk, particularly as viewed from the street and adjoining neighbours to the east. It is noted and acknowledged that the height, bulk and scale of the neighbour to the west is well above that of the the proposed development, however, this building has been built up slope of the site under a previous planning regime and is not considered a desirable element of the area's existing or future character.

On balance, the development it is considered to likely have a detrimental impact on the context and neighbourhood character, rather than protect or positively contribute to it. The proposal therefore fails to satisfy Principle 1.

## **Principle 2: Built Form and Scale**

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

### Comment:

As above, the proposed development is non-compliant with a number of the key built form planning controls which guide the bulk and scale of the building and the desired future character of the area. The non-complaint building height, in conjunction with non-compliant front and side setbacks and side boundary envelope contribute to the excessive building bulk, particularly as viewed from the street and adjoining neighbours to the east. Minimal attempt has been made to reduce the height and associated bulk of the upper floor by increasing/varying the side setbacks as the wall height increases. Additionally, the building facade fails to include varied building elements, detail and colour to provide visual interest and mitigate the bulk and scale of the built form. The development also provides insufficient setbacks and building separation, which limits the ability to provide adequate landscaping to mitigate bulk and scale of the proposed building and achieve the desired future character of the area.

For these reasons, in conjunction with those described elsewhere in this report, that the development fails Principle 2.

## **Principle 3: Density**

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

### Comment:

The internal amenity of each apartment and overall density of the site is considered acceptable.

#### **Principle 4: Sustainability**

*Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.*

##### Comment:

The layout of the building incorporates an acceptable degree of sustainability measures including solar access and cross-ventilation. The application is also supported by a BASIX Certificate.

However, the development does not incorporate rainwater tank or recycling of rainwater to the apartments. Furthermore, Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer have raised concerns with the potential impact of the development on Council's drainage infrastructure, namely the open channel traversing the site and associated stormwater impact. Additionally, the proposal has been reviewed by Council's Design and Sustainability Advisory Panel who have raised concerns with the the long-term durability of the materials proposed. The proposal therefore fails to satisfy Principle 4.

#### **Principle 5: Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.*

##### Comment:

While it is acknowledged that the proposal will comply with deep soil landscaping requirements, the nil setback of the "building A" to the western boundary and the 1.5m setback to the eastern boundary fails to provide suitable areas of deep soil landscaping to provide landscaping to offset the bulk and scale of the building as viewed from adjoining properties and the street. The reduced setback to the eastern side boundary also results in the removal of prescribed trees within this setback area, which would otherwise assist to minimise visual bulk and contributing to the landscape character of the streetscape if retained. The proposal therefore fails to satisfy Principle 5.

#### **Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*

*Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.*

##### Comment:

Internals of the development site amenity is deemed to be high by the size of apartments and their solar access and cross ventilation. However, amenity for the adjacent site to the east (No.27 Redman Road) is compromised by the footprint, height and projection of the building (particularly adjacent to the eastern boundary).

Given the impacts to amenity for adjacent buildings, the proposal is considered to fail Principle 6.

#### **Principle 7: Safety**

*Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.*

##### Comment:

The proposal is not considered to detract from public safety and satisfies Principle 7.

#### **Principle 8: Housing Diversity and Social Interaction**

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.*

##### Comment:

All the apartments within the development are proposed to be three-bedroom and the proposal does not include a mix of apartment types. The apartments proposed are large in size and the additional floor area contributes to additional building bulk. Therefore, the proposal fails Principle 8.

#### **Principle 9: Aesthetics**

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.*

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

##### Comment:

The proposal has been reviewed by Council's Design and Sustainability Advisory Panel who specified the following:

*"The façade treatment based on a rendered finish in a light colour with a graphic pattern unrelated to its context is not supported due to the natural setting and the long-term durability of light painted renders. Cement render and paint finish is not recommended"*

Additionally, the facade fails to include varied building elements, detail and colour to provide visual

interest and mitigate the bulk and scale of the built form. Therefore, the proposal fails Principle 9.

### APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<p><b>Inconsistent</b></p> <p>The proposed development is not considered to appropriately respond to the watercourse that dissects the site, with unreasonable encroachment over and within the flow channel.</p> <p>Additionally, the proposal does not comply with building height, side boundary envelope, and front and side setbacks.</p>
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p><b>Inconsistent</b></p> <p>The site has optimal orientation to achieve full compliance with the ADG sunlight requirements for the units within the development.</p> <p>However, the development does not optimise solar access for the adjoining neighbours to the east (No.25 Redman Road). See discussion below.</p>
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<b>Consistent</b>
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>Communal open space has a minimum area equal to 25% of the site</li> </ol>	<p><b>Inconsistent - However acceptable</b></p> <p>The proposal does not provide any communal open space. However, this is acceptable given the</p>

	2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	constraints of the site and limited number of apartments proposed.												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<b>Consistent</b>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Inconsistent</b></p> <p>The proposal does not meet the building separation requirements from adjoining neighbours, with habitable rooms and balconies being located within 3m of side boundaries. However, the development incorporates privacy screening, window treatment (frosted glazing and narrow windows) and offset positioning of balconies and windows to mitigate from unreasonable privacy impacts to adjoining neighbours.</p> <p>As discussed within the DSAP referral response, the separation between building modules on the site is approximately 10.5m and does not comply with the</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		required 12m separation. Under ADG 2F gallery access should be treated as habitable space with separation measured from the exterior edge of the circulation space. As such, the separation between buildings requires appropriately designed privacy screening to the lift lobby and stairs to be acceptable. If the application were approved, this could be conditioned.
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<b>Consistent</b>
<b>Vehicle Access</b>	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	<b>Consistent</b>
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><b>Inconsistent</b></p> <p>Council's Traffic Engineers have reviewed the proposal and are not satisfied that the development provides an adequate number of parking spaces to support the development.</p>
<b>Part 4 Designing the Building</b>		



Amenity												
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"><li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li></ul>	Consistent										
	<ul style="list-style-type: none"><li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li></ul>	Consistent										
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li></ul>	Consistent										
	<ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>	Consistent										
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	Consistent
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	<table><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
<b>Apartment Size and Layout</b>	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<b>Consistent</b>
	Apartment type	Minimum internal area										
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	2 bedroom	70m <sup>2</sup>										
	3 bedroom	90m <sup>2</sup>										
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	<b>Consistent</b>										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<b>Consistent</b>										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<b>Consistent</b>										
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	<b>Consistent</b>										
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	<b>Consistent</b>											
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>3.6m for studio and 1 bedroom apartments</li><li>4m for 2 and 3 bedroom apartments</li></ul>	<b>Consistent</b>											
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	<b>Consistent</b>											

<b>Private Open Space and Balconies</b>	All apartments are required to have primary balconies as follows:	<b>Consistent</b>															
	<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table>		Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m
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	1 bedroom apartments		8m <sup>2</sup>	2m													
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	<b>Consistent</b>																
<b>Common Circulation and Spaces</b>	The maximum number of apartments off a circulation core on a single level is eight.	<b>Consistent</b>															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
<b>Storage</b>	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	<b>Consistent</b>															
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>					
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2 bedroom apartments	8m <sup>2</sup>																
3+ bedroom apartments	10m <sup>2</sup>																
At least 50% of the required storage is to be located within the apartment.																	
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<b>Consistent</b>															
		An acoustic report has been prepared which provides recommendations to address potential noise impacts. If approved, suitable noise conditions will be applied. Council's Environmental Health Officer has reviewed the proposal and															

		recommends approval subject to conditions.
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<b>Consistent</b>
<b>Configuration</b>		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<b>Inconsistent</b> All the apartments within the development are proposed to be three-bedroom and the proposal does not include a mix of apartment types. The apartments proposed are large in size and the additional floor area contributes to additional building bulk and associated amenity issues to adjoining neighbours.
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>Consistent</b>
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Inconsistent</b> The proposal has been reviewed by Council's Design and Sustainability Advisory Panel who specified the following: <i>"The façade treatment based on a rendered finish in a light colour with a graphic pattern unrelated to its context is not supported due to the natural setting and the long-term durability of light painted renders. Cement render and paint finish is not recommended"</i>  Additionally, the front (street facing) facade fails to include varied building elements, detail and colour to provide visual interest and mitigate the bulk and scale of the built form.
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.	<b>Consistent</b>

	Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.																					
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Inconsistent</b> While it is acknowledged that the proposal will comply with deep soil landscaping requirements, the nil setback of the "building A" to the western boundary and the 1.5m setback to the eastern boundary fails to provide suitable areas of deep soil landscaping to provide suitable planting to offset the bulk and scale of the building as viewed from adjoining properties and the street. The reduced setback to the eastern side boundary also results in the removal of prescribed trees within this setback area, which would otherwise assist to minimise visual bulk and contributing to the landscape character of the streetscape.																				
Planting on Structures	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	<b>Consistent</b> This matter has been reviewed by Council's Landscape Officer who has specified this matter may be conditioned if the application were approved.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																		
Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent																		
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Shrubs			500-600mm																			
Ground Cover			300-450mm																			
Turf			200mm																			
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	<b>Consistent</b> The application is accompanied by a access report which confirms compliance.																				
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A																				
<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	N/A																				
<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.	N/A																				
<b>Performance</b>																						
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b>																				
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Inconsistent</b> The application includes no rainwater tank or recycling of rainwater to the apartments. Furthermore, Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer have raised concerns with the potential impact of the development on Council's drainage infrastructure, namely the open channel traversing the site and associated stomwater impacts.																				

		Comments from Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer are provided in full above in section 'Internal Referrals'.
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>Consistent</b>
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Inconsistent</b> The proposal has been reviewed by Council's Design and Sustainability Advisory Panel who specified the following: <i>"The façade treatment based on a rendered finish in a light colour with a graphic pattern unrelated to its context is not supported due to the natural setting and the long-term durability of light painted renders. Cement render and paint finish is not recommended"</i>

### **Objective 3B-2 Overshadowing to Neighbouring Properties**

The ADG requires that adjoining properties receive a minimum of 2 hours solar access to the private open space and glazed surface of living areas in accordance with 4A Solar and Daylight Access.

The application is accompanied by detailed 'sun view' diagrams which depict the adjoining residential flat building balconies and windows.

The site most affected by overshadowing with respect to the proposed development is the adjoining neighbour to the east (No.25 Redman Road). No.25 Redman Road consists of a part three, part four storey residential flat building comprising of 9 apartments. Apartment 1 (ground floor); Apartment 4 (first floor) and Apartment 7 (second floor) have south (front) facing balconies which acts as their principle private open space. These balconies currently receive direct solar access at 1pm, 2pm and 3pm. The application has not provided sufficient information to determine if these balconies receive solar access in the morning hours, as the solar access diagrams provided do not demonstrate overshadowing arising from the existing development to the east. However, it is anticipated that these balconies would not receive solar access in the morning hours, given the location of the adjoining development. The proposed development would result Apartment 1 (ground floor) of No.25 Redman Road receiving no solar access and Apartment 4 (first floor) and Apartment 7 (second floor) receiving one hour of solar access at 1pm which fails to meet the 2 hour ADG requirement.

The eastern elevation of No.25 Redman Road also contains a number of windows which provide solar access the living areas to these neighbouring apartments. These windows currently receive a

minimum of 2 hours of solar access. The solar access diagrams provided do not give sufficient detail to calculate the full impacts of these windows. However, from the information provided it appears as though the proposed development would result in Apartment 1 (ground floor); Apartment 4 (first floor) and Apartments 7 (second floor) of No.25 Redman Road not receiving a minimum of 2 hours solar access to the glazed surface of living areas.

Overall, it is considered that the development has not been designed to maximise solar access for the adjoining apartments at No.25 Redman Road. The proposed development is non-compliant with a number of the key built form planning controls which guide the bulk and scale of the building in accordance with the requirements of the DCP/LEP and SEPP 65. The non-complaint building height, in conjunction with non-compliant side setbacks and side boundary envelope, particularly on the eastern elevation, contribute to the excessive building bulk and associated overshadowing impacts. Given the likely impacts are associated with built form non-compliance and noting the absence of necessary information, Council cannot support the proposed development with regard to potential unreasonable overshadowing of adjoining properties.

#### **STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT**

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

#### Comment:

The proposal fails to provide an adequate car parking as assessed by Council's traffic engineer.  
The application provides satisfactory internal area.  
The application provides a satisfactory ceiling height of 2.7m.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and



(b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

The application is recommended for refusal with regards to inconsistencies with the design criteria of the ADG, as discussed above.

**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 773053M\_04).

Should the development be approved, 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 being included on the development consent, should the development be approved.

**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.

**Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	13.2m	20%	No

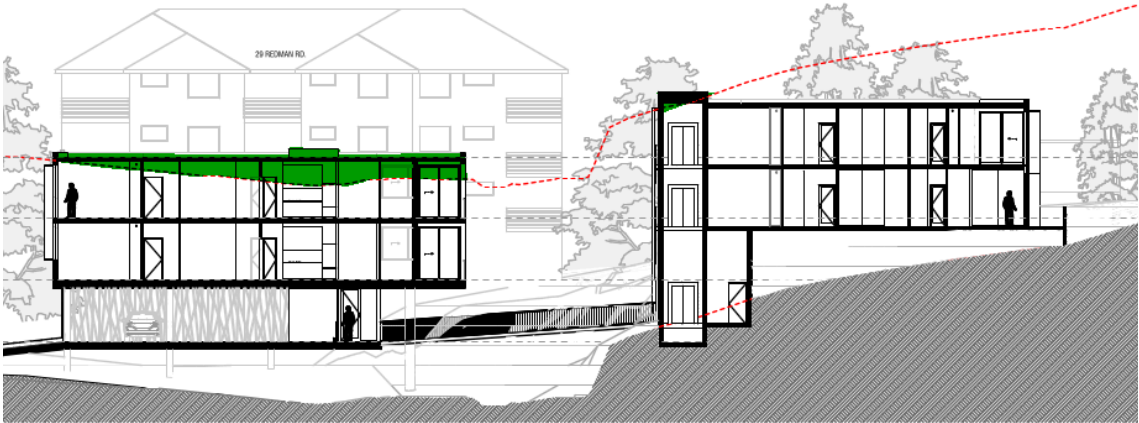
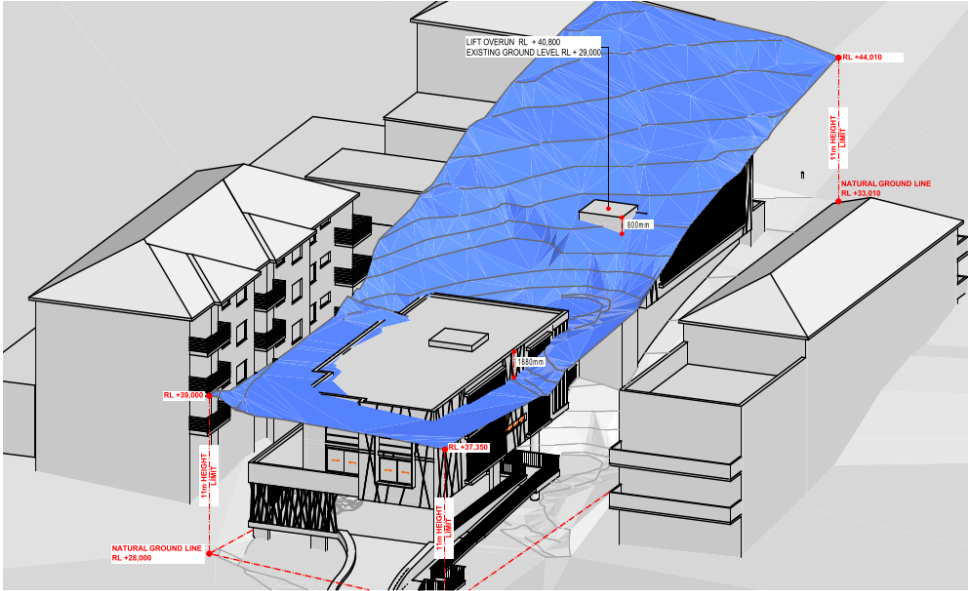
Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	No
6.2 Earthworks	No
6.4 Development on sloping land	No

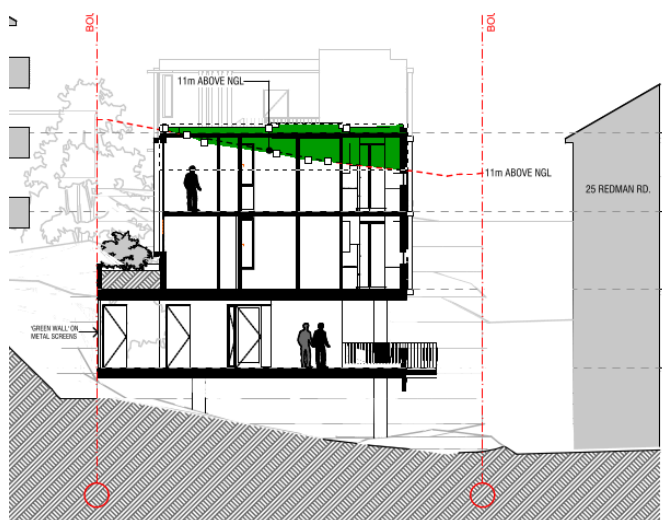
Detailed Assessment**4.3 Height of buildings**

The site is subject to a maximum building height of 11m pursuant to Clause 4.3 of the WLEP 2011.

When using survey levels, the proposal exceeds the maximum permitted building height, proposing a maximum height of 13.2m above existing ground level. This equates to a maximum variation of 20%. The non-compliance is demonstrated on the figures below:



Section C



**Figure 1** - Extract from proposed plans, long and cross section of building height plans and height blanket on 3D Model - Source Mackenzie Architects

#### 4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	13.2m
Percentage variation to requirement:	20%

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 judgements 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 not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written*

*request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

Applicants Written Request:

The applicants written request argues, in part:

1. *The variation is a result of an environmental constraint specific to the site – topography of the land and natural features, noting the site has a fall of approximately 9.1m from the rear boundary to the street frontage, and a cross fall of 4.95m from the central-west portion of the site to the central-east portion. The application seeks consent for a permissible form of development within the zone that is consistent with the envisioned form of development within the 11m height control which applies to the site – three storeys. It is submitted that the variation to the height standard is a result of providing an appropriate built form – three storeys that is compatible with surrounding development, whilst responding to the topography of the land*
2. *The variation to the maximum permissible building height results from the roof form and eastern roof parapet of the front building and lift overrun of the rear building on the site. These elements do not result in any material environmental impacts beyond that of a compliant development. Dickson C confirmed in WZSydney Pty Ltd v Ku-ring-gai Municipal Council (Paragraph 78) that the avoidance of impacts is an environmental planning ground as it promotes ‘good design and amenity of the built environment’ being an objective of the EPA Act.*

*In this instance, the variation is the result of building elements which are located above the lowest sloping portions of the site including a riparian corridor, noting a three storey form would otherwise be able to be contained within an 11m height plane on a flat site. The variation to the height limit does not contribute to additional bulk and scale noting the lift overrun and roof form of the central building sit below the maximum height of the adjoining properties and will not*

*visually dominate the surrounding development or the streetscape.*

3. *The overall height and scale of the development is consistent with that anticipated by the planning controls for the site, and the proposed building scale – three storeys does not result in a building appearance that is incompatible with the development context of the site or the locality. The resultant building form is suitable for the subject site based on what is envisioned by the Warringah LEP 2011 in providing a residential flat building in a medium density zone, and is also compatible with the planning objectives and intended outcomes of the objectives of the R3 Medium Density Residential zone.*
4. *The variation is partly the result of a lift overrun which is required to provide equitable access to all levels of the development. As such, the height variation measured to the lift overruns is a result of the function of the use – residential flat building being a permissible land use within the zone.*
5. *The development is for a residential flat building development containing 4 x dwellings and achieves the relevant aims of the Warringah LEP 2011 as follows:*
  - o 1.2.2(b) & (c) – The proposed variation allows for a development which will contribute to a range of housing to meet the needs of the residents of Dee Why. The proposed 3 bedroom and 3 bedroom + study units will contribute to unit stock within the vicinity of the Dee Why Local Centre and will serve to meet the housing needs of varying demographics within the area.*
  - o 1.2.2(d) – The proposed development will enhance the residential use of the R3 Medium Density Residential zone through the infill development of a remnant lot within the zone that is within close proximity to public transport and nearby employment centres. The proposal is compatible with neighbouring properties with respect to bulk, scale and appearance and will contribute to a historically underrepresented housing stock within unit development – 3 bedroom apartments.*
  - o 1.2.2(f) – The development has been designed in response to the environmental features of the land – riparian corridor and site topography and will not have a significant adverse impact upon the environmental quality of the locality.*

Assessment Officers Comments:

It is noted and acknowledged that the site has environmental constraints specific to the site, notably the topography of the land, flood impacts and natural features including a natural watercourse, which may warrant a minor variation to building height. However, the location and extent of the height variation proposed is not supported for the following reasons:

- The largest extent of building height variation occurs across the eastern section of the southern (front) building. This area of building would not comply with Warringah DCP controls, notably side boundary setback, front boundary setback and side boundary envelope requirements. As such, the height and scale of the development is inconsistent with that anticipated by the planning controls for the site.
- The non-complaint height, in conjunction with non-compliant side setbacks and side boundary envelope contribute to the excessive building bulk. Minimal attempt has been made to reduce the height and associated bulk of the upper floor by increasing/varying the side setbacks as the wall height increases.
- The proposed development does not provide sufficient building separation in accordance with the Apartment Design Guidelines or comprise of a landscaping scheme that will provide appropriate canopy tree planting around the building to mitigate bulk and scale.
- The largest area of proposed building height variation occurs across the eastern section of the southern building. The adjacent building to the east (No.25 Redman Road) is setback

approximately 16m from the front boundary and the front (southernmost) section of this building has a roof height of RL34.62. As such, the proposed area of height noncompliance would extend substantially forward of No.25 Redman Road and would be located approximately 2.5m above the roof of the southernmost section of this neighbouring development. Therefore, it is considered the location and extent of height non-compliance is incompatible with neighbouring properties with respect to bulk, scale and appearance. It is noted and acknowledged that the neighbour to the west is located above the proposed development, however, this is built up slope of the site under a previous planning regime and is not considered a desirable element of the area's existing or future character.

- As discussed in detail under the SEPP 65 Section and D6 Access to Sunlight of WDCP within this report, the proposal results in unacceptable solar access impacts to the adjoining neighbour at No.25 Redman Road. These impacts are exacerbated by the non-compliant building height.

In this regard, the applicant's written request has not demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying does not satisfy cls 1.3 (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential 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 WLEP 2011 are:

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

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

#### Comment:

The largest area of proposed building height variation occurs along the eastern section of the



southern building. The adjacent building to the east (No.25 Redman Road) is setback approximately 16m from the front boundary and the front (southernmost) section of this neighbouring building has a roof height of RL34.62. As such, the proposed area of height noncompliance would extent substantially forward of No.25 Redman Road and would be located approximately 2.5m above the roof of the southernmost section of this neighbouring development. Therefore, it is considered the location and extent of height non-compliance is incompatible with neighbouring properties with respect to bulk, scale and appearance. It is noted and acknowledged that the neighbour to the west is located above the proposed development, however, this is built up slope of the site under a previous planning regime and is not considered a desirable outcome to emulate.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

As discussed in detail under the SEPP 65 Section and D6 Access to Sunlight of WDCP within this report, the proposal results in unacceptable solar access impacts to the adjoining neighbours at No.25 Redman Road. These impacts are exacerbated by the non-compliant building height. The proposal results in an unreasonable solar access impact and is therefore inconsistent with this objective. The proposed height non-compliance will not result in unreasonable privacy or view loss impacts.

*c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:

As mentioned above, the excessive bulk and scale of the proposal in conjunction with the proposed height breach will result in an adverse visual impact, which is considered to affect the scenic quality of Warringah's coastal and bush environments.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The non-complaint building height, in conjunction with non-compliant front and side setbacks and side boundary envelope contribute to building bulk and associated visual impacts when viewed from the street. Minimal attempt has been made to reduce the height and associated bulk of the upper floor to manage the visual impact of development when viewed from the street.

## **Zone objectives**

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposal is consistent with this objective as it provides for housing within the community, in a medium density environment. Consistent with the objective.

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

Comment:

All the apartments within the development are proposed to be three-bedroom and the proposal does not include a mix of apartment types. The units proposed are large in size and the additional floor area contributes to additional building bulk.

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

Comment:

Not applicable to this development.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

As detailed throughout this report, the development cannot supported due to potential impacts of the development on the riparian corridor which traverses the site. As such, the development will not be in harmony with the natural environment of the site. Furthermore, the proposal does not have sufficient landscape open space, particularly adjacent to the height non-compliance on the eastern boundary, to allow meaningful landscape planting to mitigate the visual impact of the height non-compliance.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The non-complaint building height, in conjunction with non-compliant front and side setbacks and side boundary envelope contribute to building bulk and associated visual impacts when viewed from the street. Minimal attempt has been made to reduce the height and associated bulk of the upper floor to manage the visual impact of development when viewed from the street. Additionally, the front (street) facade fails to include varied building elements, detail and colour to provide visual interest to the public realm and mitigate the bulk and scale of the built form.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, 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 inconsistency of the variation to the objectives of the zone, the objectives of the development standard and the insufficient environmental planning grounds, the concurrence of the Secretary for the variation to the Height of buildings Development Standard may not be assumed by

the Local Planning Panel.

### 5.21 Flood planning

Council's flood officer undertook an assessment of the proposed development based on the flood information submitted with the development application. The information submitted with the application does not contain sufficient information for Council's flood officer to be satisfied the development complies with the requirements of Clause 5.21 of WLEP and would not have an adverse flood impacts. See detailed comments from Council's flood officer earlier within this assessment report.

This will form a reason for refusal of the application.

### 6.2 Earthworks

Clause 6.2 of WLEP 2011 requires the consent authority to have consideration of the following matters before granting consent for earthworks:

- (a) the likely disruption of, or any detrimental effect on, 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*
- (c) the quality of the fill or the soil to be excavated, or both*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*
- (e) the source of any fill material and the destination of any excavated material*
- (f) the likelihood of disturbing relics*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

The proposal involves earthworks along/within the watercourse that dissects the site. As addressed in more detail by the relevant referral bodies earlier in this report, the application has not demonstrated that these works will not unreasonably impact upon the watercourse or adjoining properties (with respect to flooding).

This will form a reason for refusal of the application.

### 6.4 Development on sloping land

Clause 6.4(3) of WLEP 2011 prescribes that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) the development will not impact on or affect the existing subsurface flow conditions.*

A "geotechnical desktop study" report has been prepared by JK GEOTECHNICS. This report addresses plans dated 30/09/2022. The plans with the Development Application are dated 07/07/2023. In this regard, there is a deficiency in the documentation.

Furthermore, the submitted geotechnical report specifies that the report only provides preliminary comments and recommendations based on a "desktop study" and that further geotechnical investigations are required. Given the sensitive nature and constraints of the site, a complete geotechnical investigation is required be carried out and submitted. As such, insufficient information has been provided to demonstrate compliance with this clause.

Moreover, Council's Development Engineer, Flood Engineer, and Riparian Lands and Creeks Officer have raised concerns with the impact of the development of Council's drainage infrastructure, namely the open channel traversing the site and associated stormwater impacts. Comments from Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer are provided in full above in section 'Internal Referrals'.

This will form a reason for refusal of the application.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of Storeys	3	3	N/A	Yes
B3 Side Boundary Envelope	5m (E)	Outside Envelope	N/A	No
	5m (W)	Outside Envelope	N/A	No
B5 Side Boundary Setbacks	4.5m (E)	1.8m – 3.8m (Ground floor) 2.7m – 3.6m (First Floor) 2.7m – 3.6m (Second floor)	60% (Max)	No
	4.5m (W)	Nil – 2.5m (Ground floor) 2.2m – 3.5m (First Floor) 2.2m - 3.5m (Second floor)	100% (Max)	No
B7 Front Boundary Setbacks	6.5m	5.5m	15%	No
B9 Rear Boundary Setbacks	6m	4.2m (rear courtyard) 6.0m (Building Facade)	30%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (369.3sqm)	41% (382sqm)	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	No	No
C7 Excavation and Landfill	No	No
C8 Demolition and Construction	No	No
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	No	No
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	No	No
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E8 Waterways and Riparian Lands	No	No
E10 Landslip Risk	No	No
E11 Flood Prone Land	No	No

Detailed Assessment

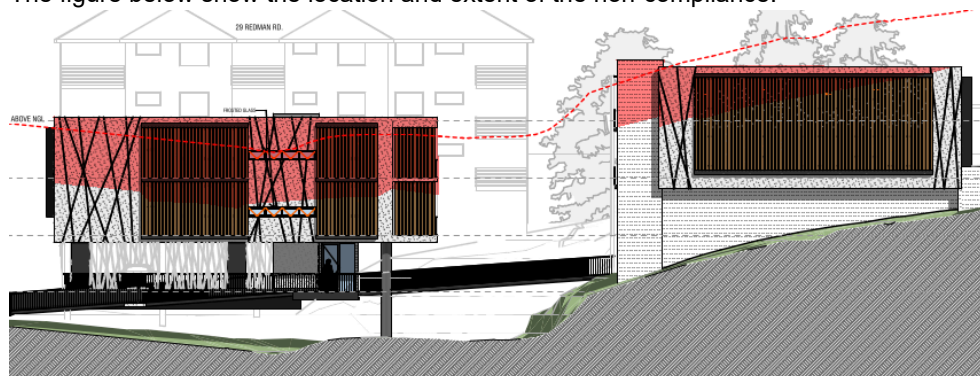
**B3 Side Boundary Envelope**

### Description of non-compliance

Clause B3 of Warringah Development Control Plan 2011 requires that buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5 metres above ground level (existing) at the side boundaries.

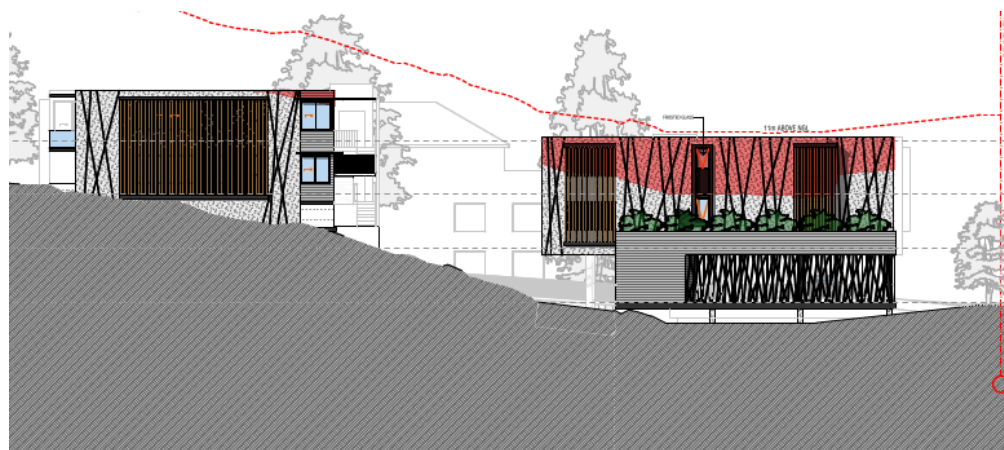
The proposal encroaches into the side boundary envelope along the eastern and western elevations as depicted in the figures below:

The figure below show the location and extent of the non-compliance.



East elevation

**Figure 1 - Envelope non-compliance eastern facade**



West elevation

**Figure 2 - Envelope non-compliance western facade**

### Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed development is non-compliant with a number of the key built form planning controls which guide the bulk and scale of the building in accordance with the requirements of the DCP/LEP and SEPP 65. The non-complaint building height, in conjunction with non-compliant side setbacks and side boundary envelope contribute to the excessive building bulk, particularly as viewed from the east. Minimal attempt has been made to reduce the height and associated bulk of the upper floor by increasing/varying the side setbacks as the wall height increases. The proposal as viewed from the east will result in unreasonable visual impact to No. 25 Redman Road and the streetscape in general.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The non-compliance with eastern side boundary envelope, will result in solar access impacts to the adjoining neighbour to the east (No.25 Redman Road). This matter has been discussed within *Clause D6 Access to Sunlight* and the ADG section of this report.

- *To ensure that development responds to the topography of the site.*

Comment:

The site has a cross-fall to the south and east. While it is noted that the proposed has been stepped down to accommodate the fall in the land to the south, the design of the development does not appropriately respond to the fall of the land to the east, which is evident from the substantial building envelope and height beach along the eastern elevation.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

## **B5 Side Boundary Setbacks**

### Description of non-compliance

The WDCP 2011 requires buildings be setback 4.5m from the side boundary. The WDCP 2011 requires side boundary setbacks to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.

The application proposes the following setbacks:

#### **East**

- 1.8m – 3.8m (Ground floor)
- 2.7m – 3.6m (First Floor)
- 2.7m – 3.6m (Second floor)

#### **West**

Nil – 2.5m (Ground floor)  
2.2m – 3.5m (First Floor)  
2.2m - 3.5m (Second floor)

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

While it is acknowledged that the proposal will comply with deep soil landscaping requirements, the nil setback of the proposed southern building ("building A") to the western boundary and the 1.5m setback to the eastern boundary fails to provide suitable areas of deep soil landscaping to provide landscaping to offset the bulk and scale of the building as viewed from adjoining properties and the street. The reduced setback to the eastern side boundary also results in the removal of prescribed trees within this setback area.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed development is non-compliant with a number of the key built form planning controls which guide the bulk and scale of the building in accordance with the requirements of the DCP/LEP and SEPP 65. The non-complaint building height, in conjunction with non-compliant side setbacks and side boundary envelope contribute to the excessive building bulk, particularly as viewed from the east. Minimal attempt has been made to reduce the height and associated bulk of the upper floor by increasing/varying the side setbacks as the wall height increases. The proposal as viewed from the east will result in unreasonable visual impact to No. 25 Redman Road and the streetscape in general.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The side setbacks are not progressively increased as wall height increases. The building design does not demonstrate adequate recessed elements and stepping-in along the upper storeys to provide adequate articulation that reduces visual bulk when viewed from adjacent land and the street. Additionally, the areas of the upper floor within the side setback will be above the prescribed building height and outside the prescribed building envelope which contribute to building bulk.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The non-compliance with eastern side setback, particularly the upper floors, will result in solar access impacts to the adjoining neighbours to the east (No.25 Redman Road). This matter has



been discussed within *Clause D6 Access to Sunlight* and the ADG section of this report.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposed non-compliance with the side setback control will not result in the unreasonable disruption of views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

### **B7 Front Boundary Setbacks**

Clause B7 of the WDCP requires development to be setback 6.5m from the front boundary. The proposed first and second floor of the development would have a 5.5m setback from the front boundary, which does not comply the requirements of this control.

It is considered the reduced setback of the upper floors, combined with the height and envelope non-compliance (as detailed elsewhere within this report) fail to meet the objectives of this control which seek to create a sense of openness; maintain the visual continuity and pattern of buildings and protect and enhance the visual quality of streetscapes.

This will form a reason for refusal of the application.

### **B9 Rear Boundary Setbacks**

The proposal involves a ground floor courtyard with a setback of 4.2m to the rear boundary. This does not comply with the requirement of 6.5m.

All other proposed works would meet the required 6.5m rear setback.

A detail merit assessment has been undertaken, and it is considered that the proposal meets the objectives of the control. As such, the proposed variation to the rear boundary setback is supportable in this circumstance.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposed development presents a compliant landscaped open space and sufficient landscaping is provided within the rear setback area.

- *To create a sense of openness in rear yards.*

Comment:

The rear of the site garden will remain predominately open. The courtyard area will be of minimal bulk.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The location of the courtyard is suitably offset from adjoining windows and private open space. Proposed screen planting will assist in retaining adequate privacy between neighbours.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The existing visual continuity and building pattern is not considered to be unreasonably impacted by the proposed courtyard.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The location of the courtyard is suitably offset from adjoining windows and private open space. Proposed screen planting will assist in retaining adequate privacy between neighbours.

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

## **C2 Traffic, Access and Safety**

As discussed in detail by Council's Traffic Engineer, the application has not demonstrated that the proposed driveway gradient and profile meets relevant Australian Standard.

Comments from Council's Traffic Engineer are provided in full above in section 'Internal Referrals'

This will form a reason for refusal of the application.

## **C3 Parking Facilities**

Council's Traffic Engineer (see referrals section of this report) has recommended refusal of the application based on inadequate parking being provided.

The applicable parking rates that apply to the development under the Warringah DCP are 1.5 spaces per dwelling for a 3 bedroom apartment with visitor parking required at a rate of 1 space per 5 apartments. The four apartments would therefore require 6 residential spaces and 1 visitor space, a total of 7 parking spaces. The proposal provides off-street parking for 4 vehicles.

The non-compliance with the minimum parking rate will result in unacceptable impacts to the on-street parking availability in surrounding streets. See detailed comments from Council's Traffic Engineer earlier within this assessment report.

This will form a reason for refusal of the application.

#### **C4 Stormwater**

Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer have raised concerns with the potential impact of the development on Council's drainage infrastructure, namely the open channel traversing the site and associated stormwater impacts. Comments from Council's Development Engineer, Riparian Lands and Creeks Officer and Flood Officer are provided in full above in section 'Internal Referrals'.

This will form a reason for refusal of the application.

#### **C6 Building over or adjacent to Constructed Council Drainage Easements**

Council's Development Engineer has reviewed the proposal and have raised concern regarding the encroachment of the building envelope onto Council's drainage infrastructure, namely the open channel traversing the site. Council's Development Engineer again is unable to support the proposed development due to non-compliances with Council's Building Over and Adjacent to Constructed Council Drainage Systems and Easements Technical Specification.

Comments from Council's Development Engineer are provided in full above in section 'Internal Referrals'

This will form a reason for refusal of the application.

#### **C7 Excavation and Landfill**

See clauses 6.2 (Earthworks) and 6.4 (Development on sloping land) of WLEP 2011 for further discussion in this regard.

#### **C8 Demolition and Construction**

Clause C8 requires the appropriate management of construction sites so that there is no unreasonable impact on the surrounding amenity, pedestrian or road safety, or the natural environment.

As outlined throughout this report, the subject site is heavily constrained due to the topography and natural watercourse (with associated rock shelves and waterfalls) traversing the site. The rear of the site is largely inaccessible due to these natural features. Insufficient details have been provided with the application in relation to construction and demolition processes to address these natural constraints and to mitigate construction risks.

Accordingly, the proposed development cannot comply with the underlying objectives of the control and therefore cannot be supported on this basis.

This will form a reason for refusal of the application.

#### **D6 Access to Sunlight**

Description of Non-compliance

The Warringah DCP 2011 requires 3 hours of solar access to be retained to 50% of the required private open space areas of the adjoining dwellings.

The applicant has prepared "eye of the sun" diagrams to assist with the assessment of solar access.

The site most affected by overshadowing with respect to the proposed development is the adjoining neighbours to the east (No.25 Redman Road). No.25 Redman Road consists of a part three, part four storey residential flat building comprising of 9 apartments. Apartment 1 (ground floor); Apartment 4 (first floor) and Apartment 7 (second floor) have south (front) facing balconies which act as their principle private open space. These balconies currently receive direct solar access at 1pm, 2pm and 3pm. The application has not provided sufficient information to determine if these balconies receive solar access in the morning hours, as the solar access diagrams provided do not demonstrate overshadowing arising from existing development to the east. However, it is anticipated the these balconies would not receive a minimum of 50% solar access in the morning hours, given the location of adjoining development.

The proposed development would result Apartment 1 (ground floor) of No.25 Redman Road receiving no solar access and Apartment 4 (first floor) and Apartment 7 (second floor) receiving one hour of solar access at 1pm. However, the solar access received would be to less than 50% of the private open space.

It is also of note that the proposal will reduce solar access to the eastern facing living room windows of the ground and first floor apartments of No.25 Redman Road to less than 2 hours.

**Merit Consideration**

Overall, it is considered that the development has not been designed to maximise solar access for the adjoining apartments at No.25 Redman Road. The proposed development is non-compliant with a number of the key built form planning controls which guide the bulk and scale of the building in accordance with the requirements of the DCP/LEP and SEPP 65. The non-complaint building height, in conjunction with non-compliant side setbacks and side boundary envelope, particularly on the eastern elevation, contribute to the excessive building bulk and associated overshadowing impacts. This is not considered to meet the objectives of this control which seek to ensure that reasonable access to sunlight is maintained to adjoining properties and development is designed to mitigate solar access impacts. Given the likely impacts are associated with multiple areas of built form non-compliance, and noting the absence of necessary information, Council cannot support the proposed development with regard to potential unreasonable overshadowing of adjoining properties.

This will form a reason of for refusal of the application.

**D8 Privacy**

The proposed development incorporates privacy screening, window treatment (frosted glazing and narrow windows) and offset positioning of balconies and windows to mitigate from privacy impacts to adjoining neighbours.

As discussed within the DSAP referral response, the separation between buildings within the site is approximately 10.5m and does not comply with the required 12m separation. Under ADG 2F gallery access should be treated as habitable space with separation measured from the exterior edge of the circulation space. As such, the separation between buildings requires appropriately designed privacy screening to the lift lobby and stairs to be acceptable. If the application were approved, this could be conditioned.

## D9 Building Bulk

Clause D11 of the WDCP requires good design and innovative architecture to minimise the visual impact of development when viewed from adjoining properties and the street. The proposed development, particularly on the eastern elevation, is not considered to meet the requirements or objectives of this control, which seeks to minimise the visual impact of development.

The proposed development is non-compliant with a number of the key built form planning controls which guide the bulk and scale of the building in accordance with the requirements of the DCP/LEP and SEPP 65. The non-complaint building height, in conjunction with non-compliant side setbacks and side boundary envelope contribute to the excessive building bulk, particularly as viewed from the east. Minimal attempt has been made to reduce the height and associated bulk of the upper floor by increasing/varying the side setbacks as the wall height increases. The proposal, as viewed from the east, will result in unreasonable visual impact to No. 25 Redman Road and the streetscape in general.

Specifically, the proposal is not considered to meet the following requirements of this control:

- Side setbacks are to be progressively increased as wall height increases.
- Use colour, materials and surface treatment to reduce building bulk
- Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.
- Articulate walls to reduce building mass.
- Landscape plantings are to be provided to reduce the visual bulk of new building and works.

This will form a reason for refusal of the application.

## D10 Building Colours and Materials

Clause D10 requires that the colours and materials of development on sites adjoining, or in close proximity to, bushland areas, waterways or the beach must blend into the natural landscape. As discussed within the DSAP Referral, the use of natural materials that blend with the colours and textures of the natural landscape should be provided, given the natural context and features of the of the site.

The proposal includes the use of white render on the southern (street facing) building which will fail to minimise the visual impact of the proposal and blend into the natural landscape. DSAP has made the following comments on the proposed colours and materials:

*"The façade treatment based on a rendered finish in a light colour with a graphic pattern unrelated to its context is not supported due to the natural setting and the long-term durability of light painted renders. Cement render and paint finish is not recommended. Materials that mimic natural materials such as fake wood grain on aluminium are not encouraged."*

*"The use of natural materials that blend with the colours and textures of the natural landscape should be provided. Materials will integral finishes such as face brick, prefinished, integral colour square edged, compressed fibre cement (CFC) panels, metal cladding including zinc and copper panels or integrally coloured acrylic textured coatings with longer term warranties are options to be considered."*

### **E1 Preservation of Trees or Bushland Vegetation**

The proposed development seeks to remove 5 trees which have been identified as medium retention significance within the Arboricultural Impact Assessment Report provided (identified as trees 3, 7, 8 & 12).

Trees 3, 7 and 8 are located within the side eastern side setback and may otherwise be retained if the development was sited in accordance with the the side setback control required by Clause B5 of WDCP. As discussed within the DSAP and landscape officer referral, and increased setback and elevated/offset structures may allow for the allow for the retention of these trees. Therefore, the proposal has not been sited and designed to minimise the impact on remnant native vegetation and as such, the proposal is considered to be inconsistent with the requirements this control

### **E6 Retaining unique environmental features**

Clause E6 of WDCP 2011 requires development to be designed to address any distinctive environmental features of the site and on adjoining nearby land and that development should respond to such features through location of structures, outlook, design and materials. The site contains a unique environmental feature in terms of a natural watercourse with rock shelves, waterfalls and rock pools.

The proposed development is not considered to appropriately respond to the watercourse that dissects the site, with unreasonable encroachment over and within the flow channel. The proposal has been reviewed by Council's Riparian Lands and Creeks Officer who has raised concerns that the the following elements of the development will impact the following general distinctive features of the site:

- The proposed building is covering a large part of the existing creek pool and channel;
- Piles are proposed in the channel.
- A large section of the creek will be completely covered by the building. No solar access will be possible and no vegetation will be able to establish.

Additionally, the construction impacts on the rock chute feature has not been adequately assessed, including an access ramp to the northern side that is likely required.

Clause E6 of the WDCP2011 requires design solutions to be explored, including (relevant to the proposed development):

- Choosing parts of the site to develop where features are not present;
- Minimising on-site disturbance;
- Locating buildings to take advantage of environmental features;
- Utilising construction methods that limit impact on sloping/ difficult sites eg. pole construction;
- Implementing a soil and water management plan to limit impact.

It is considered that the proposed development has not adequately considered these design solutions to conserve and enhance the unique environmental features.

This will form a reason for refusal of the application.

### **E8 Waterways and Riparian Lands**

Clause E8 of WDCP 2011 requires the development to be designed in accordance with Council's *Protection of Waterway and Riparian Land Policy*. The proposal has been reviewed by Council's Riparian Lands and Creeks Officer who has advised the application cannot be supported, due to potential impacts of the development on the creek riparian corridor which traverses the site. In summary, the application is not supported for the following reasons:

- Intensive engineered creek design will not be supported
- Construction over the creek riparian corridor and instream features (creek energy dissipation pool) is not supported.
- Proposed building A overhang and supporting piles are not supported.

As such, the proposed development is inconsistent with the provisions of this policy that aim to ensure:

- that the natural characteristics of the waterway are maintained and enhanced, with the promotion of naturalistic bank protection works when stabilisation is required (ie: soft engineering outcomes),
- that new development is appropriately setback from the creekline, and
- that development within waterways and riparian land should be avoided.

Comments from Council's Riparian Lands and Creeks Officer are provided in full above in section 'Internal Referrals'

This will form a reason for refusal of the application.

### **E10 Landslip Risk**

The subject site is identified as being located within Area B of the Landslip Risk Map. As discussed throughout this report, the site also contains a significant riparian corridor (watercourse) running north-west to south-east located across the central portion of the site associated with a drainage / overland flow path (stormwater channel) and waterfall.

Clause E10 of WDCP requires that the applicant must demonstrate that:

1. The proposed development is justified in terms of geotechnical stability; and
2. Development must not cause detrimental impacts because of stormwater discharge from the land.
3. Development must not cause detrimental impact on the existing subsurface flow conditions including those of other properties.

A "geotechnical desktop study" report has been prepared by JK GEOTECHNICS. This report addresses plans dated 30/09/2022. The plans with the Development Application are dated 07/07/2023. In this regard, there is a deficiency in the documentation.

Furthermore, the submitted geotechnical report specifies that the report provides preliminary comments and recommendations based on a "desktop study" and that further geotechnical investigations are required. Given the sensitive nature and constraints of the site, a complete geotechnical investigation is required to be carried out and submitted. As such, insufficient information has been provided to demonstrate compliance with this clause.

This will form a reason for refusal of the application.

### **E11 Flood Prone Land**

Council's flood engineer has undertaken an assessment of the proposed development based on the flood information submitted with the development application. The information submitted with the application does not contain sufficient information for Council's flood engineer to be satisfied the development complies with the requirements of Clause E11 and the proposal does not demonstrate the development would not have an adverse flood impact. See detailed comments from Council's flood engineer earlier within this assessment report.

This will form a reason for refusal of the application.

### **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 \$30,815 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,081,476.

### **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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP



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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 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 application has been referred to the Northern Beaches Local Planning Panel as 18 submissions were received and the proposal involves a variation to the height of buildings development standard under WLEP 2011 in excess of 10%.

The complexities of developing this "sandwich site" as a residential flat building are significant in relation to the natural constraints on development. Nevertheless, it is accepted that it has some potential to be developed as a residential flat building, which is the highest use under the R3 Medium Density zoning of the site.

The subject site is heavily constrained due to some unique environmental features and site conditions that severely constrain the site planning for a residential flat building, including the watercourse that traverses the middle of the site, the high hazard flooding affectation and the steep topography of the land to the rear. This effectively splits the site into two parts, each of which has its own challenges for the architect, project planner and flooding engineer.

This report has provided a detailed assessment of the proposed development against the applicable environmental planning controls, and has found that, whilst there is some merit in the design and site planning approach, unfortunately in its current form, it is of a size, scale and density that is excessive, is not sufficiently site responsive, does not sufficiently comply with several critical planning controls and will have a detrimental impact on the natural environment and the amenity of adjoining properties.

The proposed development does not comply with building height, front and side setbacks and side boundary envelopes, which collectively contribute to an planning outcome which is unsatisfactory, as it reflects an excessive building bulk, excessive overshadowing and insufficient building separation, particularly as it relates to the eastern interface with the adjoining residential flat building.

The Clause 4.6 variation request in relation to building height is not considered to be well founded and is not supported.

On balance, the proposed development is an overdevelopment of the site and is recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all

processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/1128 for the Demolition works and construction of a Residential Flat Building on land at Lot 73 DP 7413,27 Redman Road, DEE WHY, for the reasons outlined as follows:

1. **1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.**

Particulars:

The proposed development breaches the maximum building height development standard and is inconsistent with the objectives of clause 4.3 of Warringah Local Environmental Plan 2011.

2. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.**

Particulars:

The applicant's written request under clause 4.6 of the WLEP 2011 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has not adequately addressed and demonstrated that:

- a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case;
- b) there are sufficient environmental planning grounds to justify the contraventions, and
- c) the proposed development will be in the public interest.

3. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.**

Particulars:

The proposal fails to protect residential amenity, has excessive building bulk and fails to manage environmental constraints.

4. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the R3 Medium Density Residential zone of the Warringah Local Environmental Plan 2011.**

Particulars:

The development has not been designed to be harmony with the natural environment of Warringah and does not have a high visual quality presentation to Redman Road.

5. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development.**

Particulars:

- i) The proposed development is not considered to satisfactorily meet the relevant Design Quality Principles of SEPP 65 as required by Clause 28(2) of the SEPP, in particular: Principle

1: Context and Neighbourhood Character; Principle 2: Built Form and Scale; Principle 4: Sustainability; Principle 5: Landscape; Principle 6: Amenity; Principle 8: Housing Diversity and Social Interaction and Principle 9: Aesthetics.

ii) In accordance with Clause 28(2)(c) of the SEPP 65, the development is inconsistent with the design criteria detailed in the Apartment Design Guide in particular: 3A (Site Analysis); 3B (Orientation); 3J (Bicycle and Car Parking); 4K (Apartment Mix); 4M (Facades); 4O (Landscape Design); 4V (Water Management and Conservation) and 4X (Building Maintenance).

**6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Warringah Local Environmental Plan 2011:**

- **Clause 5.21 Flood planning**
- **Clause 6.2 Earthworks**
- **Clause 6.4 Development on sloping land**

Particulars:

i) The proposed development has not been designed to mitigate flood impacts to the subject site and adjoining land. Additionally, the applicant has not provided sufficient information to enable a complete and proper assessment of the flood impacts on the site and adjoining properties.

ii) The applicant has not provided sufficient information for Council to be satisfied that the earthworks will not result in adverse impacts to the watercourse and drainage patterns on the site and the impacts on adjoining properties.

**7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the Warringah Development Control Plan:**

- **Clause B3 Side Boundary Envelope**
- **Clause B5 Side Boundary Setbacks**
- **Clause B7 Front Boundary Setbacks**
- **Clause D6 Access to Sunlight**
- **Clause D9 Building Bulk**
- **Clause D10 Building Colours and Materials**

Particulars:

i) The proposed development fails to meet the numerical requirements of the front boundary setback, side boundary setback and side boundary envelope controls. The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site.

ii) The proposed development presents unacceptable amenity impacts to adjoining properties by way of solar access impacts that arise because of the excessive bulk and scale of the proposal and numerical non-compliance with WDCP controls.

iii) The proposed development includes a façade treatment based on a rendered finish in a light colour with a graphic pattern which is unrelated to its context and natural setting.

**8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act**

**1979, the proposed development is inconsistent with the following provisions of the Warringah Development Control Plan:**

- **Clause C2 Traffic, Access and Safety**
- **Clause C3 Parking Facilities**

Particulars:

The proposed development does not provide a adequate number of off-street car and bicycle parking spaces. Additionally, the application has not demonstrated that the proposed driveway gradient and profile meets relevant Australian Standards.

**9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the Warringah Development Control Plan:**

- **Clause C4 Stormwater**
- **Clause C6 Building over or adjacent to Constructed Council Drainage Easements**
- **Clause C7 Excavation and Landfill**
- **Clause C8 Demolition and Construction**
- **Clause E1 Preservation of Trees or Bushland Vegetation**
- **Clause E6 Retaining unique environmental features**
- **Clause E8 Waterways and Riparian Lands**
- **Clause E10 Landslip Risk**
- **Clause E11 Flood Prone Land**

Particulars:

i) The proposed development does not appropriately respond to the watercourse and open water channel that dissects the site, with unreasonable encroachment over and within the flow channel.

ii) The proposed development has not been designed to appropriately mitigate flood impacts to the subject site and adjoining land. Additionally, the applicant has not provided sufficient information to enable a complete and proper assessment of the flood impacts on the site and adjoining properties.

iii) Insufficient details have been provided for Council to be satisfied that the development will not result in adverse impacts to the watercourse and drainage patterns on the site and the effects on adjoining properties.

iv) Insufficient details have been provided with the application in relation to construction and demolition processes to address natural constraints on the site and mitigate construction risks.

v) The proposed development seeks to remove three trees identified as medium retention significance located within the eastern side setback which may otherwise be retained if the development was sited in accordance with the the side setback control.

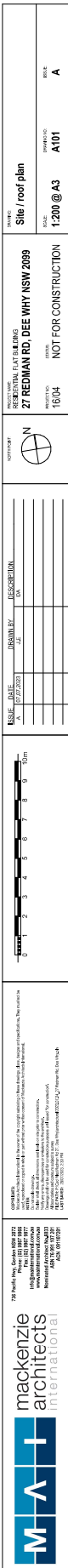
**10. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.**

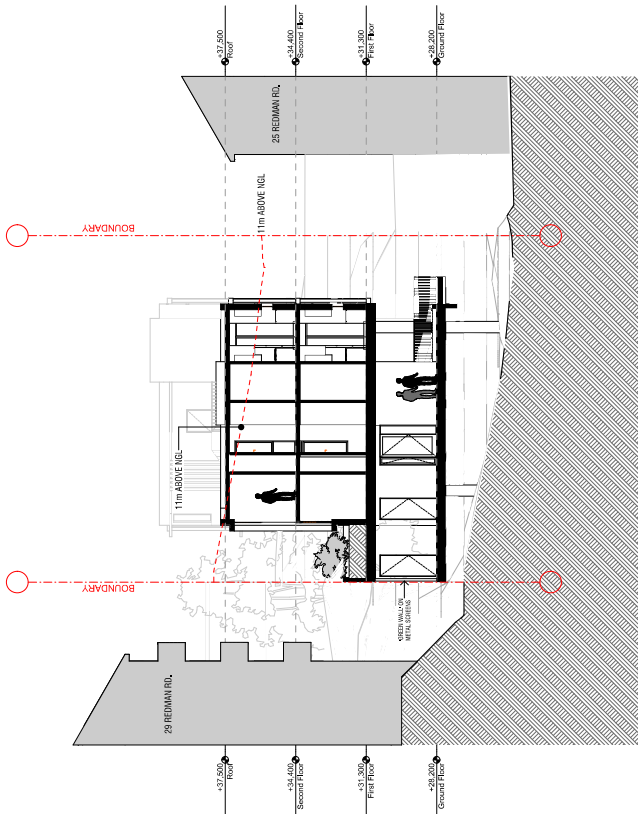
Particulars:

The proposed development is contrary to the provisions of relevant environmental planning instruments, development control plans and design guidelines. Notification of the development application has generated a number of submissions for residents in objection to the proposed development. The consent authority could not be satisfied that s.4.15(1)(e) of the Act has been

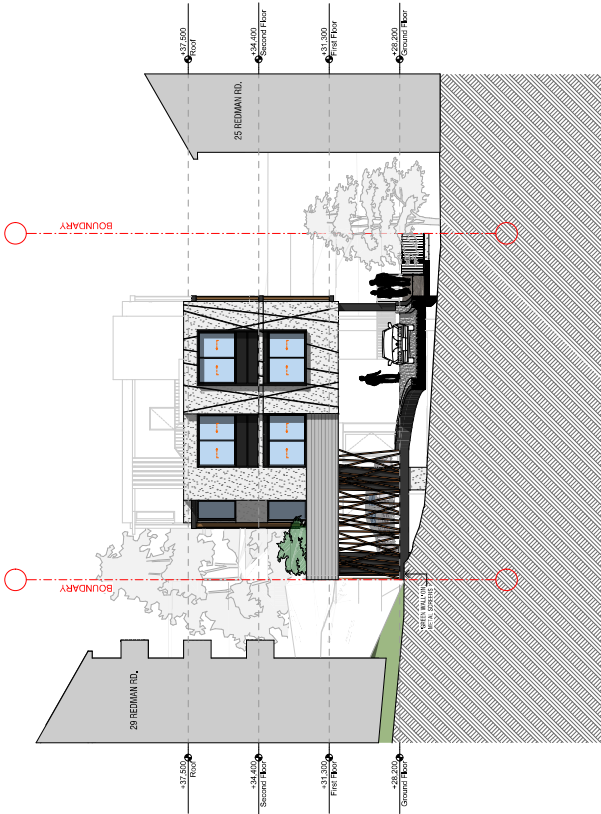
satisfied.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.






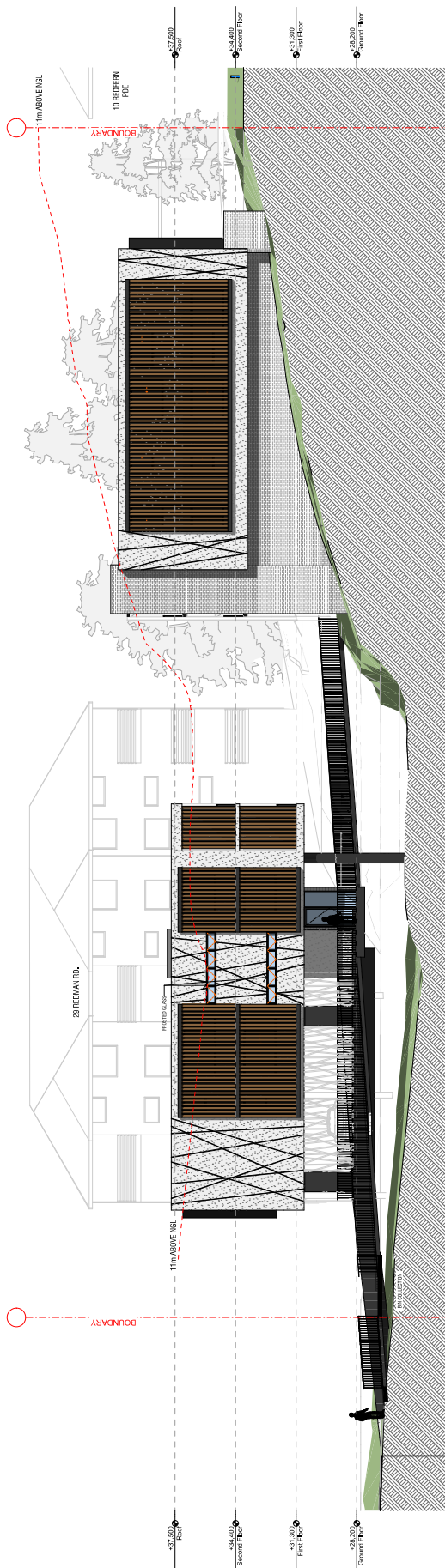
Section A



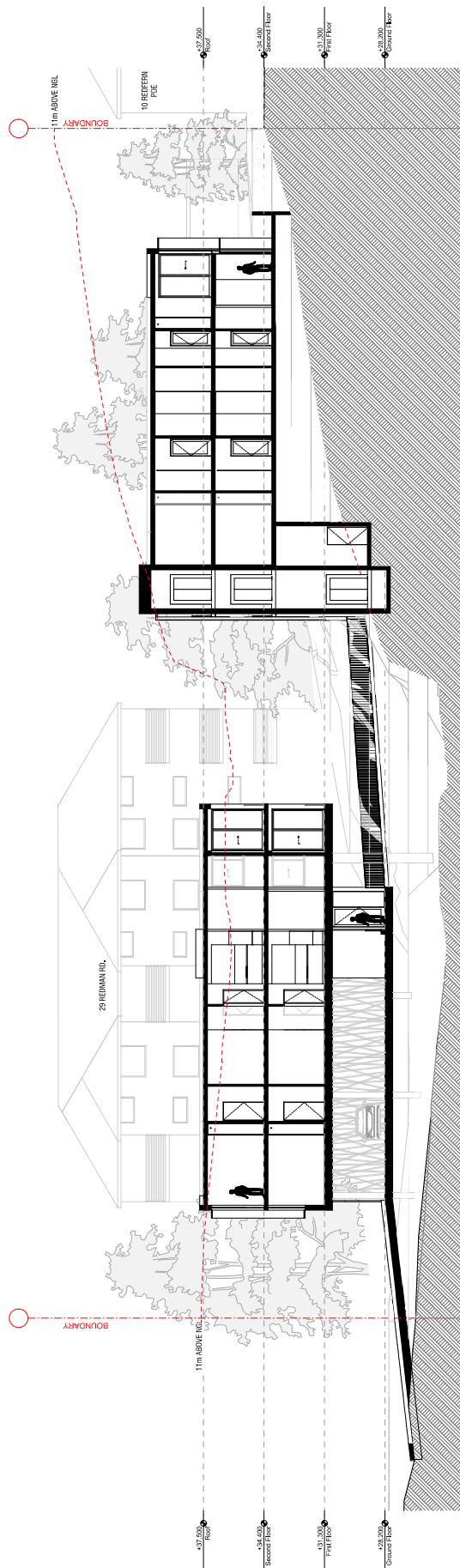
South elevation - street

	<p>150 Pacific Hwy, Suite 101, 1502 Sydney, NSW 1502 Tel: 02 9550 1234 Email: info@mackenziearchitects.com.au ABN 62 611 123 456</p>	<p>Consent to build This drawing is prepared for the purpose of obtaining consent to build. It is not to be used for any other purpose without the written consent of the architect. The architect is not responsible for the accuracy of the information provided in this drawing.</p>	<p>NAME: A/CL DATE: 12/12/2023 DESCRIPTION: 25 REDMAN RD. DEE WHY NSW 2099 PROJECT NO: 16/04 NOT FOR CONSTRUCTION</p>	<p>PROJECT NAME: 25 REDMAN RD. DEE WHY NSW 2099 PROJECT NO: 16/04 NOT FOR CONSTRUCTION</p>	<p>SCALE: 1:200 @ A3 DATE: A</p>



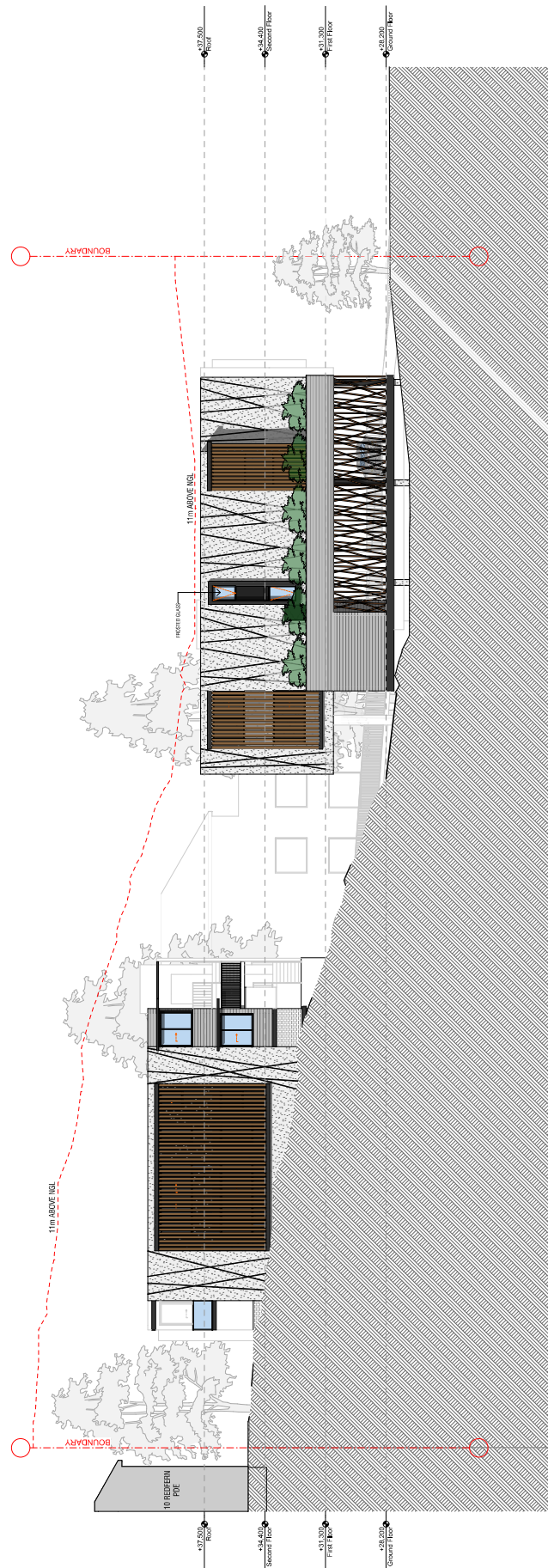


## East elevation



Section C

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West elevation

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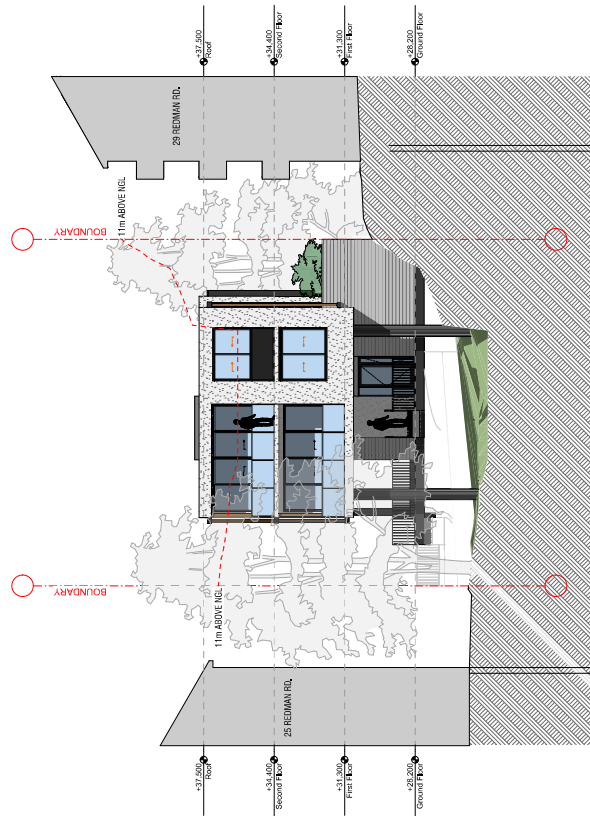


South elevation- rear block

[illegible]



North elevation- rear block



North elevation- front block

[illegible]



## **Chapman Planning Pty Ltd**

Suite 8/88 Mountain Street  
ULTIMO NSW 2007

Phone: 9560 1718  
[www.chapmanplanning.com.au](http://www.chapmanplanning.com.au)

27 July 2023

### **Clause 4.6 Variation to Development Standard**

**Property Description:** 27 Redman Road, Dee Why  
**Development:** Residential Flat Building development  
**Development Standard:** Clause 4.3(2) Height of Buildings – *Warringah LEP 2011*

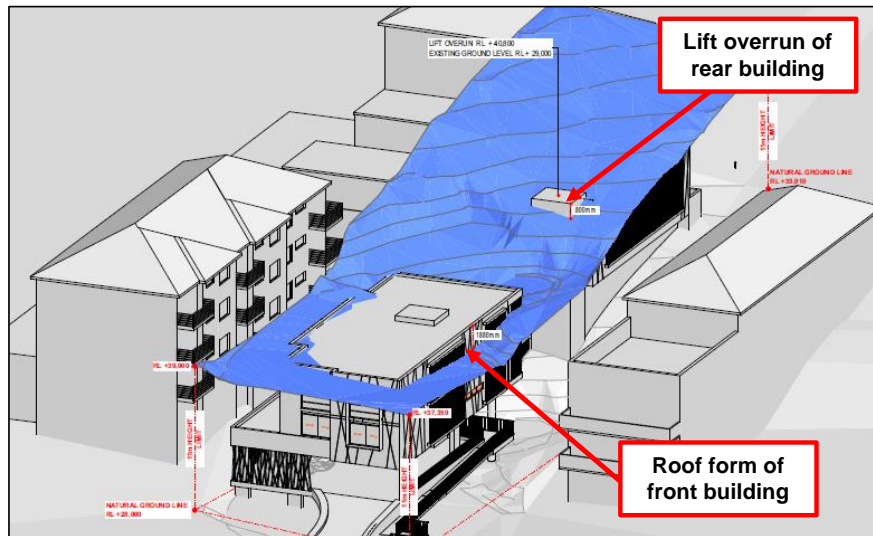
### **Introduction**

This is a clause 4.6 written request to support the development proposal for a residential flat building development containing 4 x 3 bedroom units at 27 Redman Road, Dee Why.

The development has been designed across two built forms in response to a riparian corridor – stormwater channel located centrally to the site, with a communal connecting pathway linking the lobby of each building above the riparian corridor.

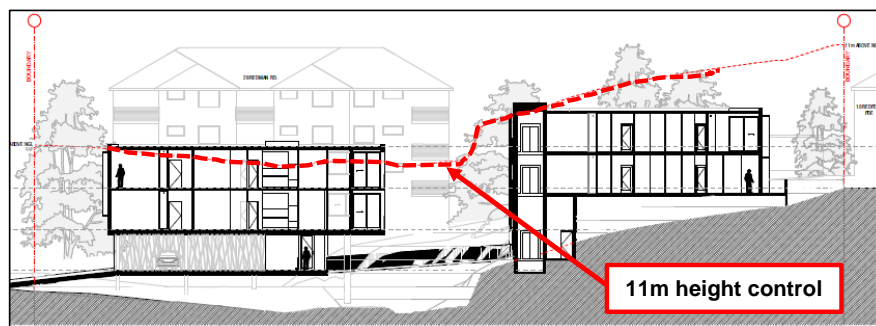
The *Warringah Local Environmental Plan 2011* applies a maximum permissible building height of 11m to the subject site. The development presents a maximum height of 12.88m measured to the roof parapet – eastern elevation of the proposed front building and 11.8m to the lift overrun of the rear building, with the proposed variation being a result of the topography and affectations of the site, having a fall of approximately 9.1m from the rear boundary to the street frontage, and a cross fall of 4.95m from the central-west portion of the site to the central-east portion. The site also contains a stormwater channel that runs centrally across the allotment and is burdened by flood planning levels which have set the minimum finished floor levels.

This written request addresses the proposed variation to the height of buildings development standard contained in the *Warringah LEP 2011*. The elements of the proposed development located above the height control are depicted in the plan extract – height plane diagram below:



Source: MAI

The below section plan depicts the topography of the subject site and resulting height variation as a result of the slope of the land and riparian corridor located central to the site:



The development proposal therefore has a maximum height of 12.88m measured to the roof parapet – eastern elevation of the proposed front building and 11.8m to the lift overrun of the rear building being a variation of 800mm & 7.2% – 1.88m & 17.9% from the maximum permissible height pursuant to Clause 4.3 of the *Warringah LEP 2011*.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

*“First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”*

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The request to contravene the Height of Buildings development standard has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130
7. *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b) and 4.6(4)(a)(ii))
5. Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

#### **Matters required to be demonstrated under clause 4.6(3) of the LEP**

##### **Compliance with the development standard is unreasonable or unnecessary in this particular case**

Pursuant to clause 4.6(3)(a), the variation to the height of buildings is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed development is consistent with the objectives of the development standard, notwithstanding non-compliance with the standard.

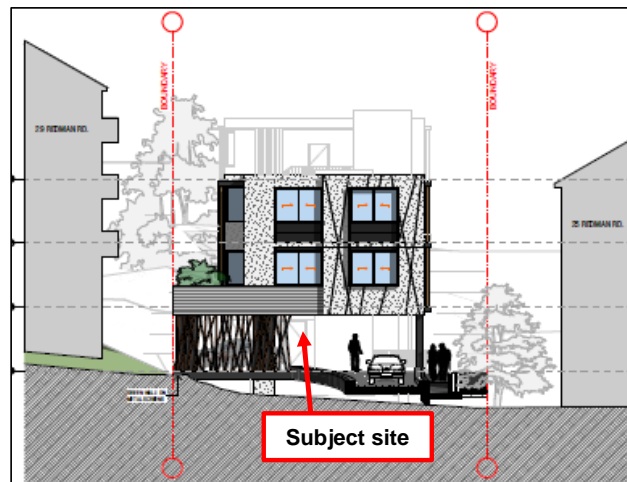
##### **• Objective of the height of buildings development standard**

The objectives of the development standard at Clause 4.3 of the *Warringah LEP 2011* are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The proposed development meets the objectives of the standard based on the following:

- **Objective (a):** The proposed development has been designed in a three storey form that is consistent with the form and scale of the adjoining residential flat buildings to the east and west at 29 and 25 Redman Road, Dee Why, noting the proposal is lower in height than the adjoining buildings and will comfortably sit within the streetscape as depicted in the elevation plan extract below:



Notwithstanding the proposed numerical variation to the maximum permissible building height, the development has been designed with a three storey form that is appropriate for the site, noting the development has been designed with undercroft areas and ground level car parking to minimise excavation and to integrate with the natural features of the land. The overall scale of the development is compatible with the broader streetscape which includes 3-4 storey residential flat buildings.

- **Objective (b):** The elements of the development which are located above the 11m height control do not present a significant visual impact upon the surrounding locality, noting the variation is largely the result of the topography of the site – slope and the proposal will sit below the maximum height of the adjoining properties to



the east and west when viewed from the public domain. The development will not result in any disruption of views or loss of privacy beyond that anticipated by the envisioned form of development within the R3 Medium Density Residential zone.

The non-compliant elements of the proposal do not result in any significant solar access impacts. As detailed within the submitted Statement of Environmental Effects, the proposed development will have an acceptable overshadowing impact upon the adjoining residential flat buildings which will retain reasonable solar access in midwinter to private open space – balconies and side elevation windows.

- **Objective (c):** The development will not have an adverse impact upon the scenic quality of Warringah's coastal environments. The proposal is well-integrated with the natural environmental features of the site, having been designed in response to the central riparian corridor on the site with a landscape treatment proposed which will provide native canopy tree plantings on the site. The development will therefore be viewed within a landscaped setting and will not have an adverse impact upon the bush environments of the locality.
- **Objective (d):** The development sits comfortably within the Redman Road streetscape, and will not have an adverse visual impact when viewed from the public domain. The development has been designed within a three storey form which is consistent with the adjoining residential flat buildings to the east and west, and is of a form that is suitable for an infill development of a remnant site in the R3 Medium Density Residential zone. Landscaping is proposed along the front, side and rear setbacks of the site which ensure the development will be viewed within a landscaped setting.

It is unreasonable and unnecessary to require compliance with the Height of Buildings development standard contained in the *Warringah LEP 2011* due to the following reasons:

- It is unreasonable to require compliance with the height of buildings standard as the variation is a result of an environmental constraint specific to the site – topography of the land and natural features, noting the site has a fall of approximately 9.1m from the rear boundary to the street frontage, and a cross fall of 4.95m from the central-west portion of the site to the central-east portion. The application seeks consent for a permissible form of development within the zone that is consistent with the envisioned form of development within the 11m height control which applies to the site. It is submitted that the variation to the height standard is a result of providing an appropriate built form – three storeys that is compatible with the 11m height control and surrounding development, whilst responding to the topography of the land.
- It is unnecessary to require compliance with the height control as the overall form and scale of the development is consistent with that anticipated by the *Warringah LEP 2011* for development within the R3 Medium Density Residential zone. Beyond the topography of the site, the variation is also measured to lift overruns which provide access to the upper levels of the proposal. The variation therefore partly results from the provision of equitable access to all levels of the development.
- It is unnecessary to require compliance with the height standard within the site context, as the proposed variation will not result in significant bulk and scale impacts and will

not set a precedent for future increased densities within the locality noting the variation is directly the result of environmental planning grounds specific to the subject site.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, it is clear that compliance with a development standard is unreasonable or unnecessary if the objectives are met.

There are sufficient environmental planning grounds to justify contravening the development standard

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation is a result of an environmental constraint specific to the site – topography of the land and natural features, noting the site has a fall of approximately 9.1m from the rear boundary to the street frontage, and a cross fall of 4.95m from the central-west portion of the site to the central-east portion. The application seeks consent for a permissible form of development within the zone that is consistent with the envisioned form of development within the 11m height control which applies to the site – three storeys. It is submitted that the variation to the height standard is a result of providing an appropriate built form – three storeys that is compatible with surrounding development, whilst responding to the topography of the land.
- The variation to the maximum permissible building height results from the roof form and eastern roof parapet of the front building and lift overrun of the rear building on the site. These elements do not result in any material environmental impacts beyond that of a compliant development. Dickson C confirmed in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* (Paragraph 78) that the avoidance of impacts is an environmental planning ground as it promotes 'good design and amenity of the built environment' being an objective of the EPA Act.

In this instance, the variation is the result of building elements which are located above the lowest sloping portions of the site including a riparian corridor, noting a three storey form would otherwise be able to be contained within an 11m height plane on a flat site. The variation to the height limit does not contribute to additional bulk and scale noting the lift overrun and roof form of the central building sit below

the maximum height of the adjoining properties and will not visually dominate the surrounding development or the streetscape.

- The overall height and scale of the development is consistent with that anticipated by the planning controls for the site, and the proposed building scale – three storeys does not result in a building appearance that is incompatible with the development context of the site or the locality. The resultant building form is suitable for the subject site based on what is envisioned by the *Warringah LEP 2011* in providing a *residential flat building* in a medium density zone, and is also compatible with the planning objectives and intended outcomes of the objectives of the R3 Medium Density Residential zone.
- The variation is partly the result of a lift overrun which is required to provide equitable access to all levels of the development. As such, the height variation measured to the lift overruns is a result of the function of the use – *residential flat building* being a permissible land use within the zone.
- The development is for a residential flat building development containing 4 x dwellings and achieves the relevant aims of the *Warringah LEP 2011* as follows:
  - 1.2.2(b) & (c) – The proposed variation allows for a development which will contribute to a range of housing to meet the needs of the residents of Dee Why. The proposed 3 bedroom and 3 bedroom + study units will contribute to unit stock within the vicinity of the Dee Why Local Centre and will serve to meet the housing needs of varying demographics within the area.
  - 1.2.2(d) – The proposed development will enhance the residential use of the R3 Medium Density Residential zone through the infill development of a remnant lot within the zone that is within close proximity to public transport and nearby employment centres. The proposal is compatible with neighbouring properties with respect to bulk, scale and appearance and will contribute to a historically underrepresented housing stock within unit development – 3 bedroom apartments.
  - 1.2.2(f) – The development has been designed in response to the environmental features of the land – riparian corridor and site topography and will not have a significant adverse impact upon the environmental quality of the locality.

**Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)**

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated pursuant to Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.

2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Randwick Council v Micaul Holding Pty Ltd and Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in Clause 4.6(3)(a) and (b), but indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b).

The relevant items in Clause 4.6(3) of the LEP have been adequately addressed above in order to enable the consent authority and the Court to form the requisite opinion of satisfaction.

#### **The proposed development is in the public interest**

In relation to clause 4.6(4)(a)(ii), the proposed residential flat building is in the public interest because it is consistent with the objectives of the height of buildings standard (addressed above) and the objectives for development in the R3 Medium Density Residential zone. The development proposal is consistent with the objectives of the zone as follows:

##### **• Objectives of the R3 Medium Density Residential Zone**

The objectives of the R3 Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

The development proposal meets the applicable objective of the zone based on the following assessment:

- The proposal provides for additional housing consistent with the medium density residential environment within a built form that is suitable for the site and compatible with the character of the streetscape;
- The proposal contributes to a variety of dwelling types to contribute to the housing needs of the community within the medium density zone, and includes 3 x bedroom and 3 x bedroom + study units;
- The development has been designed to respond to the site context – natural features of the land and has been designed across two built forms within a

landscaped setting that incorporates native canopy tree plantings to ensure the development is viewed within a landscaped setting;

- The development proposal presents an articulated built form to Redman Road being consistent with the bulk and scale of adjoining development, and is of a high visual quality.

In addition to the above, the proposal is also in the public interest because:

- The development proposal presents a three storey form to the streetscape with the resultant built form being compatible with the adjoining properties. The development will not present unreasonable bulk and scale impacts to the public domain or adjoining properties.
- The building is an articulated/contemporary built form that is a suitable built form – height for this site that responds appropriately to the topography and environmental features of the land.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with, and achieves the objectives of the development standard and the R3 Medium Density Residential zone.

For these reasons, the proposal does not undermine the integrity of the height of buildings development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

#### **The concurrence of the Secretary**

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

- a) The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the non-compliance with the building height standard is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R3 Medium Density Residential zone.
- b) The public benefit of maintaining the development standard is not considered significant because the proposed development has been designed in a form and

scale that is appropriate for the subject site when considering the surrounding development context.

- c) The proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The exceedance of the standard will not result in adverse amenity impacts and is in the public interest.

### **Conclusion**

The development proposal has a variation to the 11m maximum building height applicable to the development pursuant to Clause 4.3 of the *Warringah LEP 2011*. Notwithstanding, the proposal has been designed with a built form that is consistent with the intent of the height standard and anticipated form of development for development within the R3 Medium Density Residential zone.

The variation to the building height standard is a direct result of an environmental planning ground specific to the site – topography, and does not attempt to affect the planning outcome for the broader locality; rather the proposed variation and overall development is consistent with the scale and form of development planned for the locality.

The elements of the development which vary the control do not result in an overbearing built form, rather the proposal has been designed within a three storey form that is compatible with the adjoining residential flat building development to the east and west. The proposal will not adversely impact upon the public domain or adjoining properties and will not generate unreasonable overshadowing or amenity impacts.

In my opinion the proposed development for a residential flat building development and variation to the height of buildings development standard is well-founded as the proposal meets the objectives of the development standard and achieves an acceptable planning outcome for the subject site that is in the public interest. In accordance with the environmental planning grounds addressed in this clause 4.6 request, the proposed development can be supported.

Chapman Planning Pty Ltd  
Member PIA



Design + Sustainability Advisory Panel Meeting Report – Date 28<sup>th</sup> September 2023

## 1 - DA2023 1128 - 27 Redman Street DEE WHY

### PANEL COMMENT AND RECOMMENDATIONS

#### **General**

The proposal went to PLM2019/0290.

Urban design recommended:

- *the “4.5m setbacks to the side boundaries which should be adhered to especially on the top floor to allow as much sun penetration as possible to the next door apartments. Solar analysis plans are to be submitted to demonstrate solar access compliances.”*
- *More details to support the proposed ‘green wall’ on metal screens will be required.*

Coastal officer recommended:

- *Choosing parts of the site to develop where features are not present*
- *Minimising on-site disturbance*
- *Locating buildings to take advantage of environmental features*
- *Utilising construction methods that limit impact on sloping/ difficult sites e.g. pole or “lighter on ground” construction*

Advice to the applicant was that *“The proposal is not acceptable in its current form and requires redesign, and further information, prior to submission. This includes:*

- *Responding to the issues raised by Council’s Development Engineer, Stormwater Assets officer, Urban Design officer and Coastal Officer.*
- *Reduction in the bulk of the top storey along with increased setbacks*
- *Further information in regard to sunlight access and a response to any overshadowing impact*

In this submission:

Solar access diagrams have been submitted which demonstrate that solar access is reasonably maintained to adjoining dwellings balconies and living spaces. Detailed analysis needs to ensure this design will not impact on the minimum requirements required by the DCP.

Green wall details have not been provided.

The Panel is concerned that the recommendations of the coastal officer do not appear to have been comprehensively addressed. On-site disturbance has not been minimised but arguably should be. Lighter (low-impact) construction methods should be employed over the whole site and not just the front half. The environmental features of the site should be given prominence in the configuration and outlook of individual dwellings.

#### **Strategic context, urban context: surrounding area character**

The site contains a unique environmental feature in terms of a natural watercourse with rock shelves, waterfalls and rock pools. The arborist report indicates the site contains locally native canopy trees including Cheese Tree, Magenta Lilly Pilly and a Sydney Red Gum. The Natural Environment team comments that *“the waterway and associated stormwater infrastructure is likely to provide habitat for native wildlife, including water dragons and microbats.”*



The site is subject to *DCP 2011 E8 Waterways and Riparian Lands* which has the objectives to “*protect, maintain and enhance the ecology and biodiversity of waterways and riparian land*” as well as to “*encourage development to be located outside waterways and riparian land*” and “*avoid impacts that will result in an adverse change in watercourse or riparian land condition.*”

*DCP 2011 E6 Retaining unique environmental features* applies to the land and its objectives are to “*conserve those parts of land which distinguish it from its surroundings*”. It requires development to be designed to address any distinctive environmental features of the site and to respond to these features through location of structures, outlook, design and materials.

When viewed from the street the site provides a significant relief from its highly urbanised context due to the existing canopy trees, some of which are locally native. In this context the 4.5m required setbacks offer the opportunity to replace tree canopy lost in the development and thereby respond appropriately to the existence of a significant remnant natural feature and “*conserve those parts of land which distinguish it from its surroundings*”.

Because the buildings are required to provide a substantial central open space over the natural features of the site, some reduction in mandatory setback controls might be justified (as long as these variations have no unreasonable amenity impacts on neighbours).

It is acknowledged that to develop the site the provision of car parking is required and this will require encroachment at the lower level into those setbacks, however the Panel is of the view that a viable carparking arrangement can be provided with a minimum 1.5m open to the sky landscape setback on the western boundary. The zero setback and carpark wall on the western boundary is not supported.

The recommendations below are intended to conserve and enhance those parts of site which distinguish it from its urban context.

### Recommendations

1. Provide a minimum 1.5m setback, landscaped and open to the sky at the car parking area on the western boundary.
2. Provide minimum 4.5m setbacks and/or elevated/offset structures to retain locally native trees where possible. This includes trees referred to in the Arboricultural Impact Assessment as Tree 8 *Angophora costata*, Tree 12 *Syzygium paniculatum* and Trees 13-15 *Glochidial ferdinandi*

### Scale, built form and articulation

**Building separation:** The separation between buildings on the site is approximately 10.5m and does not comply with the required 12m separation. Under ADG 2F gallery access should be treated as habitable space with separation measured from the exterior edge of the circulation space.

**Height non-compliance:** The site is steeply sloping and the eastern building exceeds the height limit by 2m, but the area of non-compliance does not result in unreasonable overshadowing to adjacent dwellings. In its context, when viewed from the street the height non-compliance does not result in excessive bulk.

**Side boundary setbacks:** Reductions in side boundary setbacks to achieve open space over the natural water feature and rock shelves might be justified except for the following locations where detrimental impacts are unacceptable;

- As stated above (**Strategic context, urban context: surrounding area character**) the zero setback to the carpark wall on the western boundary is not supported on the basis of visual bulk when viewed along and from the boundary interface, the loss of landscape visual continuity along the boundary to the natural features and the loss of landscaped area adjacent to the boundary. The Panel has the view that landscape disturbance can be minimised by re arranging the carpark layout, waste room, lifts and stairs.
- The eastern façade of the northern building has two bedrooms with primary windows facing the boundary (Bedroom 2 and Bedroom3) with 25 Redman Road. Privacy screening to prevent a direct line of sight is proposed as an alternative to providing a 4.5m setback required by the DCP or 6m required by ADG 3F Visual Privacy. Site Analysis A302 A does not identify where





habitable windows are in 25 Redman Road west façade and the C&A Surveyors survey information submitted does not provide any information about openings in this façade.

### Recommendations

3. Building separation: The separation between buildings requires appropriately designed privacy screening to the lift lobby and stairs to be acceptable. Alternatively, the eastern building is to be setback to provide a full 12m separation.
4. Side boundary setbacks:
  - Refer Recommendation 1 above.
  - Provide a minimum 4.5m setback to Bedroom 2 and Bedroom3 windows to achieve DCP setback compliance and to contribute to the acoustic privacy objectives of ADG 4H Acoustic Privacy. The ADG 6m setback to a boundary can be reduced to 4.5m after appropriate screening design is submitted based on analysis of habitable windows proposed and existing habitable windows in 25 Redman located within direct lines of sight as set out in ADG Figure 3F.6.
  - Provide a minimum 4.5m setback to the eastern building to the extent necessary to enable the retention of Tree 8 *Angophora costata* in conjunction with other measures deemed necessary by the arborist which might include offset structural supports. The 4.5m setback in this location will enable enhancement of the bushland setting when viewed along the entry path from the street.

### Access, vehicular movement and car parking

Car park arrangement: Car parking is acceptable in principle from a vehicular movement perspective but an alternate layout that enables the provision of a minimum 1.5m built form setback on the western boundary is recommended.

Address and pedestrian entry: The address and entry sequence to the eastern building is convoluted and does not provide a direct line of sight to the street which can be improved.

### Recommendations

5. Car park arrangement: Consider a car parking layout that rotates parking through 90 degrees to achieve a 1.5m built form setback. Car manoeuvring areas for reverse movement that encroach the 1.5m setback should be provided as permeable pavement open to the sky.
6. Address and pedestrian entry: Consider relocating the bridge so that a direct line of sight from street entry point to apartment lobby entry is achieved.

### Landscape

The panel notes that the Natural Environment Referral Response – Biodiversity states that “*the waterway and associated stormwater infrastructure is likely to provide habitat for native wildlife, including water dragons and microbats.*”

The Panel notes that the Landscape Referral accepts that Tree 8 *Angophora costata* “will be impacted upslope in their structural root zones which has the potential to destabilise the tree.” The Panel considers that with increased setbacks and the structure being changed to a “pole” construction as well as the site being underlain by bedrock that retention of Tree 8 be considered.

The site currently supports a generous amount of canopy and vegetative cover which should be maintained through retention and replenishment.

The Ecology report by Narla Environmental writes the following :

*“Landscaping within the Subject Property should incorporate species representative of the local community being the Smooth-barked Apple – Red Bloodwood Open Forest on Enriched Sandstone Slopes around Sydney and the Central Coast.”*



### Recommendations

7. Existing locally native canopy trees should be retained wherever possible. Refer Recommendation 2 above in **Strategic context, urban context: surrounding area character**.
8. Replenishment tree planting shall be implemented providing both canopy and habitat for local fauna.
9. The landscape documentation package should be reviewed and ensure that a generous portion of the proposed plant schedule form part of the *Red Bloodwood Open Forest on Enriched Sandstone Slopes around Sydney and the Central Coast*.

### Amenity

The apartment planning and layouts provide good resident amenity except for where bedroom primary windows are screened to provide visual privacy where separations to boundary do not comply with ADG controls.

### Recommendations

10. Carefully design privacy screening as noted above in Recommendation 4.

### Façade treatment/Aesthetics

The façade treatment based on a rendered finish in a light colour with a graphic pattern unrelated to its context is not supported due to the natural setting and the long-term durability of light painted renders. Cement render and paint finish is not recommended. Materials that mimic natural materials such as fake wood grain on aluminium are not encouraged.

### Recommendations

11. The use of natural materials that blend with the colours and textures of the natural landscape should be provided. Materials will integral finishes such as face brick, prefinished, integral colour square edged, compressed fibre cement (CFC) panels, metal cladding including zinc and copper panels or integrally coloured acrylic textured coatings with longer term warranties are options to be considered.

### Sustainability

There are some great features on this design with regards to sustainability:

- Only 4 parking spaces which is appropriate for this location which has great public transport connectivity
- Bike parking has been included
- Great cross ventilation of all apartments
- Northern orientation to all the apartments

However, there are some things that could be improved:

- Protection of the water way does not appear to have given enough space. Providing more space between the buildings to give the water way more protection will be a better outcome.
- There is no rainwater tank or recycling of rainwater to the apartments. Could be connected to toilet flushing and/or laundry, or at the very least to the landscaping. This will avoid the need to provide washing machines and would allow better showerheads
- Gas is a legacy asset given the move to electrification and net zero in the industry. Remove the gas and replace with electric systems

### Recommendations

12. Remove gas from the site - use induction cooktops and heat pump hot water systems



13. Provide solar panels on the roof and direct connect to the apartments to offset their individual energy use
14. Provide rainwater tanks connected to toilets and/or laundry

## **PANEL CONCLUSION**

**The Panel does not support the proposal in its current form. A complete redesign and substantial reduction in the floor area would be required to incorporate the recommendations of the panel.**

<b>ITEM 4.2</b>	<b>DA2023/0646 - 121 NARRABEEN PARK PARADE, MONA VALE - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE.</b>
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**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2023/0646 for the Demolition works and construction of a dwelling house on land at Lot 1 DP 22672, 121 Narrabeen Park Parade, MONA VALE for the reasons for refusal set out in the Assessment Report.

<b>REPORTING MANAGER</b>	<b>Adam Richardson</b>
<b>TRIM FILE REF</b>	2024/188569
<b>ATTACHMENTS</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan &amp; Elevations</a> <a href="#">↓3 Clause 4.6</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0646
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<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot 1 DP 22672, 121 Narrabeen Park Parade MONA VALE NSW 2103
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Patricia Mary Casey Michael Joseph Casey
<b>Applicant:</b>	Nanna Margrethe Lesiuk

<b>Application Lodged:</b>	02/06/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	12/06/2023 to 26/06/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	16
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 2,821,000.00
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house, on land situated at No.121 Narrabeen Park Parade, Mona Vale.

The land adjoins the coastal foreshore on Warriewood Beach and is nominated as a Scenic Protection Area under Council's policies. It also lies in the Coastal Use Area and is adjacent to mapped areas of special biodiversity.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the number of unique submissions by way of objection exceeding ten (10). During the notification period, a total

of sixteen (16) submissions have been received.

Concerns raised in the submissions predominantly relate to:

- adverse amenity impact on adjoining properties, relating to:
- view loss;
- privacy;
- visual impact;
- view loss from the adjoining public domain; and
- non-compliance with the development controls of Council.

Initial assessment of the proposal found that the application was inconsistent / non-compliant with the following controls: foreshore building line; front building line; building envelope; landscaped open space; side building line; garage width; view loss and visual impact as well as the extent of works on Council's road reserve. Amended plans were provided by the applicant, in response to Council's concerns.

Other assessment issues of note as they relate to the amended application, include:

- view loss to both adjoining private properties and public domains;
- the visual impact of the proposal on the adjoining coastal areas of high scenic value, as required by Council and State policies.

Despite the amendments made to the application, it is considered that the concerns and issues in relation to view loss and visual impact have not been adequately resolved in the amended proposal.

Given this, his report concludes with a recommendation that the NBLPP refuse the application.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The application (as amended) consists of the demolition of the existing dwelling house and the construction of a multi-level dwelling house.

The existing swimming pool on the site will be retained largely in its current state, with the exception of the removal of an attached spa (to be reduced in area by 2.4m<sup>2</sup>) and minor alterations around the perimeter of the existing pool, for landscaping.

Significant excavations are proposed, primarily to accommodate the dwelling, private open space along the north-east side boundary and a home office / studio underneath the proposed driveway.

Landscaped terraces and a pathway / steps, which is 1.6 metres in width is proposed on the adjoining road reserve.

Upon an initial assessment of the application, correspondence was forwarded to the applicant (dated 16 November 2023), where it was advised that Council did not support the application, based on the following issues:

- non-compliance with the Foreshore Building Line (FBL) development standard;

- non-compliance with the Front Building Line development control;
- non-compliance with the Building Envelope development control;
- non-compliance with the Landscaped Open Space development control;
- non-compliance with the Side Building Line development control;
- adverse impact on the visual privacy of adjoining dwellings;
- exceedance of maximum garage width;
- insufficient detail on east elevation;
- loss of views, from both the private and public domains;
- adverse impact on the Scenic Protection Area; and
- excessive works on the public domain / Council road reserve.

In response, amended plans were received on 22 January 2024. In summary these amendments included;

- removed all works forward of the FBL;
- increased the area of landscaped open space, to comply with the relevant standard;
- brought the dwelling into compliance with the Side Building Line control;
- amended upper level decks and terrace by reducing size and use of privacy screens; and
- brought the proposed garage width into compliance.

Works within the Council road reserve remain on the amended plans.

## **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**

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
 Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve  
 Pittwater 21 Development Control Plan - B6.2 Internal Driveways  
 Pittwater 21 Development Control Plan - B8.5 Construction and Demolition - Works in the Public Domain  
 Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan  
 Pittwater 21 Development Control Plan - C1.3 View Sharing  
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
 Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure  
 Pittwater 21 Development Control Plan - D14.7 Front building line  
 Pittwater 21 Development Control Plan - D14.11 Building envelope  
 Pittwater 21 Development Control Plan - D14.18 Scenic Protection Category One Lands

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 22672 , 121 Narrabeen Park Parade MONA VALE NSW 2103
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Narrabeen Park Parade, Mona Vale.</p> <p>The site is irregular in shape with a frontage of 15.2m along Narrabeen Park Parade and a varying depth of 48.195 metres / 57.62 metres. The site has a surveyed area of 831m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a dwelling house and swimming pool.</p> <p>The site is on the low side of the road and has a SE aspect. The slope is moderate where the dwelling located. The natural slope of the land falls across the property at an average angle of 15°. The slope above the property gradually decreases in grade. The slope below the eastern boundary of the property increases in grade before reaching the top of a sea cliff, approximately 15 metres in height.</p> <p>The site has no significant / native vegetation and is occupied by minor shrubs and turfed areas. Notwithstanding, the site is identified as being within a established wildlife / habitat corridor, being the Flora and Fauna Habitat Enhancement Category 2 Land, identified under Pittwater21 Development Control Plan (littoral rainforest).</p> <p>The site is also identified as being within:</p>



- a Scenic Protection Area (Category One) within the P21 DCP; and
- the Coastal Environment and Use Areas under Sections 2.10 and 2.11 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Adjoining and surrounding development is characterised by dwelling houses to the north, south and west. To the east of the site is a sea cliff and Warriewood Beach, zoned RE1 Public Recreation under the Pittwater Local Environmental Plan 2014.

Map:



#### SITE HISTORY

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

0323/98: Application for a "Concrete Swimming Pool", undated.

#### 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 Matters for Consideration	Comments
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	Pittwater 21 Development Control Plan 2011 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)	<p>Part 4, <u>Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;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.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to: foreshore building line; front building line; side building line; building envelope; landscaped open space; elevation details; view loss (private and public); scenic protection area; works on Council's road reserve, in correspondence dated 16 November 2023. Additional information / amended plans were received on 22 December 2023.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;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.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p>

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered generally suitable for the proposed development, noting that the site is currently occupied and used for low density residential purposes.
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	<p>This assessment has found the proposal to be contrary to the relevant policy requirement(s) in regard to:</p> <ul style="list-style-type: none"> <li>• Building Envelope;</li> <li>• Scenic Protection;</li> <li>• View sharing (from both private and public domains);</li> <li>• Visual impact on significant coastal environment;</li> <li>• Visual privacy;</li> <li>• Works on Council road reserve; and</li> <li>• Vehicular and public pedestrian access</li> </ul> <p>As such, this will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 12/06/2023 to 26/06/2023 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 process council is in receipt of 16 submission/s from:

Name:	Address:
Mr Rick Andrew Eggins Mrs Linda Eggins	174 Narrabeen Park Parade MONA VALE NSW 2103
Mr Christopher Mark Logan Ms Mary Marian Anne Logan	123 Narrabeen Park Parade MONA VALE NSW 2103
Mr Jeffrey David Raubal	158 Narrabeen Park Parade MONA VALE NSW 2103
Mrs Debbie Margaret Wall Michael Wall	176 Narrabeen Park Parade MONA VALE NSW 2103
Mrs Judith Beryl Fitz-Roy	119 Narrabeen Park Parade MONA VALE NSW 2103
Western Sydney Planning	Po Box 278 BAULKHAM HILLS NSW 1755
Mr Richard Jefferson Wilkins	164 Narrabeen Park Parade MONA VALE NSW 2103
Dr Vijay Solanki	172 Narrabeen Park Parade MONA VALE NSW 2103
Mrs Annalisa Macdonald Mr Ross McDonald	117 Narrabeen Park Parade MONA VALE NSW 2103
Dfp Planning Pty Ltd	11 Dartford Road THORNLEIGH NSW 2120
Mrs Simone Vidal Allan	160 Narrabeen Park Parade MONA VALE NSW 2103
Mrs Bhavisha Vijay Solanki	172 Narrabeen Park Parade MONA VALE NSW 2103
Ms Elise Andrews	180 Narrabeen Park Parade MONA VALE NSW 2103
Joanna Knight	170 Narrabeen Park Parade MONA VALE NSW 2103
Nathan Knight	170 Narrabeen Park Parade MONA VALE NSW 2103
Mr Aaron Dean Cutter Mrs Karen Elizabeth Cutter	152 Narrabeen Park Parade MONA VALE NSW 2103

During the course of notification period of the application, a total of sixteen (16) submissions were received.

Pursuant to the provisions of the Northern Beaches Community Participation Plan (CPP), the amended plans received on 22 December 2023 were not re-notified, as they did not represent a development which was of greater environmental impact than originally lodged.

The issues raised in these submissions are summarised and addressed below:

- ***The proposed development will have an adverse visual impact when viewed from adjoining private properties.***

Comment: A detailed and comprehensive consideration of the visual impact of the proposal is provided further in this report. In summary, the proposed non-compliance with the Building Envelope control, and the overall design of the proposal is such that, its visual impact will be overly pronounced and out of character on its south-west and north-east (side) elevations. As such, there will be an adverse visual impact when from adjoining private properties. Hence, this issue is considered valid and forms one of the recommended reasons to refuse the application.

- ***The proposed development will have an adverse visual impact when viewed from the adjoining public domain, including Narrabeen Park Parade and adjoining areas of public open space.***

Comment: The subject site is located in a designated Scenic Protection Area under the P21 DCP and adjoins the Northern Beaches Coastal Walk. In the context of the established non-compliances with Council's controls, the proposal's visual impact is considered to be adverse. Hence, this issue is considered valid and forms one of the recommended reasons to refuse the application.

- ***The application will result in an adverse loss of views enjoyed by adjoining private properties.***

Comment: A detailed and comprehensive consideration of the likely loss of views from adjoining private properties is provided further in this report, with specific reference to the Principles established by the NSW Land and Environment Court in the matter of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. In summary, the extent of the views lost as a result of the proposed development (and in the context of the established non-compliances) is such that the application is considered to fail the Principles established by the Court. Therefore, this issue is considered valid and forms one of the recommended reasons to refuse the application.

- ***The application will result in an adverse loss of ocean views from the adjoining public pedestrian path on Narrabeen Park Parade.***

Comment: A detailed and comprehensive consideration of the likely loss of views from the adjoining public domain is provided elsewhere in this report, with specific reference to the Principles established by the NSW Land and Environment Court in the matter of *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046. In summary, the extent of the views lost as a result of the proposed development (and in the context of the established non-compliances) is such that the application is considered to fail the Principles established by the Court. Therefore, this issue is considered valid and forms one of the recommended reasons to refuse the application.

- ***The application will have an adverse impact on the privacy of adjoining dwellings.***

Comment: As discussed further in this report, the amendments made to the application, in particular the: reduction on the size of the Level 3 deck; and the increased setbacks on the north-east side boundary, have resulted in adequate level of visual and acoustic privacy for adjoining dwellings. The development is considered acceptable in this regard.

- ***The application consists of multiple non-compliances with the relevant development controls of Council and as such, should be refused.***

Comment: A detailed and comprehensive consideration of the proposal against the relevant development controls is provided further in this report. In brief: the non-compliance with the Front Building Line control with regard to the home office / studio is, despite the numerical variation, consistent with the objectives of the control, however the non-compliance with Building Envelope control, is not consistent with the objectives. As such, the non-compliance with Building Envelope control forms one of the reasons for the refusal of the application.

- ***Previous development standards and controls limited the height of development to the height of the adjoining roadway and these standards and controls should apply to the***

***proposed development.***

Comment: In June 2014, the Pittwater Local Environmental Plan 2014 took effect, and the Height of Buildings development standard (8.0m) has since been the relevant development standard, specifically under Clause 4.3(2). In the consideration of this application, this is the current relevant development standard and expecting compliance with a previous, repealed development standard would not be consistent with the provisions of Section 4.15 of the Environmental Planning & Assessment Act 1979.

**REFERRALS**

Internal Referral Body	Comments
Landscape Officer	<p><b><i>Not Supported</i></b></p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D14 Warriewood Locality</li> </ul> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>Updated Landscape Referral comments 05.01.2024: Amended Master Set Plans are submitted. Amended Landscape Plans are not submitted and thus the landscape outcome is unable to be assessed without such co-ordinated information. Correspondence includes reference to deletion of hard landscape surfaces such as pool paving and pool decking, as well as replacement of other terrace paved areas and paths to lawn to increase the landscape area to a reported 57% landscape area. It is noted that under PLEP the definition of landscape area "means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area".</p> <p>Within the Amended Master Set Plans, reference of works within the public road reserve remain on drawings and additionally there are plans indicating pavement around the pool and continuance of the pool deck that contradicts the correspondence of deleted hard surfaces (pool paving and pool decking) to increase the landscape area.</p> <p>Landscape Referral concerns remain with the Amended Master Set Plans that the 60% landscape area is realistically unable to be</p>

Internal Referral Body	Comments
	<p>achieved, and that the landscape outcome does not achieve the landscape objectives of the C4 Environmental Living zone, as detailed below:</p> <ul style="list-style-type: none"> <li>• the northern outdoor terrace area (Level 2) adjacent to the proposed Home Office/Studio and the two Bedrooms are shown as lawn however opening areas from the building onto the lawn area are unlikely to support lawn due to foot traffic and the foot traffic to the outdoor terrace with seating likewise is unlikely to support lawn, such that the landscape area is likely reduced in reality with replacement of lawn to pavement,</li> <li>• the northern outdoor terrace area (Level 1) adjacent to the proposed Living Room are shown as landscape and paverslabs are in a likely high foot traffic area such that the landscape area is in reality better served by pavement,</li> <li>• the area surrounding the pool shown as lawn is fundamentally a poor surface selection with expected foot traffic and recreational usage likely to ultimately damage the lawn, such that the landscape area is likely reduced in reality with replacement of lawn to pavement,</li> <li>• no amended landscape plans co-ordinated with the amended Master Plan Set are submitted to allow Landscape Referral to determine the proposed landscape outcome to satisfy the landscape objectives of PLEP clause C4 Environmental Living Zone, and PDCP controls C1.1 Landscaping, and it is advised that reference to Amended Landscape Plans in the initial Landscape Referral Response shall be recognised and documented for consideration and determination.</li> </ul> <p><u>Planner's Note:</u> A review of the amended proposal has demonstrated that the proposal can comply with the relevant numerical requirements of Part D14.13 Landscaped Area - Environmentally Sensitive Areas.</p>
NECC (Bushland and Biodiversity)	<p><b><i>Supported, subject to Conditions</i></b></p> <p>The proposal seeks approval for Demolition works and construction of a dwelling house.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• SEPP (Resilience and Hazards) - Development within the coastal environment area</li> <li>• Pittwater LEP 2014 - Part 7.6 Biodiversity Protection</li> <li>• Pittwater DCP 21 - Clause B4.3 Flora and Fauna Habitat Enhancement Category 2 Land</li> </ul> <p>The proposal would take place on a site that has been heavily disturbed and has little native vegetation remaining.</p> <p>The development is unlikely to impact native vegetation or fauna habitat, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p><b><i>Supported, subject to Conditions</i></b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 &amp; 2.12);</li> <li>• State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>State Environmental Planning Policy (Resilience &amp; Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated May 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&amp;H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p><b>Coastline Bluff Hazard Management</b></p> <p>A Geotechnical Report by White Geotechnical Group dated April 2023 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. An impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Horton Coastal Engineering dated December 2022 has been appended with the Geotechnical Report. The report assessed that an allowance for erosion/weathering of 7mm/year of the cliff seaward of 121 Narrabeen Park Parade Mona Vale, with sensitivity testing up to 12mm/year, should be considered and assessed by the geotechnical engineer. The geotechnical engineer should consider these estimated rates in conjunction with an understanding of the particular nature of the cliff materials east of the subject property, their resistance to erosion, and potential failure</p>



Internal Referral Body	Comments
	<p>planes related to geotechnical issues such as the joint spacing. That stated, any future failure of the upper slope of the cliff may be unrelated to coastal processes at the base of the cliff, so other failure mechanisms should be considered by the geotechnical engineer.</p> <p>Coastal inundation is not a significant risk for the proposed development over a planning period of well over 100 years. Given this, and assuming that the geotechnical engineer will find that the development is at an acceptably low risk of damage from erosion/recession over a 100 year design life, the proposed development satisfies the requirements of State Environmental Planning Policy (Resilience and Hazards) 2021 (Clauses 2.10 to 2.13), and Clause 7.5 of Pittwater Local Environmental Plan 2014 for the matters considered herein.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP</p> <p><b>Development on Foreshore Area</b> A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes works of additional decking seaward of the swimming pool. All these proposed works are consistent with Clause 7.8(2)(b).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated May 2023, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p> <p>No other coastal issues identified.</p>
NECC (Development Engineering)	<p><b><i>Not supported</i></b></p> <p>The site drains to the rear and proposes to discharge stormwater from the site using a level spreader. Given that this will not affect downstream properties, it is considered acceptable. The site is in a geotechnical hazard area and a geotechnical report has been provided. Vehicle crossing construction is proposed. The proposed vehicle crossing profile which has been amended from the original submission is not supported. The existing footpath on the property frontage falls to the road. The proposed vehicle crossing profile needs to be amended to Extra Low A4 3330/5 EL.</p>
Parks, reserves, beaches, foreshore	<p><b><i>Supported, subject to Conditions</i></b></p>

Internal Referral Body	Comments
	<p>The development site adjoins South Mona Vale Headland Reserve that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. Public access to the reserve is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>
Road Reserve	<p><b>Not supported</b></p> <p>It is unclear what works are proposed on the public road reserve to replace the removal of existing walls. Landscaping up to/adjacent to the footpath will ultimately obstruct sight distance and foot traffic as growth encroaches over time. Development Engineering to consider conditioning approval to require Road Act application for any civil works on the road reserve such as retaining walls and stairways.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, subject to Conditions</b></p> <p>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.</p>
Aboriginal Heritage Office	<p><b>Supported, subject to Conditions</b></p> <p>The Aboriginal Heritage Office have advised the following:</p> <p><i>"Reference is made to the proposed development at the above area and Aboriginal heritage.</i></p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be</i></p>

External Referral Body	Comments
	<i>Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted."</i>

#### **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 (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was supplied with the application.

##### **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 30 metres of a structure supporting an overhead electricity transmission line and/or within 5.0 metres of an overhead electricity power line.

Comment: The proposal was referred to Ausgrid who raised no objections, subject to conditions in the event that the proposal is approved.

##### **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 3 Coastal environment area**

#### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.

Comment: The proposal is not considered to be contrary to any of the matters or values outlined in Clause 2.10(1).

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: As stated above, the proposal is not considered to be contrary to any of the matters or values outlined in Clause 2.10(1). Further, there are no specific impacts of the proposal on the surrounding coastal environment area that need to be avoided or minimised.

### **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 proposed development is not considered to have an adverse impact on any of those matters, values or requirements so specified in Clause 2.11(1)(a) or (b). However, with respect to 2.11(c), the proposal is considered to be inconsistent with the surrounding coastal and built environment, in relation to the bulk, scale and size of the proposal. In particular, the south-west elevation of the proposal will be of a scale that overly dominates the coastal environment, in a highly visually prominent area. As such the proposal is non-compliant with Section 2.11(c) and this forms a recommended reason for the refusal of the application.

## **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 works are not considered to represent an unacceptable increase in the risk of coastal hazards.

### **2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

As such, it is considered that the application does not comply with the requirements of Chapter 2 of the State Environmental Planning Policy (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.

#### **Pittwater Local Environmental Plan 2014**

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?	No

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8m	Maximum 7.8m	N/A	Yes
Foreshore Building Line (FBL)	line behind shown on the FBL Map	works behind the FBL	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone C4 Environmental Living**

The subject application is considered against the objectives of the control, as follows:

*To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment: A detailed assessment on the special scenic values is provided elsewhere in this report. In summary, based on the identified adverse visual impact of the proposal as a result of the non-compliances, it therefore cannot be reasonably assumed that the proposal is "low-impact" as the objective requires. Hence, the proposed development is inconsistent with this objective.

*To ensure that residential development does not have an adverse effect on those values.*

Comment: As above, the proposal will be inconsistent with the special aesthetic values of the site (ie. the coastal foreshore location) and as such, inconsistent with this objective.

*To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The proposed development, through its non-compliances with the relevant built form controls, is not adequately integrated with the landform and landscape. Hence, the proposal is inconsistent with this objective.

*To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: Whilst the site adjoins a special foreshore vegetation area (ie. littoral rainforest vegetation community), there will be no adverse impact in this regard.

In summary, the development cannot demonstrate compliance with the objectives of the C4 Environmental Living zone and this forms one of the reasons for the recommended refusal.

## **7.2 Earthworks**

The objective of Clause 7.2 - 'Earthworks' requires development 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.

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. Conditions could apply to ensure compliance.

*(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 could apply to ensure compliance.

*(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. Conditions could apply to ensure compliance.

*(f) the likelihood of disturbing relics*

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

Comment: The subject site is adjacent a coastal cliff / foreshore on its eastern boundary. However no adverse impact on the environmental values of this area is likely.

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

Comment: Conditions could apply in this regard.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP 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.

## **7.5 Coastal risk planning**

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 the development:

*(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and*

Comment: The development has been assessed by Council's Coast and Catchments team. No objections to approval were raised, subject to conditions. Therefore, Council is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

*(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and*

Comment: This matter was considered in the aforementioned referral to Council's Coast and Catchments team. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

*(c) incorporates appropriate measures to manage risk to life from coastal risks, and*

Comment: This matter was considered in the aforementioned referral to Council's Coast and Catchments team. Therefore, Council is satisfied that the development is not likely to alter coastal



processes and the impacts of coastal hazards to the detriment of the environment.

*(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and*

Comment: This matter was considered in the aforementioned referral to Council's Coast and Catchments team. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

*(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and*

Comment: This matter was considered in the aforementioned referral to Council's Coast and Catchments team. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

*(f) has regard to the impacts of sea level rise, and*

Comment: This matter was considered in the aforementioned referral to Council's Coast and Catchments team. Therefore, Council is satisfied that the development has regard to the impacts of sea level rise.

*(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.*

Comment: This matter was considered in the aforementioned referral to Council's Coast and Catchments team. Therefore, Council is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

## 7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

*(a) whether the development is likely to have:*

*(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

*(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

*(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

*(iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment: The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

*(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the*

development.

Comment: The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development in regard to biodiversity.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse natural environmental impact.

## 7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment: The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site.

- (b) the consent authority is satisfied that:*
  - (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
  - (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
  - (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment: The information provided by the applicant in regard to geotechnical risk is considered acceptable. Its findings and recommendation could form potential conditions of consent.

## 7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The existing swimming pool on the site is located partially forward of the foreshore building lines (FBL) that applies to the land under PLEP 2014. The application as originally lodged included an elevated deck area to the east of the existing pool and forward of the foreshore building line. It was communicated to the applicant that this structure was not supported and this has been subsequently deleted. The proposed development as amended would now only involve the alterations to the existing pool, to delete the associated spa on its western side, and replace with landscaped area. This will not result in the footprint of the building extending further into the foreshore area. Note that based on the most recently amended plans, that an existing retaining wall forward of the FBL is to be not modified or changed in any way, as part of the application.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
  - *pollution or siltation of the waterway, or*
  - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - *an adverse effect on drainage patterns, or*
  - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development, in relation to the works adjoining the FBL, is consistent with the objectives of the C4 Environmental Living zone. Further, this aspect of the works will not: be incompatible with the surrounding area; cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation; cause congestion or generate conflict between people using the adjacent open space or waterway; restrict public access along the foreshore; result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land; have an adverse impact on the amenity or aesthetic appearance of the foreshore; and impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

**Pittwater 21 Development Control Plan**Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
Front building line	6.5m	6.8 - 7.4m (garage) 1 - 1.5	N/A 85	Yes <b>No</b>
Rear building line	N/A	N/A	N/A	N/A
Side building line	2.5m (north)	Level 1: 2.5 - 5.1m Level 2: 2.5 - 5.8m Level 3: 2.5 - 5.4m	N/A N/A N/A	Yes Yes Yes
	1m (south)	Level 1: 1m Level 2: 2.8 - 3.5m Level 3: 2.8 - 3.5m	N/A N/A N/A	Yes Yes Yes
Building envelope	3.5m (north)	No breach	N/A	Yes
	3.5m (south)	Two (2) breaches of: 2.1m (length) x 0.7m (height) and 6m (length) x 1.9m height	27	<b>No</b>
Landscaped area	60%	560m <sup>2</sup> or 67%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	No	No
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	No	No
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	No	No
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	No	Yes
D14.8 Side and rear building line	Yes	Yes
D14.11 Building envelope	No	No
D14.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D14.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D14.18 Scenic Protection Category One Lands	No	No

Detailed Assessment**B6.1 Access driveways and Works on the Public Road Reserve**

Council's Development Engineer has advised that the access driveway to the proposed dwelling is not consistent with the relevant standards for gradients. As such, this forms a reasons for the recommended refusal of the application.

**B6.2 Internal Driveways**

Council's Development Engineer has advised that the proposed vehicular crossing to the proposed dwelling fails the relevant technical standard. Therefore, this forms one of the relevant reasons for refusal of the proposed development.

**B8.5 Construction and Demolition - Works in the Public Domain**

The proposal incorporates significant works in the road reserve, which in addition to the proposed driveway, includes: retaining walls; landscaping, access pathways to the proposed dwelling; and the removal of one (1) street tree.

The applicant was advised in correspondence to removal all such works, with the exception of the driveway. The amended plans nonetheless still retain these works. These plans were referred to Council's Road Reserve team for comment, who subsequently advised such works were not supported as they: restricted sight distances for vehicles; and conflicted with the high volumes of pedestrian traffic on Narrabeen Park Parade.

As such, this form a reason for the recommended refusal of the application.

**B8.6 Construction and Demolition - Traffic Management Plan**

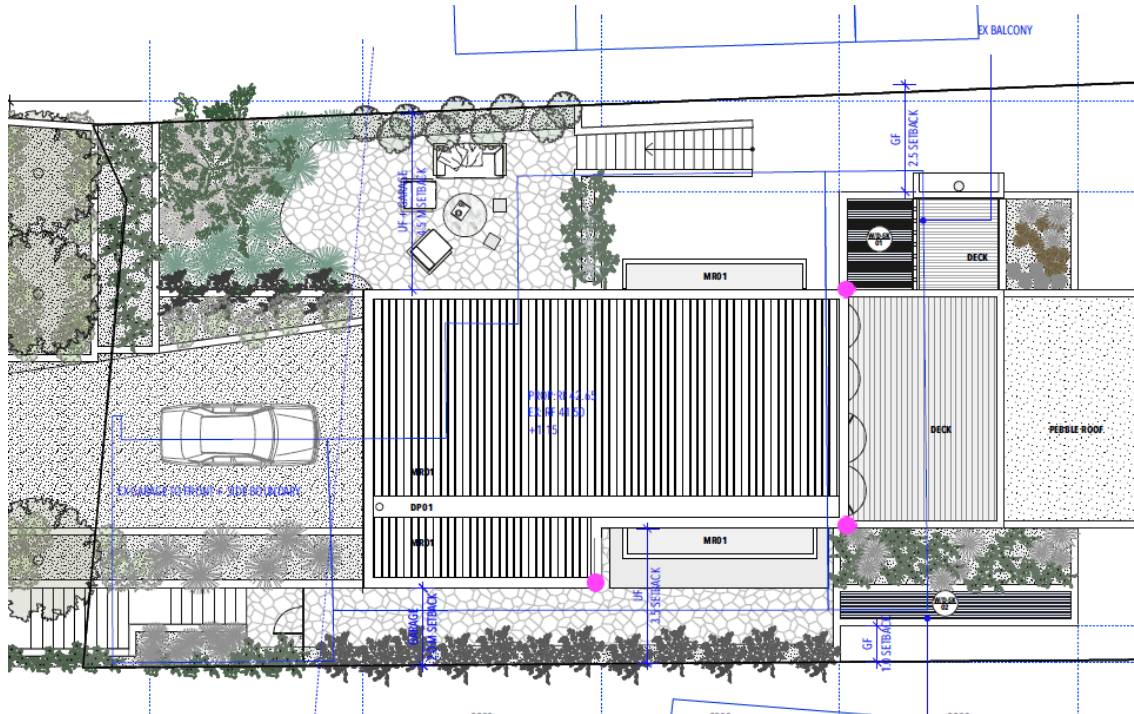
This control requires all development where excavated materials is 100m<sup>3</sup> or greater, a Construction Traffic Management Plan indicating truck movements, and truck routes is to be provided and approved by Council prior to the commencement of works.

Based on the proposed level of excavation (estimated at 200m<sup>2</sup> in the submitted Waste Management Plan) this threshold is likely to have been exceeded. Hence, if consent were to be granted, a condition of consent requiring the submission of a Construction Traffic Management Plan indicating truck movements, and truck routes would need to be applied.

**C1.3 View Sharing**

During the course of the notification, a number of submissions were received, in regard to the potential loss of views from both private properties and the public domain. The specific properties which raised concern with loss of views from their dwellings, were: Nos.119, 123, 174 and 176 Narrabeen Park Parade.

For the benefit of the assessment, the applicant assisted by erecting height poles, to illustrate the heights of Level 2 and 3, on their east elevation. The height and location of these poles were confirmed by a registered surveyor, in documentation dated 23 September 2023, in the locations shown below (in pink):



**Figure 1 - site plan**

Site inspections were also undertaken on the aforementioned properties, as part of this assessment.

To ensure a thorough consideration of this matter, the following assessment is divided into a discussion on both the impacts on the private and public domains.

#### Private Properties

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

- *A reasonable sharing of views amongst dwellings.*

#### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

#### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

#### Comment to Principle 1:

A general description of the views enjoyed by surrounding properties is provided below:

**Figure 2** - No.119 Narrabeen Park Parade: Views to the north-east, east and south-east, incorporating: the ocean; Warriewood Beach and associated headland. A photo taken from the ground floor deck of this dwelling, showing the height poles, is provided below:





**Figure 3** - No.123 Narrabeen Park Parade: Views to the north-east, east and south-east, incorporating: the ocean; Warriewood Beach and associated headland; district views to the south. A photo from the upper ground floor of this dwelling, showing the height poles, is provided below:



**Figure 4** - No.174 Narrabeen Park Parade: Views to the north-east, east and south-east, incorporating; the ocean; Warriewood Beach and associated headland. A photo taken from the upper level is provided below, note existing vegetation obscures the view of most of the poles:



**Figure 5** - No.176 Narrabeen Park Parade: Views to the north-east, east and south-east, incorporating the ocean; Mona Vale Beach / headland; minor aspects of Warriewood Beach; Warriewood Headland. A photo taken from the upper level deck of this dwelling, showing the height poles, is provided below:





## 2. What part of the affected property are the views obtained

*“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.*

### Comment to Principle 2:

As discerned from the site inspections, views are enjoyed from the following areas, by property:

No.119 Narrabeen Park Parade: upper level living room and deck; upper ground floor deck; and lower ground floor rumpus / deck, across side and rear boundaries.

No.123 Narrabeen Park Parade: lower ground floor living room/deck; ground floor living room; upper level bedroom, across side and rear boundaries.

No.174 Narrabeen Park Parade: lower ground level bedroom, rumpus/deck; upper level living living, bedroom and deck, across a front boundary.

No.176 Narrabeen Park Parade: upper level living room and deck, across a front boundary.

## 3. Extent of impact

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more*

*significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

Comment to Principle 3:

A summary of estimated loss of views for each property is provided below:

No.119 Narrabeen Park Parade: a minor loss of ocean views is estimated from the upper level living room and deck, from the works on level 2. In effect, the breach of the envelope, on both its vertical and horizontal dimensions, will contribute to this loss.

No.123 Narrabeen Park Parade: a minor loss of views of Warriewood Beach and district views to the south is estimated from the upper level living room and deck from the works on Level 2. In effect, the breach of the envelope, on horizontal dimensions, will contribute to this loss of views from this property.

No.174 Narrabeen Park Parade: a minor loss of ocean views is estimated from lower ground level bedroom, rumpus/deck; upper level living room, bedroom and deck, from the works on Level 3. However, the proposed works may open up some additional views to the ocean.

No.176 Narrabeen Park Parade: a minor loss of ocean views is estimated from upper level living room and deck from the works on Level 3

**4. Reasonableness of the proposal that is causing the impact**

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

Comment to Principle 4:

In the context of the works being non-compliant with the Building Envelope control on the south elevation, then the estimated loss of views from adjoining private properties are considered to be unreasonable. The view loss is considered to be result of the elongated design of the dwelling, which accentuates the loss from the adjoining properties at Nos.119 and 123. As such, the proposal is considered to be inconsistent with Principle 4.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment: This matter is discussed in greater detail on the discussion on views to The Public Domain. In short, there will be an unacceptable loss of views to the adjoining areas of the public domain, hence this objective is not achieved.

- *Canopy trees take priority over views.*

Comment: Not relevant to the proposed development, as no significant tree canopy exists on

the subject site or the surrounding area.

### The Public Domain

Relevant to the subject application is the Principle established by the Court "Impact on public domain views" in the matter of *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046. The Principle established five (5) principles in this regard, which are discussed below:

#### **1. Existing views from the public domain**

*"The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):*

- *the nature and extent of any existing obstruction of the view;*
- *relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);*
- *is the change permanent or temporary; or*
- *what might be the curtilages of important elements within the view."*

Comment to Principle 1: In the areas adjoining Narrabeen Park Parade, significant views of the Tasman Sea and associated foreshores, beaches and headland are present. This includes: Warriewood Beach and headland; Mona Vale Beach and headland; and significant district views to the north, south and west.

#### **2. Identification of where views are enjoyed**

*"The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed."*

Comment to Principle 2: Adjacent the north-west frontage of the site, on the Narrabeen Park Parade road reserve, is a pedestrian path which constitutes part of the established Northern Beaches Coastal Walk. The views could be generally described as "corridor" views, obtained along the side boundaries of the properties on the eastern, or lower, side of Narrabeen Park Parade. This the primary area where views would be potentially interrupted.

#### **3. Identification of the obstruction to view**

*"The third step is to identify the extent of the obstruction at each relevant location. . . Unlike Tenacity (which adopts the proposition that sitting views are more difficult to protect than standing views), the impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment of the whole population, old or young and whether able-bodied or less mobile. It is not appropriate to adopt some statistically derived normative eye height for the assessment of such views (such as the conventionally adopted 1.6m eye height for the assessment of overlooking privacy impacts). Indeed, some views (such as that from Mrs Macquarie's Chair toward the Opera House and Harbour Bridge) may well be ones likely to be enjoyed frequently from a seated position"*

Comment to Principle 3: The proposed dwelling will result in a loss of views to the ocean, and in

regard to the breaches of the envelope on the south elevation, some views to the shoreline of Warriewood Headland are also likely to be lost.

#### **4. Identify the intensity of public use**

*"The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development."*

Comment to Principle 4: The Northern Beaches Coastal walk is highly used, by both local residents, and visitors from outside the area. In this regard, the loss of views will represent a significant diminishment in the value of this highly used public area.

#### **5. Identify any document which recognises the importance of the view**

*"The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed . . . This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views."*

Comment to Principle 5: The Pittwater 21 Development Control Plan, specifically the following clauses: Part C1.3 View Sharing and D14.18 Scenic Protection Category One Lands, contain objectives that seek to mitigate the loss of views from public areas, as a result of proposed development. As such, this impact is highly relevant in the assessment of the overall impact of the subject application.

#### Conclusion:

Having regard to the above assessment, it is concluded that the proposed development will result in an adverse loss of views from adjoining private properties and also the adjoining public domain.

As such, the application is inconsistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **C1.5 Visual Privacy**

The amendments made to the application, in particular the: reduction on the size of the Level 3 deck; and the increased setbacks on the north-east side boundary, have resulted in an adequate level of visual and acoustic privacy for adjoining dwellings.

#### **C1.24 Public Road Reserve - Landscaping and Infrastructure**

This control seeks consistency in the design and construction of landscape works in the road reserve. Given that Council's Road Reserve team has not supported the proposed works within the road reserve, this objective is not met and refusal is recommended.

#### **D14.7 Front building line**

##### **Description of the Non-compliance**

The home office/studio is located at distance of 1-1.5m from the front boundary of the site, which represents up to an 85% variation with the minimum front setback requirement of 6.5m.

##### **Consideration of the Outcomes**

*Achieve the desired future character of the Locality.*

Comment: Aspects of the Desired Future Character (DFC) for the Warriewood Locality that are relevant to the proposed non-compliance include: "Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. . . Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. . . Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance".

The majority of the floor area of the proposed home office / studio is to be located beneath the existing ground level, essentially as a basement room, situated directly beneath the proposed driveway and not visible from either adjoining public and private domains. As such, the siting and location of this aspect of the proposal is consistent with the requirement of the DFC that requires development to be integrated with the landform and landscape. In turn, it is the opinion of this assessment that this Outcome has been achieved.

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

Comment: A detailed consideration of the preservation of views and vistas from public/private places is provided elsewhere in this report. In consideration of the potential impact of the home office / studio, this aspect of the proposal is not considered to have a detrimental impact on any view or vista. Hence, this Outcome is achieved.

*The amenity of residential development adjoining a main road is maintained. (S)*

Comment: Not relevant to the proposed development.

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

Comment: There will be no significant loss of any vegetation on the subject site as a result of the proposed home office / studio. As such, this Outcome not compromised.

*Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment: Not relevant to the proposed development, as the site is not located on a main road.

*To preserve and enhance the rural and bushland character of the escarpment and the locality. (En, S)*

Comment: Not strictly relevant to the proposal, as the site is not located in a rural zone, nor adjacent a bushland area. It is acknowledged that the site is adjacent a coastal shore, however the location of this aspect of the works will not be visible from these areas. Hence, this Outcome is not adversely compromised.

*To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment: When viewed from the adjoining public domain of Narrabeen Park Parade, the home office / studio will not be readily visible. Therefore, this aspect of the proposal is considered to enhance the existing streetscape and not be adverse to the natural topography of the area.

*To encourage attractive street frontages and improve pedestrian amenity.*

Comment: In this regard, the negligible visual presence of the home office / studio, will not be adverse to the achievement of an attractive street frontage, nor detrimental to the pedestrian amenity of the immediate area.

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment: As discussed at length in this section of the report, the aspect of the proposal subject to the proposed non-compliance, will not be visible from the public domain and will have a negligible visual presence when viewed from adjoining properties.

In conclusion, despite the close proximity of the home office / studio to the front boundary, its location and siting well below the existing ground level will render this part of the proposal mostly invisible when viewed from surrounding areas. Full compliance with the Outcomes has been demonstrated. Hence, the proposed variation to the standard is supported.

#### **D14.11 Building envelope**

##### **Description of the Non-compliance**

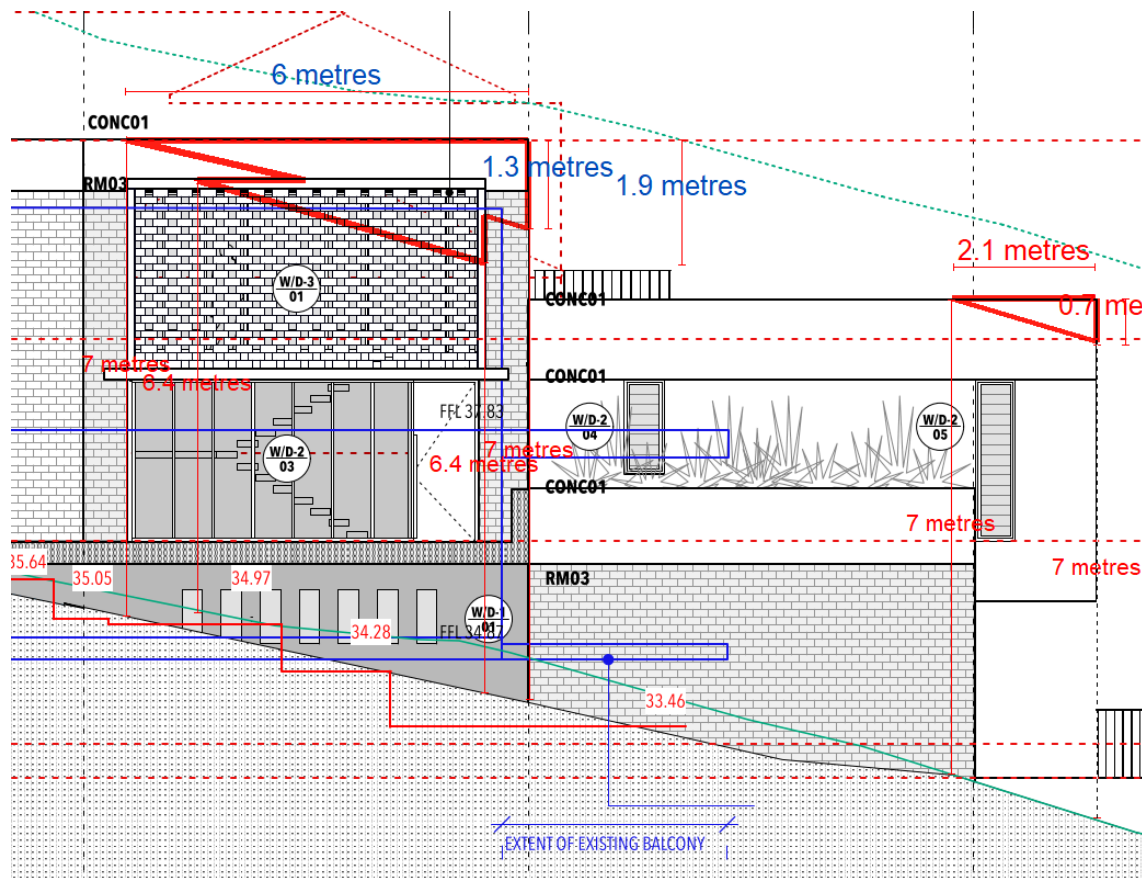
Breaches of the Building Envelope control is proposed on the south-west elevation, of the following dimensions:

Level 2: 0.7 metres (height) x 2.1 metres (length)

Level 3: 1.3 - 1.9 metres (height) x 6 metres (length)

An estimate of the breach is shown below (in red):





**Figure 6 - extent of building envelope breach**

### **Consideration of the Outcomes**

*To achieve the desired future character of the Locality. (S)*

Comment: Aspects of the Desired Future Character (DFC) for the Warriewood Locality that are relevant to the proposed non-compliance include: "Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. . . Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. . . . Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance".

The site has a moderate easterly aspect, sloping down towards the coastline. The site is allocated under State biodiversity mapping as being within a Coastal Headland Clay Heath vegetation community. This is typified by very sparse canopy trees and will generally be dominated by low-lying shrubs, due to the influence of sea spray and windy conditions.

The breach proposed on the south elevation is result of the proposed dwelling projecting in an unnecessary manner, both upwards on the horizontal scale for Level 3 and outwards to the east, on Level 2. These result in a bulk and scale that is not: stepped down the slope to respond to the topography of the site; and not an adequate response to the coastal landscape and the low-lying nature of the vegetation communities that exist upon it.

As such, it is considered that this Outcome has not been achieved.

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment: As detailed in the previous commentary, the vegetation community in the coastal area is typified by a sparse canopy of low-lying shrubs. In this regard, the breaches of the building envelope control represent an unreasonable built form that will not be below the height of the trees of the natural environment. Hence, the proposal fails this objective.

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment: As stated above, the proposed development will represent a bulk and scale that is not consistent with the typical height of vegetation that would naturally occur on the subject site and the surrounding coastal area. In turn, this is not an appropriate relationship with the spatial characteristics of the existing natural environment, and the proposal is considered to fail this objective.

*The bulk and scale of the built form is minimised. (En, S)*

Comment: The application has not provided a bulk and scale that is appropriate to the surrounding area, hence this objective has not been adequately met.

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

Comment: A detailed consideration of the preservation of views and vistas is conducted elsewhere in this report, with specific regard to the NSW Land and Environment Court Planning Principles for both: "Views - general principles" and "Impact on public domain views". In summary, it has been found that there will be a loss of significant views as a result of the proposed no-compliances. As such, this objective has not been met.

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

Comment: Whilst it has been identified that there will be a loss of views as a result of the proposed envelope breach, in regard to privacy and solar access, there is no specific adverse amenity impact on adjoining properties identified in this regard.

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

Comment: As the site has been heavily modified from its original state, no significant vegetation will be removed as result of the proposal.

In conclusion, the proposal will have multiple breaches of the building envelope, which will result in: a structure that will have adverse visual impact when viewed from both the private and public domains; and result in an unacceptable loss of views from both private properties and public areas. Hence, this forms one of the recommended reasons for the refusal of the application.

#### **D14.18 Scenic Protection Category One Lands**

The site is located in a Scenic Protection Area (Category One).

This area is designated as a means of minimising any visual impact on the natural environment when

viewed from any waterway, road or public reserve.

Objectives of this control which are considered specifically relevant to the proposed development include:

*To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and waterfront. (En, S))*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.*

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

These objectives have no corresponding numerical control. Therefore, it is incumbent upon the relevant development standards and controls to assist in determining whether the proposed development can meet the aforementioned objectives.

As discussed elsewhere in this report, the proposed development represents a breach to the Building Envelope control (Part D14.11), on its south elevation.

Further, a quantitative assessment on view sharing (Part C1.3) has established that there will be an adverse loss of views, from both adjoining private properties and the adjoining public domain.

The proposal will be highly prominent when viewed from adjoining public areas, in particular from Warriewood Beach, surf club, car parks and public reserve open space and pedestrian paths, to the south and south-east of the subject site.

The breach of the building envelope is proposed on the south elevation of the dwelling, accentuating the visual impact, when viewed from these areas which are highly utilised by the public. This is also evidenced by the significant public interest generated by the proposal, by way of the number of submissions received (16 in total).

Under the circumstances, full control with the relevant numerical controls is considered necessary, in order to meet the objectives of the Category One Scenic Protection Area and in turn, ensure the legitimacy of Council's development controls.

This therefore forms one of the recommended reasons for the refusal of the application.

#### **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 \$28,210 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,821,000.

### **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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

### **PLANNING CONCLUSION**

This proposal, for demolition works and construction of a dwelling house has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the number of public submissions exceeding ten (10), with sixteen (16) submissions received.

The critical assessment issues raised in the assessment centre on:

- the loss of views from both the adjoining private and public domains;
- the visual impact of the proposal, when viewed from both the adjoining private and public domains; and
- the role of the non-compliance with the Building Envelope control on those issues pertinent to view loss and visual impact.

The findings of this assessment is that the generally elongated form of the proposed dwelling will result in an adverse amenity loss to adjoining dwellings, in respect to its visual impact and the likely loss of

views.

In a broader sense on the proposal's impact on the Scenic Protection Area, the identified non-compliance with the Building Envelope control results in a structure that would be inconsistent with the Council's expectations for future development. The works as proposed would diminish the value of the coastal foreshore landscape on which the site is situated and a full compliance with the built form controls is necessary under the circumstances. Further, as the site is located in a Coastal Use Area under the State Environmental Planning Policy (Resilience and Hazards) 2021, this visual impact is not acceptable.

The concerns raised in the objections from the public, in regard to: view loss, both from private properties and the public domain; visual impact; and non-compliance with Council's controls (specifically, Building Envelope) are considered valid, and form part of the recommended reasons for the refusal of the application.

Subject to reasons outlined in detail in this report, it is recommended that the application be refused, for the following summarised reasons:

- adverse impact to views enjoyed from adjoining private properties;
- adverse impact to views enjoyed from the adjoining public domain;
- non-compliance with the numerical requirements of P21 Development Control Plan (building envelope);
- failure of the objectives of Clause 2.11 (c) of SEPP (Resilience and Hazards) 2021.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/0646 for the Demolition works and construction of a dwelling house on land at Lot 1 DP 22672, 121 Narrabeen Park Parade, MONA VALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

### Particulars:

The proposal represents numerous non-compliances with State and Council policy and with the principles established by the NSW Land & Environment Court. No circumstances exist that would justify the non-compliances with these policies and principles.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 2.11 (c) of State Environmental Planning Policy (Resilience and Hazards) 2021.

### Particulars:

The proposal is considered to be inconsistent with the surrounding coastal and built environment, in relation to the bulk, scale and size of the proposal. The south-west elevation of the proposal will be of a scale that overly dominates the coastal environment, in a highly visually prominent area.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.

### Particulars:

The proposed development will not be of an acceptably low density and scale that is integrated with the landform and landscape and will have an unacceptable visual impact on the aesthetic values of the adjoining coastal foreshore.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.1 Access driveways and Works on the Public Road Reserve of the Pittwater 21 Development Control Plan.

### Particulars:

The proposed vehicle crossing profile fails the required standard, specifically that profile referenced as Extra Low A4 3330/5 EL in Appendix 10 of Pittwater21 Development Control Plan.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.2 Internal Driveways of the Pittwater 21 Development Control Plan.

### Particulars:

The proposed vehicular crossing fails to comply with Council standard for vehicle crossing profile Extra Low A4 3330/5 EL.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B8.5 Construction and Demolition - Works in the Public Domain of the Pittwater 21 Development Control Plan.

Particulars:

The proposed works in the adjoining road reserve will adversely effect pedestrian and vehicular safety and the efficiency of the road network for all road users, including pedestrians.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.

Particulars:

The application will result in an unacceptable loss of views from both adjoining private properties, specifically: No.119 Narrabeen Park Parade; No.123 Narrabeen Park Parade; No.174 Narrabeen Park Parade; and No.176 Narrabeen Park Parade, and from the adjoining public domain.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.24 Public Road Reserve - Landscaping and Infrastructure of the Pittwater 21 Development Control Plan.

Particulars:

The proposed works in the road reserve are not consistent with the design expectations of Council and should be removed or re-designed to be consistent with those expectations.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.11 Building envelope of the Pittwater 21 Development Control Plan.

Particulars:

The breaches of the building envelope will result in both an adverse visual impact and unacceptable loss of views, when viewed from private and public domains.

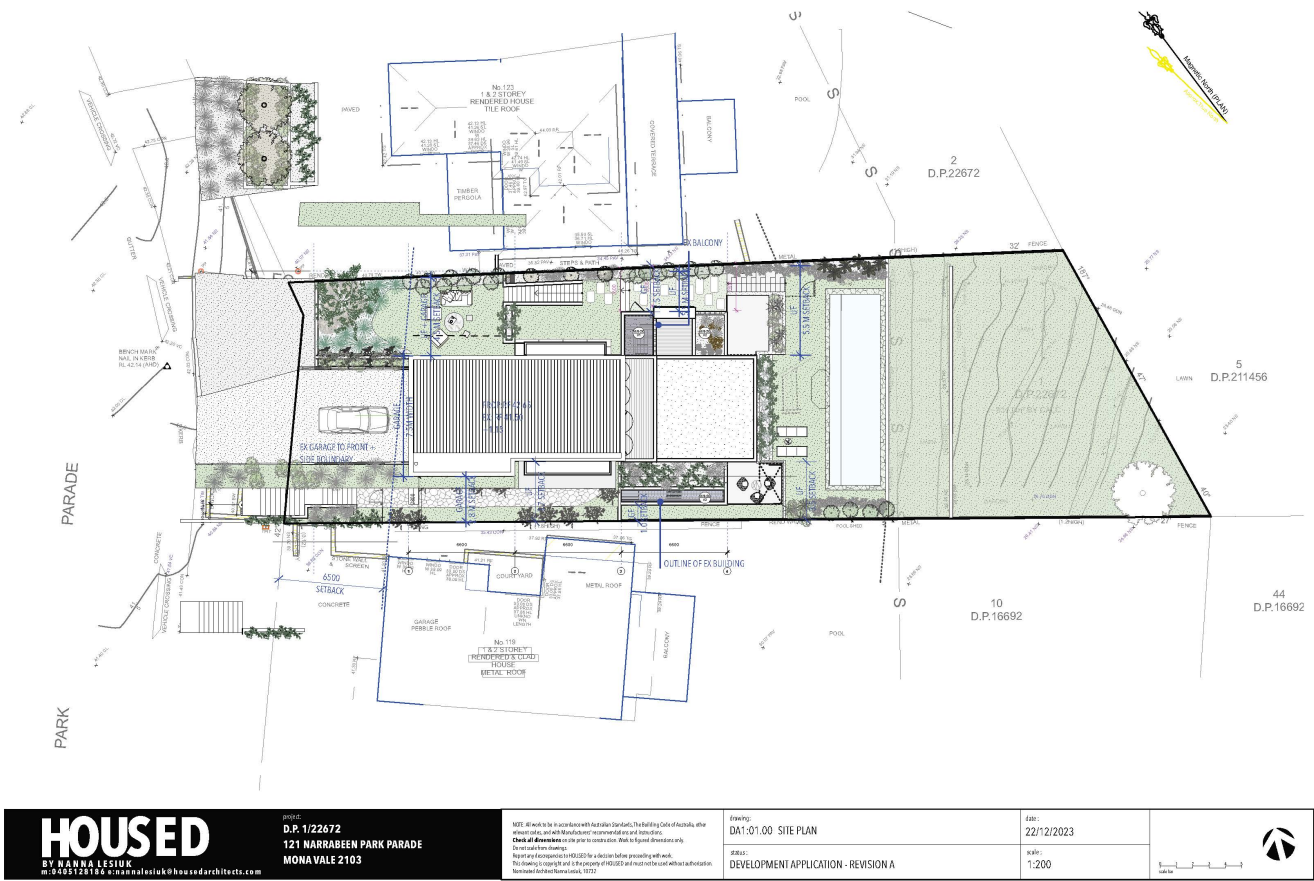
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.18 Scenic Protection Category One Lands of the Pittwater 21 Development Control Plan.

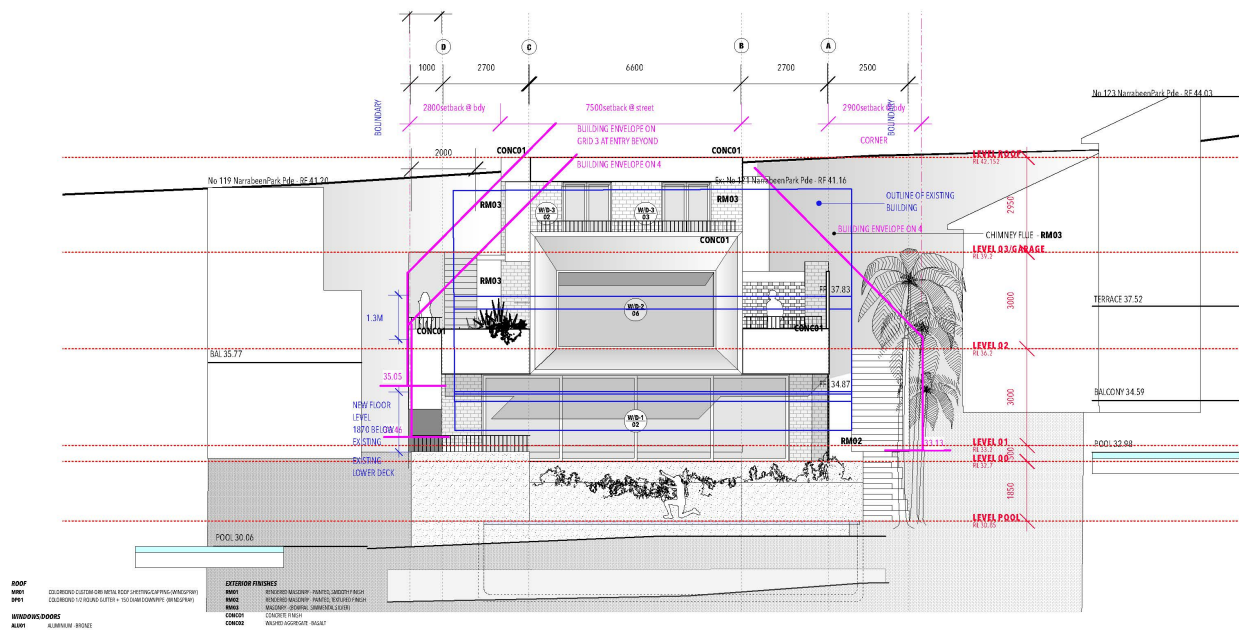
Particulars:

The application will have an adverse visual impact on the natural environment when viewed from the adjoining coastal foreshore, road and public reserve.









DOOR	DOOR TYPE	DOOR TYPE
DOOR 01	DOOR 01	DOOR 01
DOOR 02	DOOR 02	DOOR 02
DOOR 03	DOOR 03	DOOR 03
DOOR 04	DOOR 04	DOOR 04
DOOR 05	DOOR 05	DOOR 05
DOOR 06	DOOR 06	DOOR 06
DOOR 07	DOOR 07	DOOR 07
DOOR 08	DOOR 08	DOOR 08
DOOR 09	DOOR 09	DOOR 09
DOOR 10	DOOR 10	DOOR 10
DOOR 11	DOOR 11	DOOR 11
DOOR 12	DOOR 12	DOOR 12
DOOR 13	DOOR 13	DOOR 13
DOOR 14	DOOR 14	DOOR 14

LEVEL	ORIENTATION	TYPE	SIZE	SHADING	WINDOW	ORIENTATION	TYPE	SIZE	SHADING	WINDOW	ORIENTATION	TYPE	SIZE	SHADING
LEVEL 1					LEVEL 2					LEVEL 3				
W1-1	01	South	aluminium frame glass door	2100 x 1000	W2-1	01	South	aluminium frame glass door	900 x 2100	W3-1	01	South	aluminium frame glass door	1500 x 2400
W1-2	02	East	aluminium frame glass door	900 x 2100	W2-2	02	South	aluminium frame glass door	2100 x 1000	W3-2	02	East	aluminium frame glass door	1500 x 2400
W1-3	03	North	aluminium frame glass door	1500 x 2400	W2-3	03	South	aluminium frame glass door	4100 x 2400	W3-3	03	East	aluminium frame glass door	1500 x 2400
W1-4	04	West	aluminium frame glass door	1500 x 2400	W2-4	04	South	aluminium frame glass door	2100 x 1000	W3-4	04	East	aluminium frame glass door	1500 x 2400
W1-5	05	West	aluminium frame glass double window	1500 x 2400	W2-5	05	South	aluminium frame glass double window	600 x 2400	W3-5	05	North	aluminium frame glass double window - Road glass	800 x 1000
W1-6	06	North	aluminium frame glass door	4900 x 2100	W2-6	06	East	aluminium frame glass door	4900 x 2400	W3-6	06	North	aluminium frame glass double window	1500 x 2400
					W2-7	07	North	aluminium frame glass door	4900 x 2400	W3-7	07	West	aluminium frame glass double window	1500 x 2400
					W2-8	08	North	aluminium frame glass door	4900 x 2400	W3-8	08	North	aluminium frame glass double window	1500 x 2400
					W2-9	09	West	aluminium frame glass door	4900 x 2400	W3-9	09	West	aluminium frame glass double window	1500 x 2400
					W2-10	10	North	aluminium frame glass door	4900 x 2400	W3-10	10	North	aluminium frame glass double window	1500 x 2400
					W2-11	11	North	aluminium frame glass door	4900 x 2400	W3-11	11	North	aluminium frame glass double window	1500 x 2400
					W2-12	12	East	aluminium frame glass door	4900 x 2400	W3-12	12	East	aluminium frame glass double window	1500 x 2400
					W2-13	13	North	aluminium frame glass door	4900 x 2400	W3-13	13	North	aluminium frame glass double window	1500 x 2400
					W2-14	14	East	aluminium frame glass door	4900 x 2400	W3-14	14	East	aluminium frame glass double window	1500 x 2400

**HOUSED**  
BY NANNAL LESIUK  
n:8405126186 e:nannalesiuk@housedarchitects.com

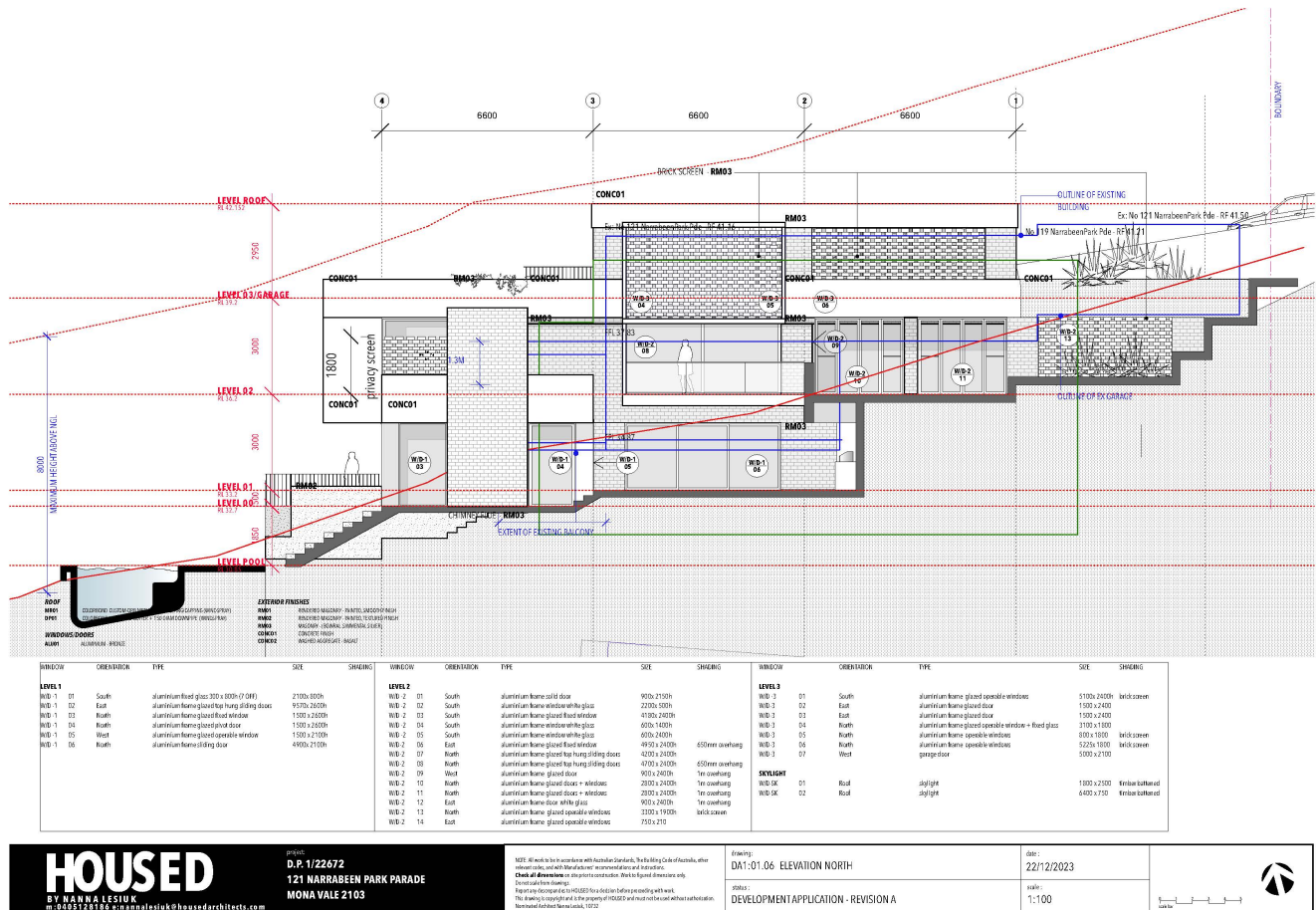
D.P. 1/22672  
121 NARRABEEN PARK PARADE  
MONA VALE 2103

NOTE: All work to be in accordance with Australian Standards. The Building Code of Australia, other relevant codes, and all relevant standards, regulations and codes of practice.  
Check all dimensions on site prior to construction. Work to final dimensions only.  
Report any discrepancies to the architect prior to construction.  
This drawing is copyright and the property of HOUSED and must not be used without authorisation.  
Revised: 01/01/2023

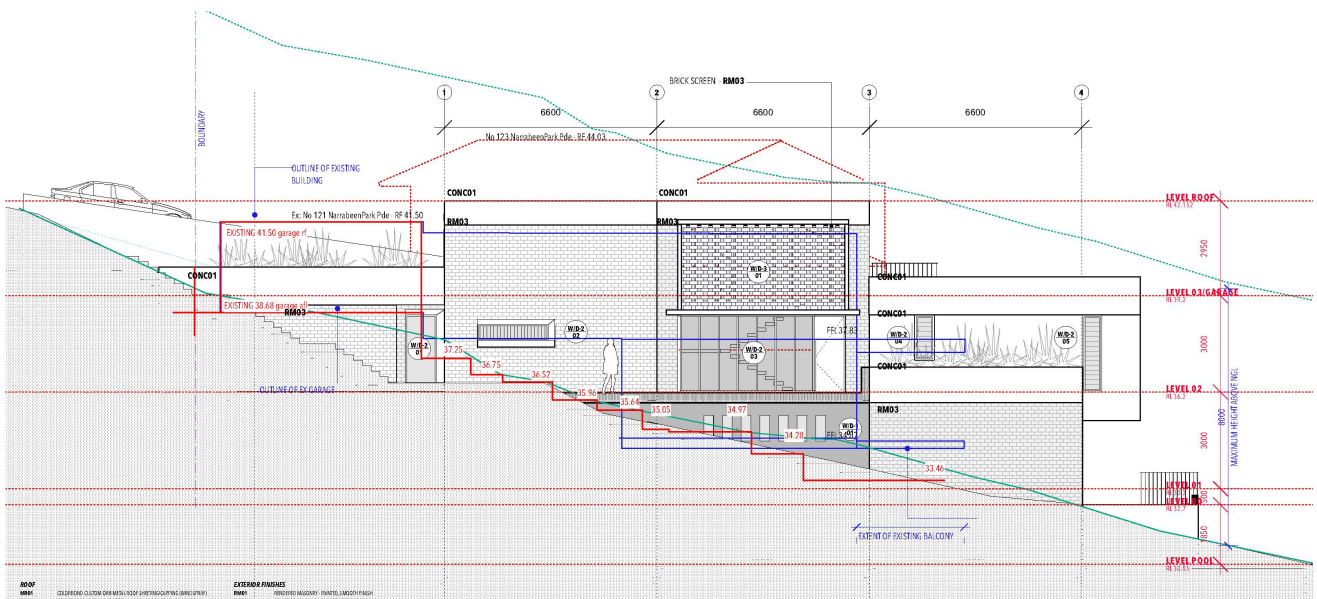
Drawing:  
D.A.1-01.05 ELEVATION EAST  
2023-01  
DEVELOPMENT APPLICATION - REVISION A

Date:  
22/12/2023  
Scale:  
1:100



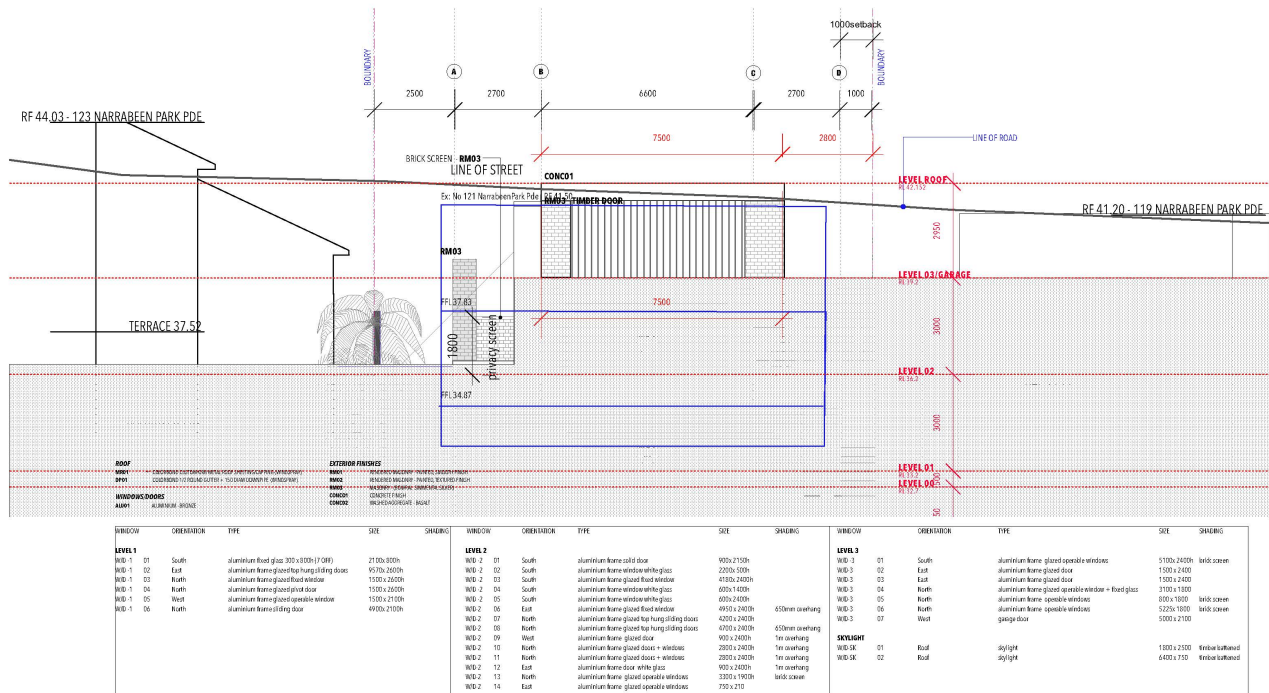


**ATTACHMENT 2 : SITE PLAN & ELEVATIONS - ITEM 4.2 - NORTHERN BEACHES COUNCIL MEETING - 3 APRIL 2024**

[illegible]

<h1>HOUSED</h1> <p>BY NINA LESIUK          (416) 321-7818 or nina@ninaleski@housedarchitects.com</p>	<p>project:  <b>D.P. 1/22672</b>  <b>121 NARRABEEN PARK PARADE</b>  <b>MONIA VALE 2103</b></p>	<p>NOTE: All work to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and AHS Manufacture's recommendations and instructions.  <b>Check dimensions on site prior to construction. Work to given dimensions only.</b>          Report a discrepancy to HOSIED for decision before proceeding with work.          If the drawing is completed and the project of HOSIED is not used to create construction, the owner shall be responsible. 1/22672</p>	<p>drawing:  <b>DA-101.07 ELEVATION SOUTH</b></p> <p>status:  <b>DEVELOPMENT APPLICATION - REVISION A</b></p>	<p>date:  <b>22/12/2023</b></p> <p>scale:  <b>1:100</b></p>
	<p>scale bar: 0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100</p>			





LEVEL	CONCRETE	TYPE	DATE	STATUS	WINCON	CONCRETE	TYPE	DATE	STATUS	WINCON	CONCRETE	TYPE	DATE	STATUS
LEVEL 1					LEVEL 2					LEVEL 3				
WIN-1-01	South	aluminum floor grid 303 1200x1200 (1700)	21/06/2020	OK	WIN-2-01	South	aluminum frame cold door	20/06/2020	OK	WIN-3-01	South	aluminum frame glass operable window	19/06/2020	both cover
WIN-1-02	East	aluminum frame glass fixed window	19/06/2020	OK	WIN-2-02	South	aluminum frame window with glass	22/06/2020	OK	WIN-3-02	East	aluminum frame glass door	19/06/2020	both cover
WIN-1-03	North	aluminum frame glass fixed window	15/06/2020	OK	WIN-2-03	North	aluminum frame glass fixed window	4/10/2020	OK	WIN-3-03	East	aluminum frame glass door	15/06/2020	both cover
WIN-1-04	West	aluminum frame glass fixed door	15/06/2020	OK	WIN-2-04	North	aluminum frame glass fixed window	4/10/2020	OK	WIN-3-04	West	aluminum frame glass door	15/06/2020	both cover
WIN-1-05	West	aluminum frame glass operable window	15/06/2020	OK	WIN-2-05	South	aluminum frame window with glass	22/06/2020	OK	WIN-3-05	North	aluminum frame operable window + fixed glass	20/06/2020	both cover
WIN-1-06	North	aluminum frame glass door	4/09/2020	OK	WIN-2-06	East	aluminum frame glass fixed window	4/10/2020	OK	WIN-3-06	North	aluminum frame operable window	15/06/2020	both cover
					WIN-2-07	East	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-07	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-08	West	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-08	East	aluminum frame operable window	15/06/2020	both cover
					WIN-2-09	North	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-09	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-10	South	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-10	North	aluminum frame operable window	15/06/2020	both cover
					WIN-2-11	North	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-11	South	aluminum frame operable window	15/06/2020	both cover
					WIN-2-12	East	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-12	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-13	West	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-13	East	aluminum frame operable window	15/06/2020	both cover
					WIN-2-14	East	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-14	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-15	West	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-15	East	aluminum frame operable window	15/06/2020	both cover
					WIN-2-16	South	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-16	North	aluminum frame operable window	15/06/2020	both cover
					WIN-2-17	North	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-17	South	aluminum frame operable window	15/06/2020	both cover
					WIN-2-18	East	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-18	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-19	West	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-19	East	aluminum frame operable window	15/06/2020	both cover
					WIN-2-20	South	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-20	North	aluminum frame operable window	15/06/2020	both cover
					WIN-2-21	North	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-21	South	aluminum frame operable window	15/06/2020	both cover
					WIN-2-22	East	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-22	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-23	West	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-23	East	aluminum frame operable window	15/06/2020	both cover
					WIN-2-24	South	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-24	North	aluminum frame operable window	15/06/2020	both cover
					WIN-2-25	North	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-25	South	aluminum frame operable window	15/06/2020	both cover
					WIN-2-26	East	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-26	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-27	West	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-27	East	aluminum frame operable window	15/06/2020	both cover
					WIN-2-28	South	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-28	North	aluminum frame operable window	15/06/2020	both cover
					WIN-2-29	North	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-29	South	aluminum frame operable window	15/06/2020	both cover
					WIN-2-30	East	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-30	West	aluminum frame operable window	15/06/2020	both cover
					WIN-2-31	West	aluminum frame glass fixed door	4/10/2020	OK	WIN-3-31	East	aluminum frame operable window	15/06/2020	both cover
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					WIN-2-99	West	aluminum frame glass fixed door	4/1						

 <p>BY NANA LESTIK          @005128186 @nanalestik@housedarchitects.com</p>	<p>project:  <b>D.P. 1/22672</b>  <b>121 NARRABEEN PARK PARADE</b>  <b>MONA VALE 2103</b></p>	<p>1/22672: All work to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, AS/NZS Manufacturers' recommendations and standards.          Check all dimensions in millimetres construction. Work to 50mm dimensions only.          (round all dimensions)</p> <p>Report to be completed and signed by the designer before proceeding with work.          The drawings are prepared and the responsibility of the designer and shall not be used without the architect's permission.          The architect's name and the architect's number, 1/22672</p>	<p>drawing:  <b>DA1-01.08 ELEVATION WEST</b></p> <p>status:  <b>DEVELOPMENT APPLICATION - REVISION A</b></p>	<p>date:  <b>22/12/2023</b></p> <p>scale:  <b>1:100</b></p> <div>   </div>
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Suite 1, 9 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | [www.bbfplanners.com.au](http://www.bbfplanners.com.au)

## **Clause 4.6 request to vary the Foreshore Building Line Development Standard.**

### **121 Narrabeen Park Parade, Mona Vale**

#### **Foreshore building line**

##### **1.0 Introduction**

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

##### **2.0 Pittwater Local Environmental Plan 2012 (“PLEP”)**

##### **2.1 Clause 7.8 – Foreshore building line**

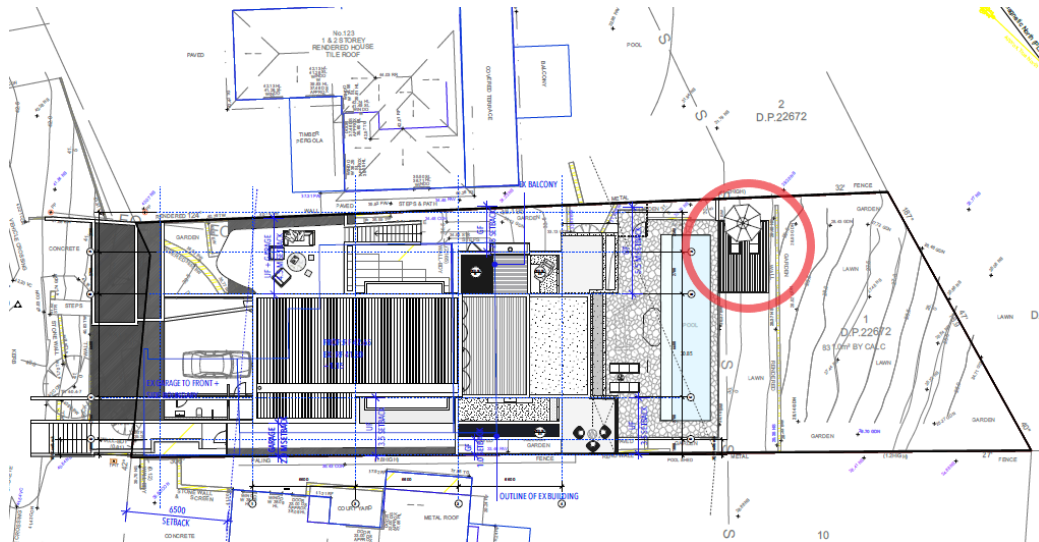
Pursuant to clause 7.8 of PLEP development consent must not be granted for development on land in the foreshore area except for the following purposes:

- 2) *the rebuilding of an existing building wholly or partly in the foreshore area,*
  - a. *the erection of a building in the foreshore area, but only if the building is at or below the existing ground level, and if the levels, depth or other exceptional features of the site make it appropriate to do so,*
  - b. *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs or swimming pools.*

The objectives of the foreshore building line control are as follows:

- a. *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- b. *to ensure continuous public access along the foreshore area and to the waterway.*

I confirm that the additional decking seaward of the swimming pool will encroach within of the foreshore building line, as highlighted below.



**Figure 1 – Foreshore building line breach identified in red**



**Figure 2: 3D representation of the deck**

## 2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) *The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

- (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.*

This clause applies to the clause 7.8 Limited Development on Foreshore Area

Clause 4.6(3) of PLEP provides:

- (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.*

The proposed development does not comply with the foreshore building line provisions in clause 7.8 of PLEP however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (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 Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the

consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

(5) *In deciding whether to grant concurrence, the Director-General must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 7.8 of PLEP from the operation of clause 4.6.

### 3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 7.8 of PLEP development standards?

- 
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
    - (a) compliance is unreasonable or unnecessary; and
    - (b) there are sufficient environmental planning grounds to justify contravening the development standard
  3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 7.8 standard and the objectives for development for in the zone?
  4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
  5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 7.8 of PLEP?

#### **4.0 Request for variation**

##### **4.1 Is clause 7.8 of PLEP development standards?**

Clause 7.8 prescribes a provision that seeks to limit the extent of development with the foreshore area and accordingly is considered to be a development standard to which clause 4.6 PLEP applies.

##### **4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary**

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

##### Consistency with objectives of the foreshore building line standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

*(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area*

**Comment:** I am satisfied that the non-compliant portion of the deck will not impact on natural foreshore processes or affect the significance and amenity of the area. The platform does not raise any view loss concerns across the site from adjoining properties. It is intended to be a lounging area associated with the pool that can access the superior views. This objective is achieved.

*(b) to ensure continuous public access along the foreshore area and to the waterway.*

The existing public access to the foreshore area will not be impacted by the areas of encroachment.

#### Consistency with zone objectives

The subject site is zoned C4 Environmental Living pursuant to the provisions of PLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the C4 zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

**Response:** The works represent a small deck associated with the existing swimming pool and will not cause any unreasonable impacts to the environmental value of the area.

- *To ensure that residential development does not have an adverse effect on those values.*

**Response:** The development will not have an adverse impact on those values. It is raised above ground level due to the sloping topography and will have little impact the environmental value of the area.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

**Response:** The works do not give rise to any unreasonable bulk and scale concerns. It is an open deck structure associated with the existing swimming pool and would not be seen as jarring or offensive within the context of development along the coastal escarpment.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

**Response:** The areas of non-compliance do not impact on any riparian zone, foreshore vegetation or wildlife corridors.

The non-compliant component of the development, as it relates to foreshore building line, demonstrates consistency with objectives of the C4 Environmental Living zone and clause 7.8 of the PLEP. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

#### **4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the due to the existing swimming pool to be retained which currently sits within the foreshore building line. The deck will provide the

occupants for an area to take in the view and when enjoying recreational activities associated with the swimming pool.

The deck has a low profile in relation to the landform and will include glass balustrades to limit any impacts to views accessed across the site.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal facilitates ecologically sustainable development through the retention of the existing building fabric and adopting alterations and additions (1.3(b)).
- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The variation facilitates good design and enhanced amenity (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

There are sufficient environmental planning grounds to justify contravening the development standard.

#### **4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone**



The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

*“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

#### **4.5 Secretary’s concurrence**

By Planning Circular dated 5 May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.



## 5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the foreshore building line standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the foreshore building line standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and foreshore building line standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a foreshore building line variation in this instance.

**Boston Blyth Fleming Pty Limited**

**William Fleming**  
BS, MPLAN



Clause 4.6 – Floor Space Ratio

Director

## 5.0 NON PUBLIC MEETING ITEMS

**ITEM 5.1      DA2023/1507 - 5/150-152, 6/150-152 & 8/150-152 OCEAN STREET, NARRABEEN - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING.**

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants 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.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/1507 for Alterations and additions to a Residential Flat Building on land at Lot 5 SP 77933, 5 / 150 - 152 Ocean Street, NARRABEEN, Lot 6 SP 77933, 6 / 150 - 152 Ocean Street, NARRABEEN, Lot 8 SP 77933, 8 / 150 - 152 Ocean Street, NARRABEEN subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	<b>Steve Findlay</b>
<b>TRIM FILE REF</b>	2024/154781
<b>ATTACHMENTS</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan &amp; Elevations</a> <a href="#">↓3 Clause 4.6</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1507
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<b>Responsible Officer:</b>	Clare Costanzo
<b>Land to be developed (Address):</b>	Lot 5 SP 77933, 5 / 150 - 152 Ocean Street NARRABEEN NSW 2101 Lot 6 SP 77933, 6 / 150 - 152 Ocean Street NARRABEEN NSW 2101 Lot 8 SP 77933, 8 / 150 - 152 Ocean Street NARRABEEN NSW 2101
<b>Proposed Development:</b>	Alterations and additions to a Residential Flat Building
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Karen Louise Richards
<b>Applicant:</b>	Developable Pty Ltd

<b>Application Lodged:</b>	26/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	02/11/2023 to 16/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 34%%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 45,000.00
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### EXECUTIVE SUMMARY

This development application seeks consent for the construction of alterations and additions to a residential flat building, consisting of the three new pergolas at the roof top level.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to contravening the building height of a Class 2 building by greater than 10%.

Concerns raised in the objections predominantly relate to building height and overshadowing.

Critical assessment issues included building height, overshadowing and bulk and scale.

The Clause 4.6 request for the non-compliance with the building height development standard arises from the site being excavated underneath the existing building, thereby creating a 34% or 2.7m variation, as per the Bettar court judgement.

Based on extrapolated natural ground levels as per the Merman court judgement, the effective height would only be measured at 9.1m, which is 7% or 600mm above the 8.5m height control.

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

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal comprises of the construction of a pergola to existing roof terraces of Unit 5, 6 and 8 of an existing residential flat building. The proposal also comprises of associated 1.7m high privacy screening to the southern edge of Unit 8 roof terrace and the northern and southern edge of Unit 6.

External colours and finishes have not been provided and as such a condition will be included recommending the colours and finishes to complement the existing residential flat building.

### **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**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D9 Building Bulk

#### SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 5 SP 77933 , 5 / 150 - 152 Ocean Street NARRABEEN NSW 2101</p> <p>Lot 6 SP 77933 , 6 / 150 - 152 Ocean Street NARRABEEN NSW 2101</p> <p>Lot 8 SP 77933 , 8 / 150 - 152 Ocean Street NARRABEEN NSW 2101</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the corner of Ocean Street and Loftus Street. The street address, pedestrian access and primary frontage is located along the western side of Ocean Street. The vehicular access to the on site car parking and secondary frontage is located on Loftus Street.</p> <p>The site is regular in shape with a primary frontage of 30.48m along Ocean Street and a secondary frontage of 30.48m to Loftus Street. The site has a surveyed area of 929m<sup>2</sup>.</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a two storey residential flat building with eight units and basement car parking. Vehicular access to the basement carparking is available via Loftus Street.</p> <p>The site is generally flat and is located within the coastal management zone.</p> <p>The site has some vegetation along the perimeter of the residential flat building.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by similar residential flat buildings, two storey dwelling houses and a residential aged care.</p>

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

A site visit was conducted at the subject site.

Following the notification and assessment of the application, the applicant was notified of a number of concerns raised by Council and the respondents to the notification regarding shadow diagrams, revised Clause 4.6 and amended plans.

The applicant responded by providing amended shadow diagrams and a revised Clause 4.6. The applicant did not agree with Council's position regarding the amended plans and provided a submission for the Northern Beaches Local Planning Panel with their request to delete recommended condition requiring a setback of 1.0m of the northern and southern pergolas to the edge of the residential flat building.

The requirement for a 1.0m setback to the northern and southern edges of the building has been imposed by way of condition.

## 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	Warringah 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)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;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.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;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.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>



Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 02/11/2023 to 16/11/2023 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Richard Thomas Leslie Inkster	4 / 150 - 152 Ocean Street NARRABEEN NSW 2101
Steven Clifford Faddy	7 / 150 - 152 Ocean Street NARRABEEN NSW 2101

The following issues were raised in the submissions:

- Building Height
- Solar Access
- Engineering Plans and Construction Materials

The above issues are addressed as follows:

- **Building Height**

The submissions raised concerns that the breach of the building height as a result of the pergola structures will set precedence for the height of any future redevelopment.

Comment:

Each application is assessed on its individual merits and circumstances.

- **Solar Access**

The submissions regarding shadow impacts were made by an owner within the development, who is not part of the proposal to install pergolas. In this regard, the owner is concerned that the proposed pergolas will have an unreasonable level of overshadowing of their roof top terrace area. The submission also raised concerns regarding the accuracy of the shadow diagrams.

Comment:

Council has assessed the application in accordance with the planning controls under the Warringah Development Control Plan 2011 and have found the proposal complies with the relevant controls, see D6 Access to Sunlight within the assessment report for further discussion.

Council requested amended shadow diagrams which have been used to assess the development.

- **Engineering Plans and Construction Materials**

The submissions raised concerns that there are no engineering plans provided as part of the development application to support the construction and no materials details have been supplied. This concern of the property owner is based this area being subject to high winds.

Comment:

Engineering plans are produced at the Construction Certificate stage and the construction of the pergolas will be required to meet all relevant Australian Standards and construction related requirements.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department.

Internal Referral Body	Comments
	<p>There are no concerns with the application.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>

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 (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 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.

#### **Comment:**

The proposal is not expected to have any adverse impacts on any of the above.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

#### **Comment:**

The consent authority is satisfied the works have been designed, sited and will be managed to avoid an adverse impact on any of the above.

## **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 consent authority is satisfied the works have been designed to not have any impacts on any of the above.

## **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 proposal is not likely to cause any 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.

## **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.

#### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.2m	34% (2.7m)	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.2m
Percentage variation to requirement:	34%

##### 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 judgements 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.*

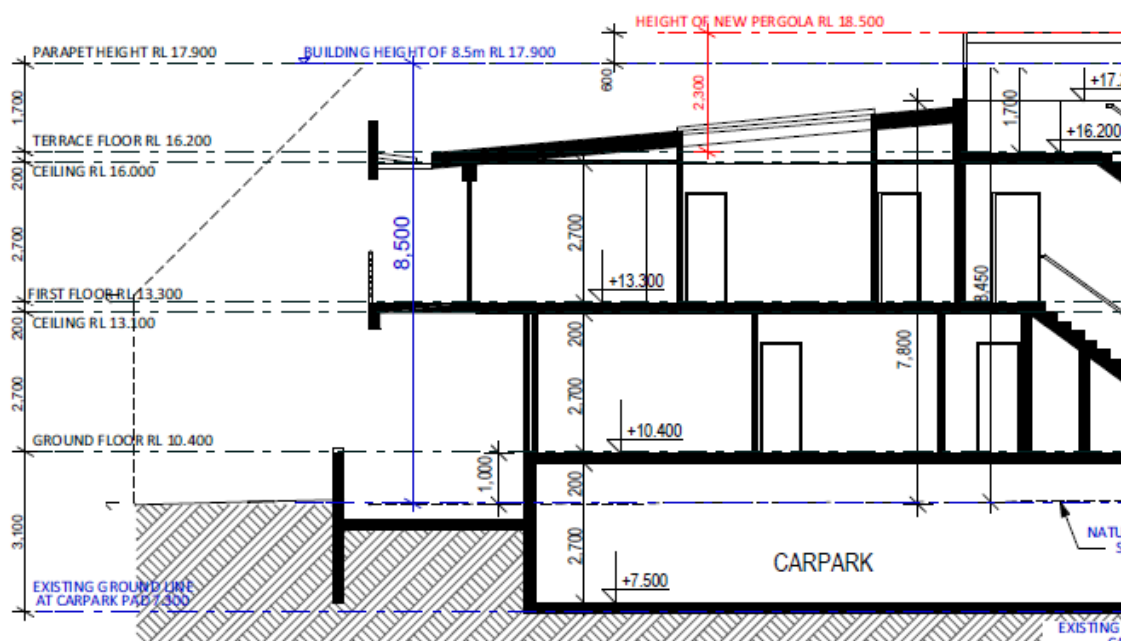
Applicants Written Request

The applicants written request argues, in part:

- *The height breach of 34% is not an accurate representation of the overall height breach as this is measured from the existing excavated ground level. If the calculation was taken from natural ground level, the non-compliance would only be 600mm, which is minimal of a pergola structure with louvers. This is a true representation of the non-compliance, and demonstrates that the height and scale of the pergola is compatible with the surrounding area.*
- *A portion of the structure will only be visible from the road reserve when looking at the site from the South of the development. The pergola is considered to not cause unreasonable visual impacts as the structure is only 600 millimetres above the natural ground level when viewed from the public domain.*
- *The proposed building height variation does not contravene any of the zone objectives.*
- *The pergola is not enclosed and will not result in any additional floor area.*
- *The building height is compatible with the three storey residential flat buildings within the area.*



- The pergola is consistent with the design and character of the building and streetscape with examples of similar development within the area.



**Figure 1:** Excerpt from applicant's Clause 4.6 outlining the height of the new pergola

Council agrees with the applicant that the variation is as a result of historical excavation for the basement level of the existing RFB, the works are not expected to have any unreasonable amenity impacts and will not be highly visible in the streetscape given the design and location of the pergolas.

The modest height of the new pergolas and open nature and location will ensure the works will not result in significant increase of bulk and scale of the existing residential flat building.

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 R3 Medium Density Residential zone. An assessment against these objectives is provided below.

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

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

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The definition of building height is taken from existing ground level. The natural ground level has been disturbed by the construction of a basement for the existing development and therefore, by definition the calculation needs to be taken from below the basement slab. If the calculation was taken from natural ground level, the non-compliance would only be 600mm, which is minimal of a pergola structure with louvres.

The building height is compatible with the 3 storey residential flat buildings located at 149 Ocean Street and 157 Ocean Street.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

The proposal is not expected to result in any unreasonable visual impact given the centralised location of the pergolas. In addition the works are not expected to result in any view loss, loss of privacy or solar access with the shadows generally overshadowing the road reserve. The works will continue to meet the requirements under the Apartment Design Guidelines under Part 4A. There are no adjacent windows to the west that the proposed development would impact from adjoining properties. Any additional overshadowing will fall within the existing site and road reserve.

*c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

Comment:

The development is not considered to have any impact upon the scenic quality of the surrounding coastal and Bush environments.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

A portion of the structure will only be visible from the road reserve when looking at the site from the South of the development. The pergola is considered to not cause unreasonable visual impacts as the structure is not expected to be highly visible when from natural ground level when viewed from the public domain.

### **Zone objectives**

The underlying objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment;*
- *To provide a variety of housing types within a medium density environment;*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents;*
- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah; and*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

### Comment:

The proposed pergolas will provide a shade structure to meet the needs of the residents and does not proposed to change the existing approved use of the building. The proposed development will not significantly disrupt the existing presentation an facade of the building to the public domain. The development retains high visual quality to the public streets and spaces.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

### **Exception to Development Standards conclusion**

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development breaching the maximum height control. It is considered appropriate that in this instance, flexibility in the application of the development standard height of buildings be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

### **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 & Infrastructure, 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.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	no changes	N/A	N/A
B3 Side Boundary Envelope	4m	within (new works)	N/A	Yes
	4m	within (new works)	N/A	Yes
B5 Side Boundary Setbacks	4.5m (northern)	4.5m (pergola)	N/A	Yes
	4.5m (western)	16m (pergola)	N/A	Yes
B7 Front Boundary Setbacks	6.5m (eastern primary)	12.6m (pergola)	N/A	Yes
	3.5m (southern secondary)	3.2m (pergola)	9%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	no changes	N/A	N/A

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	N/A	N/A
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	N/A	N/A
C3 Parking Facilities	N/A	N/A
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	N/A	N/A
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	N/A	N/A
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B7 Front Boundary Setbacks**

##### Description of non-compliance

The proposed pergola on the roof terrace of Unit 5 does not comply with the secondary front setback of 3.5m to Lofus Street. The works will be setback 3.2m from the southern boundary, which is a 9% or 300mm non-compliance with the control requiring a minimum setback of 3.5m.

It is worth noting that strict compliance with this control is limited given the existing non-compliant secondary front boundary setback.

##### Merit consideration:

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

- *To create a sense of openness.*

##### Comment:

The proposed pergola structures are of an open nature when viewed from the streetscape and a modest height that is expected to continue to create a sense of openness. Privacy screens are proposed along the southern edge of Unit 8 and the northern and southern edge of Unit 6. Given the centralised location of the privacy screens and significant setbacks from the boundaries they will not be highly visible from the streetscape and as such are not considered to have an unreasonable impact on maintaining the open character as viewed from the streetscape.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The works follow the pattern of the existing building and will maintain the existing visual continuity.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The pergolas are of a modest height and generally open structure and are not expected to have an impact on the visual quality of the streetscape. The structures are reasonably setback from the boundaries to reduce their visibility from Ocean Street. A condition has been recommended requiring an additional setback of 1m from the northern and southern edge of the residential flat building to ensure the visual quality of the streetscape is protected and view lines minimised.

- *To achieve reasonable view sharing.*

Comment:

The proposal is not expected to have any view impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D1 Landscaped Open Space and Bushland Setting**

The works are proposed over the existing building footprint and therefore there will be no changes to the existing approved landscaped area on site.

No assessment is necessary in these circumstances.

#### **D6 Access to Sunlight**

A compliant level of solar access will be available to all units in accordance with the controls, the rooftop terrace and first floor balcony of the units will also retain existing solar access.

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

Given this is a residential flat building the terrace and balconies are considered to be the

private open space. All units will retain a reasonable level of solar access to the roof terraces and their first floor balconies.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed pergolas will have louvres and therefore allowing additional sunlight penetration when desired. In addition, the separation between the pergola of Unit 8 and Unit 7 and the modest height of the pergola will reduce the overall overshadowing.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal will promote passive solar design.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D8 Privacy**

The proposal comprises of new pergolas for three units to cover previously approved roof top terraces. The pergola structures will not result in any additional privacy impacts and no further assessment is required.

## **D9 Building Bulk**

Council raised concerns during the assessment of the application regarding the setback of the pergolas to the edge of the building and requested in Council's RFI that the applicant provide an additional setback of the pergola to the edge of the building by a minimum of 1.0m to reduce visibility of the pergolas when viewed in the streetscape.

The applicant did not agree with the proposition and rather responded to the request with examples of other pergolas within the area.

Three (3) examples were provided along Ocean Street and Waterloo Street:

- **99 Ocean Street, Narrabeen**

Comment:

This site is located approximately 430m to the south of the subject site and is also located on the corner. The pergola on this building has been centrally located above the building and has a 1m setback to the edge of the building.

- **92 Ocean Street, Narrabeen**

Comment:

The site is located approximately 475m south of the subject site and has a primary frontage to Ocean Street. Again the pergola structures are centrally located above the building. The pergola as part of this development is sufficiently setback from the front and side boundaries and features high levels of articulation.

- **11 Waterloo Street, Narrabeen**

Comment:

This site is located approximately 400m south of the subject site and is also a corner allotment. This site is developed with shop top housing and is located within the E1 Local Centre zone where the maximum building height is 11m and therefore the character of this area is generally buildings of this height and scale.

It is evident from the discussion above that each of these sites have their own site conditions and structures have been designed according to the site and streetscape circumstances. In addition, the pergola structures are minimal and recessed from the edge of the buildings, with a minimum setback of 1.0m to the building edge.

In their current form, Council does not consider the proposed pergolas to adequately meet the objectives of the control, as such a merit assessment including recommended conditions is conducted below.

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The pergolas height and proposed size generally meet the control, however a condition has been recommended to increase the setback to the northern and southern boundaries to ensure the pergolas are centrally located to reduce any perceived bulk and scale when viewed from the streetscape. The recommended setback will encourage an articulated design to reduce bulk and scale.

1.7m high privacy screens have been proposed along the southern edge of Unit 8 roof terrace and the northern and southern edge of Unit 6 roof terrace. The privacy screens are centrally located on the roof of the building and as such are not expected to be highly visible from the streetscape.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:



A condition has been included to increase the setback of the pergola along the northern and southern side boundaries by 1.0m to increase the setback of the pergola to be 1m from the edge of the building. The building has a prominent corner location and therefore the visual impact of development shall be minimised. This has been done through increasing the setback of the pergolas through a recommended condition.

Having regard to the above assessment, it is concluded that the proposed development, with the proposed conditions to create a setback from the facade of the building, that the pergolas are consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance subject to the recommended conditions of consent.

#### **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**

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

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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 Warringah Local Environmental Plan 2011 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 involves alterations and additions to a residential flat building in the form of pergolas to be erected at the roof top terrace level of the building has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the Height of Buildings development standard by greater than 10% to a Class 2-9 building.

The critical assessment issues related to the proposed height of the pergolas and building bulk.

The applicant provided a clause 4.6 request to vary the building height control which is considered to be well founded and is supported.

The submissions received related to building height, overshadowing and construction of the pergolas. The issues raised have been considered and will not result in any unreasonable impacts.

Overall, the development is a high quality design that performs well against the relevant controls, subject to the special condition for increased northern and southern setbacks to the pergolas, and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

## REASON FOR DETERMINATION

The proposal provides sufficient reasons why it is unreasonable or unnecessary to comply with the height standard and there are sufficient environmental planning grounds to vary the height of buildings control as demonstrated in the applicants Clause 4.6 written request.

The assessment concluded that the proposed pergolas will be sympathetic to the character of the area, subject to recommended condition increasing the northern and southern pergola setback by 1.0m to the edge of the building.

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 WLEP 2011 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 DA2023/1507 for Alterations and additions to a Residential Flat Building on land at Lot 5 SP 77933, 5 / 150 - 152 Ocean Street, NARRABEEN, Lot 6 SP 77933, 6 / 150 - 152 Ocean Street, NARRABEEN, Lot 8 SP 77933, 8 / 150 - 152 Ocean Street, NARRABEEN, 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
1/09	Rev D	Site Plan	Daniel Attard Designs	12 March 2024
2/09	Rev D	Ground Floor Plan	Daniel Attard Designs	12 March 2024
4/09	Rev D	Terrace Levels	Daniel Attard Designs	12 March 2024
5/09	Rev D	Elevation	Daniel Attard Designs	12 March 2024
6/09	Rev D	Elevation	Daniel Attard Designs	12 March 2024
7/09	Rev D	Section B-B	Daniel Attard Designs	12 March 2024

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	28 November 2023

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

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

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **6. Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The pergola structures on the rooftop terrace of Unit 5 and 8 shall be setback 1m from the edge of the northern and southern edge of the residential flat building.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

### **7. 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.

### **8. External materials and finishes**

External materials and finishes schedule shall be provided for the pergolas and privacy screens. The external materials and finishes schedule shall be of colours and materials to complement the existing residential flat building.

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

Reason: To ensure colours and finishes have been selected to protect and maintain desired streetscape character.

## **DURING BUILDING WORK**

### **9. 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.

### **10. 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.

#### BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

11. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

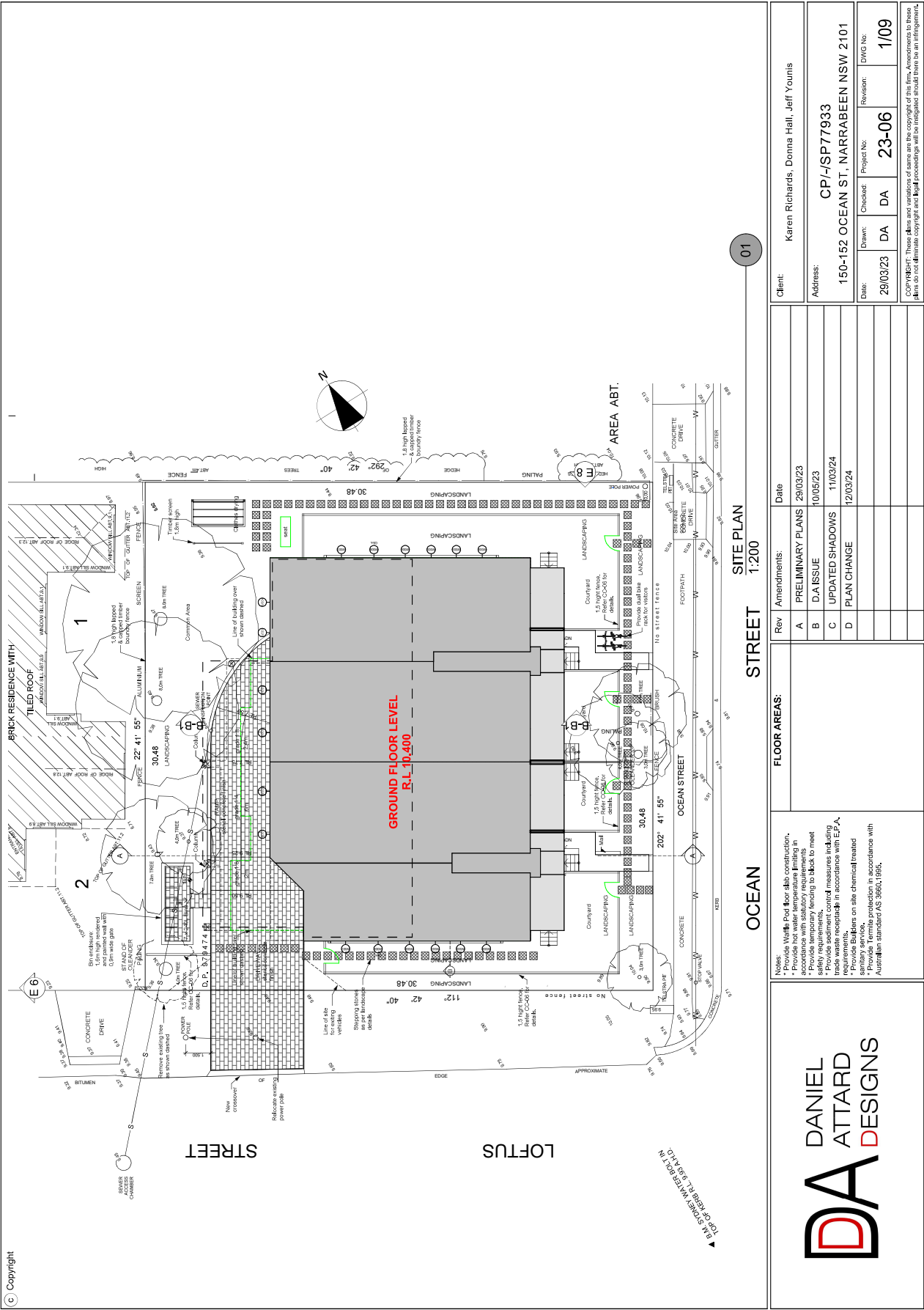
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

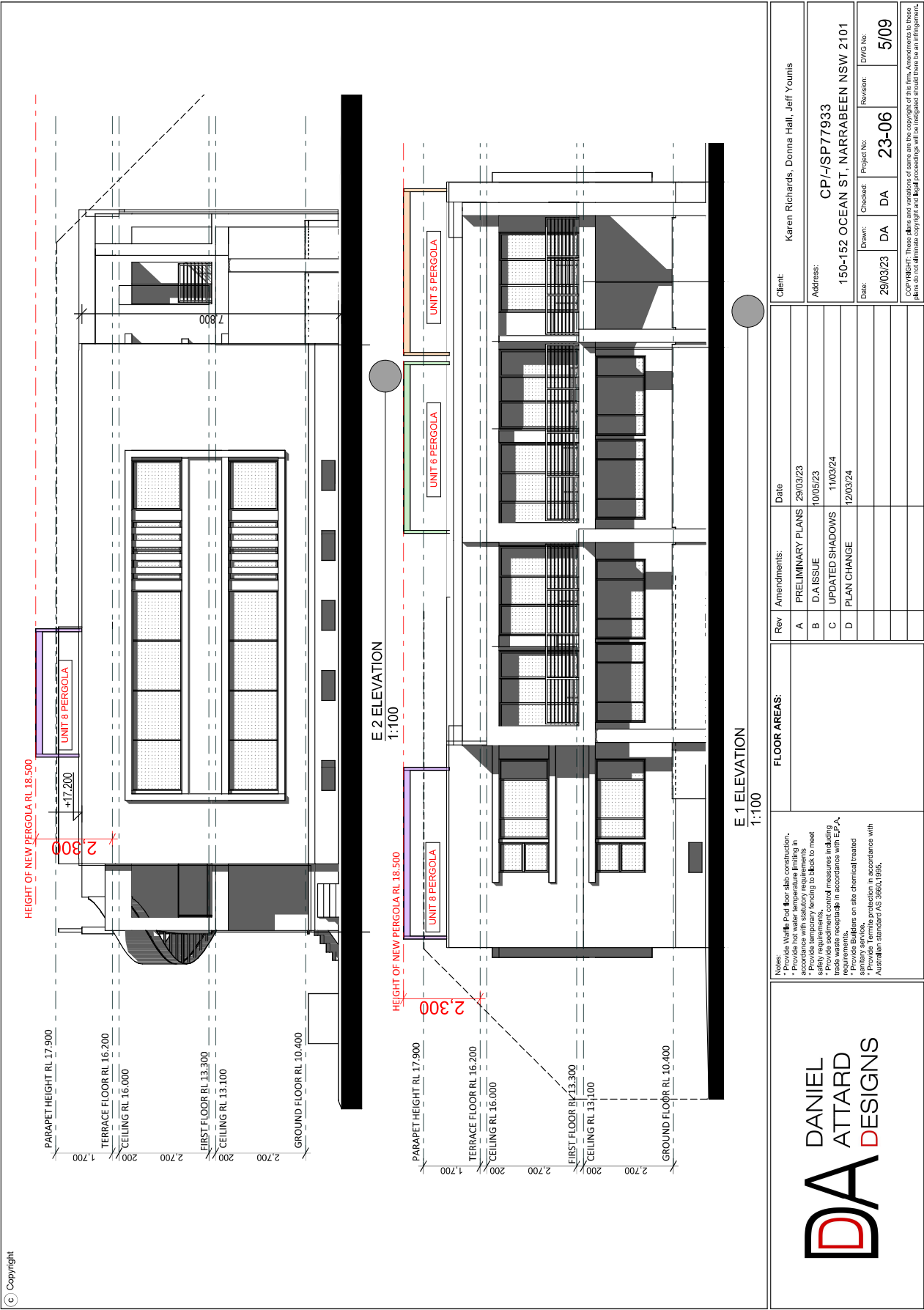
Reason: To ensure bushland management.

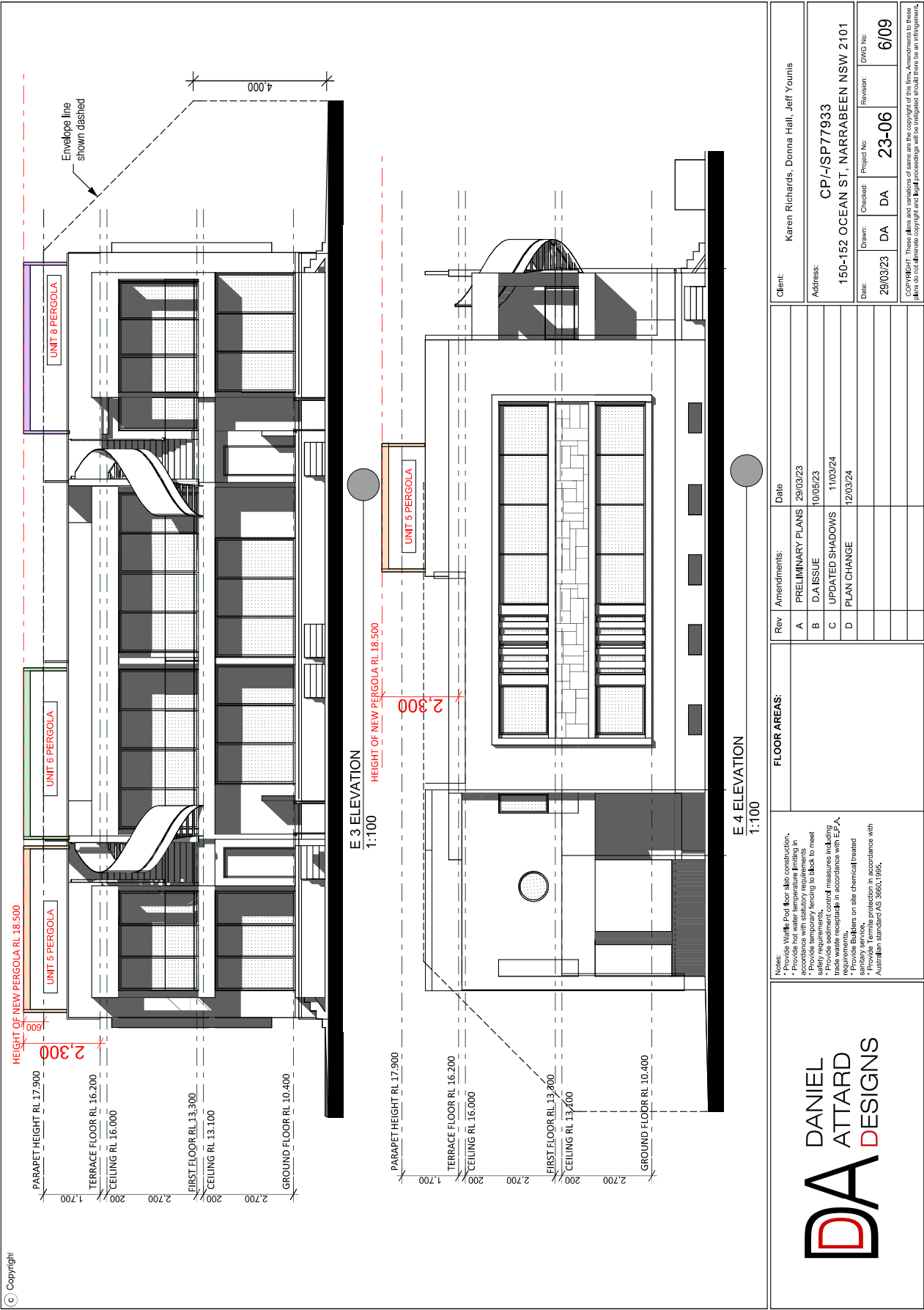
12. **Waste Management Confirmation**

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

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







# Developable

Town Planning

## 150-152 OCEAN STREET, NARRABEEN

1 3 . 0 3 . 2 0 2 4



CLAUSE 4.6 VARIATION REQUEST  
CLAUSE 4.3 - HEIGHT OF BUILDINGS  
PROPOSED PERGOLA TO THE ROOF TERRACES OF THREE  
UNITS TO AN EXISTING TWO STOREY RESIDENTIAL FLAT  
BUIDLING.

Phone : 0433 946 019

Email : [steven@developable.com.au](mailto:steven@developable.com.au)

Web : [www.developable.com.au](http://www.developable.com.au)

ABN : 51 628 117 751

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## Developable

### 1. Introduction

This variation request is prepared pursuant to Clause 4.6 of Warringah Local Environmental Plan 2011 (WLEP 2011) and considers several New South Wales Land and Environment Court (NSW LEC) planning principles and judgements that have refined the manner in which variations to development standards are to be approached. The development in question relates to the construction of a proposed pergola to the roof terraces of three units to an existing two storey residential flat building at 150-152 Ocean Street, Narrabeen.

### 2. Proposed Variation

Clause 4.3(2) of the WLEP 2011 refers to the Building Height Map with the subject site located within Area 'I' illustrated below of which prescribes a maximum building height of 8.5m.



The dictionary of the WLEP 2011 defines building height as follows:

*building height (or height of building) means -*

*(a) in relation to the height of a building in metres - the vertical distance from ground level (existing) to the highest point of the building, or*

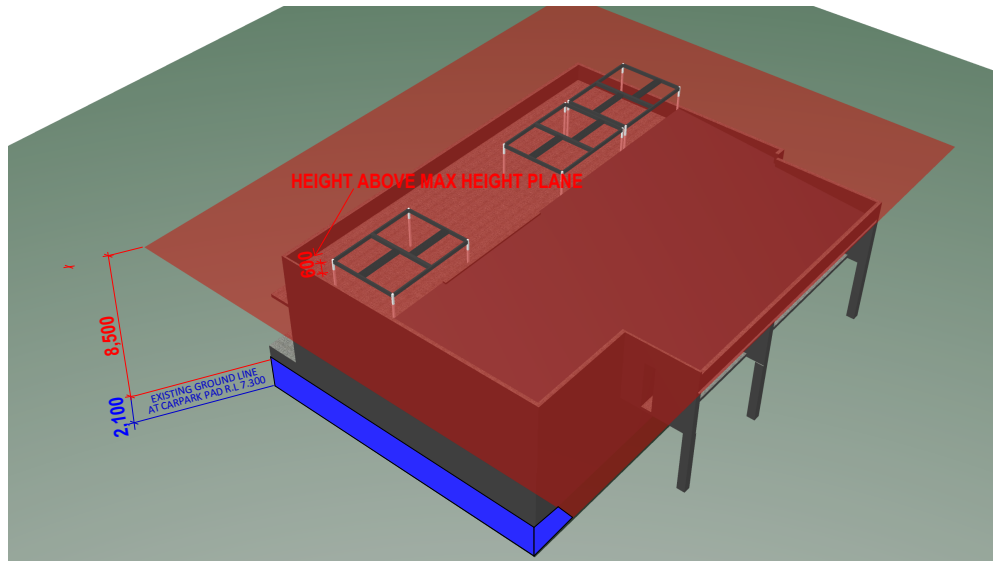
*(b) in relation to the RL of a building - the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposed pergola has a maximum 11.2m height, noting existing natural ground level (7.3 AHD underneath the basement) and roof height (18.5 AHD), which represents a 2.7m non-compliance or 31.76% variation to the control. With respect to the extent of the non-compliance it relates to a small portion of the upper-level ridge as illustrated below.



## Developable



### 3. Clause 4.6 Assessment

#### 3.1 Clause 4.6(1) - Objectives

Clause 4.6(1) outlines objectives that underly the clause as follows:

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

Reference is made to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 in which Preston CJ ruled that there is no provision that requires compliance with the objectives of the clause and that cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). It was also noted that in particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

Given the above the remaining considerations of clause 4.6 form the basis for which the consent authority is to be satisfied that the request for variation of the development standard is acceptable.

#### 3.2 Clause 4.6(2) - Development Consent May be Granted

Clause 4.6(2) states that ...‘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’.

Building height is a development standard as defined in Section 1.4 of the Environmental Planning & Assessment Act 1979 to which variations can be granted under cl 4.6.

#### 3.3 3.1.3 Clause 4.6(3) - Consent Authority to Consider Written Submission

Clause 4.6(3) provides that ...‘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

## Developable

- of the case, and*  
 (b) *that there are sufficient environmental planning grounds to justify contravening the development standard'.*

This submission and information contained within, constitutes a written request for the purposes of Clause 4.6(3) and the following subsections address the justifications required under that subclause.

### **3.4 Clause 4.6(4) - Consent Authority is to be Satisfied**

Clause 4.6(4) provides that ...'*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'.*

Each of the above mentioned matters has been addressed individually under the following subheadings.

#### **3.4.1 Clause 4.6(4)(a)(i) Written Request to Address Matters Required by 4.6(3)**

Clause 4.6(3) requires the applicant to justify contravention of 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'.*

With respect to clause 4.6(3)(a) the common ways in which an Applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary are listed in the 'five-part test' outlined by Preston CJ in *Wehbe v Pittwater* [2007] NSWLEC 827. In this respect an Applicant does not need to establish all of the tests or 'ways', rather it may be sufficient to establish only one, although if more are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The five possible ways are as set out below:

<b>First</b>	<i>The objectives of the standard are achieved notwithstanding non-compliance;</i>
<b>Second</b>	<i>The underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;</i>
<b>Third</b>	<i>The underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;</i>
<b>Fourth</b>	<i>The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;</i>
<b>Fifth</b>	<i>The zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.</i>

## Developable

With respect to the subject application, the first way is utilised with the sole objective underlying the building height development standard contained within clause 4.3(1) of WLEP 2011 addressed as follows:

Objective	Comment
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,	<p>Although the variation is technically 31.76% variation of the development standard, it is not a true representation of the non-compliance for the following reasons:</p> <ul style="list-style-type: none"> <li>(a) The definition of height of building is taken from <u>existing</u> ground level. The natural ground level has been disturbed by the construction of a basement for the existing development and therefore, by definition the calculation needs to be taken from below the basement slab.</li> <li>(b) If the calculation was taken from natural ground level, the non-compliance would only be 600mm, which is minimal of a pergola structure with louvers. This is a true representation of the non-compliance, and demonstrates that the height and scale of the pergola is compatible with the surrounding area.</li> <li>(c) The building height is compatible with the 3 storey residential flat buildings located at 149 Ocean Street and 157 Ocean Street.</li> <li>(d) The pergola does not enclose the roof area or create additional floor space.</li> <li>(e) The pergola does not obstruct any views, privacy or solar access of the neighbouring properties or the public domain.</li> <li>(f) The pergola is consistent with the design and character of the building and the streetscape, with examples of similar development found at 99 Ocean Street, 92 Ocean Street and 11 Waterloo Street.</li> </ul>
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,	<ul style="list-style-type: none"> <li>• There are no adjacent windows to the west that the proposed development would impact from adjoining properties.</li> <li>• Any additional overshadowing will fall within the road reserve.</li> </ul>
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,	The development is not considered to have any impact upon the scenic quality of the surrounding coastal and Bush environments.
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.	A portion of the structure will only be visible from the road reserve when looking at the site from the South of the development. The pergola is considered to not cause unreasonable visual impacts as the structure is only 600 millimetres above the natural ground level when viewed from the public domain.

With respect to clause 4.6(3)(b) the above demonstrates that the environmental impacts of the proposed development are acceptable notwithstanding non-compliance with the building height standard.

## Developable

### 3.4.2 Clause 4.6(4)(a)(ii) Written Request to Address Matters Required by 4.6(3)

As discussed by Preston CJ in Initial Action, if the development is consistent with the objectives of the development standard and the objectives of the zone, the consent authority can be satisfied that the development will be in the public interest. Objectives of the Building Height development standard have been previously addressed with those of R3 Medium Density Residential Zone outlined and addressed below.

Zone Objective	Comment
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	The residents of the subject units would like a shading structure to meet their needs.  The proposed development does not change the existing use of the building .
<i>To provide a variety of housing types within a medium density residential environment.</i>	The proposed development does not change the existing use of the building .
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	N/A
<i>To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.</i>	The proposed development does not impact the existing landscaped areas of the subject site.
<i>To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.</i>	The proposed development will not significantly disrupt the existing presentation an facade of the building to the public domain. The development retains high visual quality to the public streets and spaces.

As detailed the proposed building height variation does not contravene any of the zone objectives.

### 3.4.3 Clause 4.6(b) Concurrence of the Secretary.

Planning Circular (PS 18-003) dated 21 February 2018 provides that concurrence can be assumed when a Local Planning Panel (LPP) is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to.

Accordingly, concurrence of the LPP can therefore be assumed in this case.

## 3.5 Clause 4.6(5) - Concurrence Considerations

Clause 4.6(5) provides that ...'In deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by Secretary before granting concurrence'.*

N/A - As detailed above, concurrence of the secretary can be assumed in this instance.

## Developable

### 3.6 Clause 4.6(6) - Subdivision of Certain Land

Clause 4.6(6) provides that ... *'Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if -*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Development does not seek subdivision.

### 3.7 Clause 4.6(7) - Keeping of Records

Clause 4.6(7) provides that ... *'After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3)'*.

Northern Beaches Council are required to keep a register of Clause 4.6 variations publicly available. Should this application be supported it would be added to the register along with specific factors as required.

### 3.8 Clause 4.6(8) - Exclusions from use of Clause 4.6

Clause 4.6(8) provides that ... *'this clause does not allow development consent to be granted for development that would contravene any of the following -*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated listed in the table to this clause,*
- (ba) clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,*
- (c) clause 5.4,*
- (caa) clause 5.5.*

The development seeks variation to Clause 4.3 of the Warringah LEP 2011 and does not contravene any of the listed clauses, standards related to the BASIX SEPP or a development standard under complying development.

## 4. Conclusion

The proposed development seeks variation to the 8.5m building height control prescribed by Clause 4.3(2) of the WLEP 2011 and thus the subject clause 4.6 submission has been provided.

The application to vary the building height development standard is well founded and as addressed meets the objectives of the building height development standard. The proposal achieves an acceptable design outcome and one that does not result in unreasonable amenity impacts towards surrounding properties.

Consequently, strict compliance with the development standard is unreasonable and unnecessary in this instance and that the use of Clause 4.6 of the WLEP 2011 to vary the control is appropriate.

<b>ITEM 5.2</b> <b>DA2023/1405 - 6/21 CAVILL STREET, QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING.</b>
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## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants 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.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/1405 for Alterations and additions to a residential flat building. on land at Lot 6 SP 6539, 6 / 21 Cavill Street, QUEENSCLIFF subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	<b>Adam Richardson</b>
<b>TRIM FILE REF</b>	2024/205759
<b>ATTACHMENTS</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan &amp; Elevations</a> <a href="#">↓3 Clause 4.6</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1405
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<b>Responsible Officer:</b>	Michael French
<b>Land to be developed (Address):</b>	Lot 6 SP 6539, 6 / 21 Cavill Street QUEENSCLIFF NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a residential flat building.
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Max Joseph Evans
<b>Applicant:</b>	Performance Building Consultants

<b>Application Lodged:</b>	06/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	11/10/2023 to 25/10/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 28.2%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 55,800.00
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a residential flat building.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal results in a variation of more than 10% to Clause 4.3 Height of Buildings of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

The maximum permitted building height under the WLEP2011 is 8.5 metres. The proposed building height is 10.9 metres resulting in a variation of 28.2%. In support of the variation is a written Clause 4.6 Variation Request where compliance with the development standard is considered unreasonable in

the circumstances of this case. The variation arises from the addition of a Vergola louvred roof system attached to the existing top floor terrace of a residential flat building. The Vergola maintains a height below that of the existing building and remains within the current building footprint. It is for these reasons that the environmental planning grounds in the written Clause 4.6 Variation Request.

Residential Flat Buildings are prohibited in the R2 zone pursuant to the Warringah LEP. Therefore, the proposal relies on and benefits from Existing Use Rights.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. No submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant is seeking development consent for the following:

- Addition of a Vergola louvred roof system attached to the existing top floor 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**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings



Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 6 SP 6539 , 6 / 21 Cavill Street QUEENSCLIFF NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Cavill Street.</p> <p>The site is irregular in shape with a frontage of 19.235 metres along Cavill Street and a depth of 48.77 metres. The site has a surveyed area of 574m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011.</p> <p>The site is relatively flat throughout.</p> <p>The site has no details of any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a mix of dwellings within an R2 Low Density Residential zone.</p>

Map:



#### SITE HISTORY

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

- Strata Plan 6539- 12 September 1972.

While there are no specific details available regarding the approval of the Residential Flat Building, the approved strata plan would indicate that the proposal maintains the ongoing use of a site that has been in operation since its initial development.

#### 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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;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.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an amended Statement of Environmental Effects (SEE), and amended Architectural Plans.</p> <p><u>Clause 61</u> of the EP&amp;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.</p> <p><u>Clause 69</u> of the EP&amp;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.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia</p>

Section 4.15 Matters for Consideration	Comments
	(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	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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

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

Section 4.65 of the Act defines an existing use as:

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

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

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

This necessarily requires the following questions to be answered:

1. Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect

of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of a Statement of Environmental Effects, which reveals that the use of the building commenced as a lawful purpose, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011. Evidence of this is provided in the form of Strata Plan 6539 dated 12 September 1972.

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

Comment:

The use of the building was lawfully approved by Council prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011. Evidence of this is provided in the form of Strata Plan 6539 dated 12 September 1972.

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

Comment:

The Applicant has provided evidence in the form of a Statement of Environmental Effects, which reveals that the use of the building was carried out on 12 September 1972, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

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

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

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

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry

out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

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

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

Comment:

Planning Principle 1 makes it clear that, whilst an existing use rights development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of the character of surrounding development.

The judgement indicates that care must be taken in this assessment to avoid any de facto application of these standards and that failure to comply with these standards cannot be a consideration in the assessment. The focus of the assessment therefore, is to draw a comparison between the height, bulk, scale and density of the proposed development and the height, bulk, scale and intensity of existing development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls

**Building Height**

The maximum required height of buildings is 8.5 metres. The proposed Height of Buildings is 10.9 metres, causing a variation of 28.2% from the established standard. In this regard, the applicant has submitted a Clause 4.6 Variation Request. As detailed elsewhere within this report, the variation to the *Clause 4.3 Height of Buildings* Principal Development Standard is supportable in this instance. The assessment concluded that there is substantial environmental planning grounds to deviate from the specified Development Standard.

**Wall Height**

Clause B1 Wall Height required a maximum wall height of 7.2 metres. The proposal does not include any works that alter the existing wall height.

**Side Boundary Envelope**

Clause B3 Side Boundary Envelope required that built structures are sited within an envelope, measured at the side elevations of the dwelling by projecting planes at 45 degrees from a 5 metre height. The proposal does not include any works that alter the existing side boundary envelope non-compliance.

**Side Boundary Setbacks**

Clause B5 Side Boundary Setbacks required a minimum 0.9m setback from each side boundary. The proposal does not include any works within either setback area.

### **Front Boundary Setbacks**

Clause B7 Front Boundary Setbacks required a minimum 6.5m setback from the front boundary. The proposal does not include any works within the front setback area.

### **Rear Boundary Setbacks**

Clause B9 Rear Boundary Setbacks required a minimum 6m setback from the rear boundary. The proposal does not include any works within the rear setback area.

### **Landscaped Open Space and Bushland Setting**

Clause D1 Landscaped Open Space (LOS) and Bushland Setting required soft landscaped area to total a minimum 40% of the site area. The proposal does not include any works that alter the existing calculation.

### **Conclusion**

While the proposal fails to satisfy the Building Height Principal Development Standard, the proposed works are minor and will not detrimentally alter the bulk and scale of the development. As such council considers the proposed development acceptable.

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

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

#### Comment:

No change of use is proposed

## **3. What are the impacts on adjoining land?**

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

#### Comment:

The proposed works are minor and are considered to have no significant adverse impacts on the adjoining dwelling.

## **4. What is the internal amenity?**

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Comment:

The site will maintain an acceptable level of internal amenity following the proposed works.

**Conclusion**

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (WLEP2011).

**BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 11/10/2023 to 25/10/2023 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	<p><b><i>Supported, subject to Conditions</i></b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</p> <p><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Strategic and Place Planning (Heritage Officer)	<b><i>Supported, no Conditions necessary</i></b>
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is located opposite a heritage item
	<b>I117 - House - 26 Cavill Street</b>
	Details of heritage items affected
	<p><u>Statement of Significance</u></p> <p>A rare example of a Victorian stone cottage &amp; one of the earliest remaining structures in the area. Strong associational value with the old Harbord quarry, both as a source of building material &amp; as provider of occupants for the house.</p>

Internal Referral Body	Comments		
	<u>Physical Description</u> Small stone dwelling, 1 storey on Cavill St, 2 storey at rear. Medium pitched roof of corrugated metal with bull-nosed roofs to front & rear verandahs. Sandstone chimney with t/c pots. French doors to front verandah, with timber posts & balustrade. Four panelled front door. While renovated, the dwelling retains high integrity of character & fabric.		
	<u>Other relevant heritage listings</u>		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	<u>Consideration of Application</u>		
	The proposal seeks consent for a new pergola on an existing balcony for unit number 6. The heritage item is located opposite the site, across Cavill Street. The proposed pergola is considered to a relatively lightweight structure and it is setback from the existing masonry balustrade at the western end of the balcony. Given the structure is lightweight, setback from the edge of the balcony and is separated by the road, the proposal is considered to not impact upon the heritage item or its significance.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of WLEP.		
Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No			
External Referral Body	Comments		
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<b><i>Supported, subject to Conditions</i></b>  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		



External Referral Body	Comments
	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 (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 5.0 metres of an overhead electricity power line.

##### Comment:

The proposal was referred to Ausgrid who raised no objections.

#### **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 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.
  
- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

It is considered that works are unlikely to cause an adverse impact on land within the Coastal environment area. The proposed works adhere to the above criteria.

**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 works will not unreasonably increase the risk of coastal hazards on the site or any adjoining or surrounding 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.

**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.

#### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.9m	28.2%	No

#### Compliance Assessment

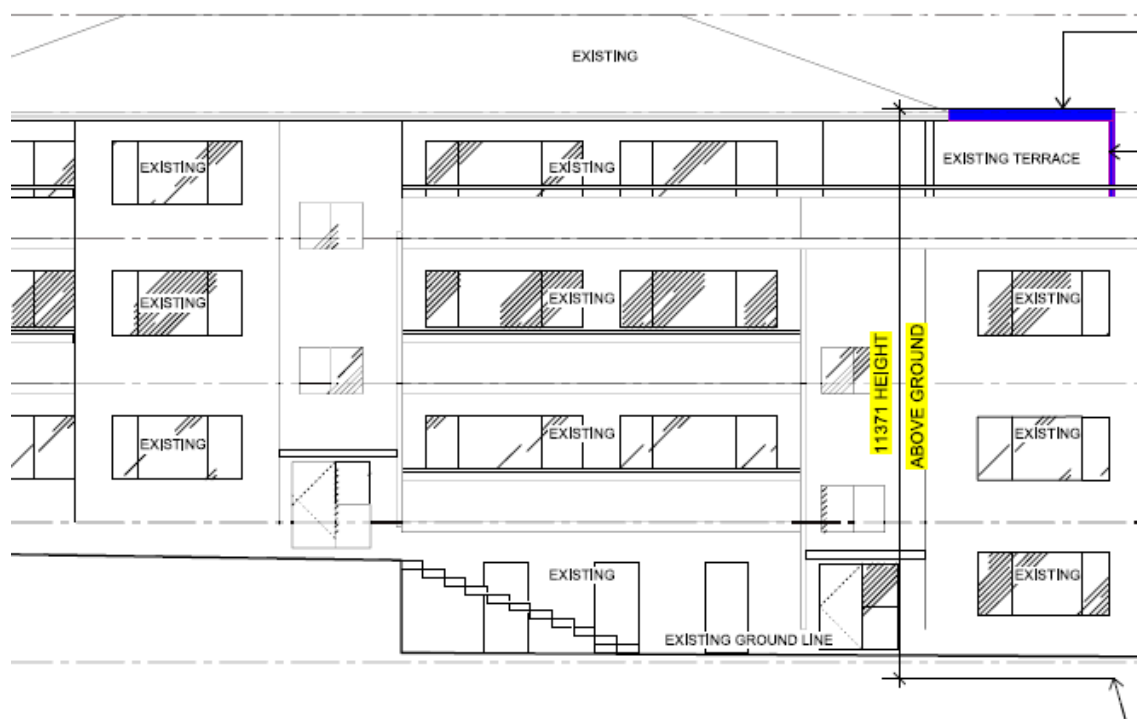
Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

##### 4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.9m
Percentage variation to requirement:	28.2%



**Figure 1 - extent of height breach**

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 judgements 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 proposed vergola does not increase the approved building height.*
- The awning aligns with the prevailing building height and streetscape character, responding adequately to the area's topography without unreasonable additional bulk or scale.*
- The proposal has no impact on view sharing to or from adjacent sites or public areas; the awning maintains privacy and sunlight access to the building.*
- The assessment ensures neighboring properties receive adequate sunlight access.*
- The proposed bulk and scale are generally consistent with surrounding development.*
- The proposal will not negatively impact residential amenity.*
- The proposed development aligns with the objectives of the Height of Buildings development standard, despite the numerical non-compliance.*

It is agreed that the objectives of the development standard are achieved notwithstanding the noncompliance with the standard. It is considered that the written request has demonstrated consistency with the objectives of the Height of Buildings development standard and zone objectives. It is considered that the applicant has demonstrated that the proposal adequately responds to the amenity of the built environment. In this regard, the applicants written request has satisfactorily demonstrated that the proposed development satisfies cls 1.3 (c) and (g) of the EPA Act. As such, the applicants written request has adequately demonstrated that there is sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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 R2 Low Density Residential 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 WLEP 2011 are:

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

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The proposed Vergola does not increase the approved building height and is comparable with surrounding and nearby development.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

The proposal has no impact on view sharing, maintains privacy, and ensures adequate sunlight access, effectively minimising visual impact, disruption of views, loss of privacy, and loss of solar access.

*c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:

The proposed Vergola is not considered to have any adverse impact on the scenic quality of Warringah's coastal and bush environments.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The proposal is considered to manage visual impact effectively, especially when viewed from public places such as parks and reserves, roads, and community facilities.

### **Zone objectives**

The underlying objectives of the R2 Low Density Residential zone are:

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

#### Comment:

The proposal is considered to wholly adhere with the above mentioned objective.

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

#### Comment:

The proposal is considered to wholly adhere with the above mentioned objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

#### Comment:

The proposal is considered to wholly adhere with the above mentioned objective.

#### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

### **Exception to Development Standards conclusion**

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development. The proposed Vergola fails to adhere to the Height of Buildings Development Standard. For the reasons detailed above, it is considered appropriate that in this instance, flexibility in the application of the development standard *Clause 4.3 Height of Buildings* be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

### **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 & Infrastructure, 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.



**Warringah Development Control Plan**Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	existing-unchanged	N/A	N/A
B3 Side Boundary Envelope	5m	existing-unchanged	N/A	N/A
	5m	existing-unchanged	N/A	N/A
B5 Side Boundary Setbacks	0.9m (north)	3.4m	N/A	Yes
	0.9m (south)	5.3m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	12.1m	N/A	Yes
B9 Rear Boundary Setbacks	6m	complies	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	existing-unchanged	N/A	N/A

Note: The above controls are generally applied to development permissible with consent in the R2 Low Density Residential zone.

**Part B Built Form Controls**

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 confirms that the provisions of Environmental Planning Instruments and Development Control Plans that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Therefore, zone objectives and planning controls that govern the size of a development (i.e building height, floor space ratio, building envelope and setbacks) are not strictly applied where existing use rights apply. This includes qualitative provisions as well as quantitative provisions. Having regard to the above case law, the built form controls contained within the WDCP 2011 compliance table are not strictly applied to this particular application and is, therefore, only included as a record to identify how the proposed development relates to applicable planning controls that would otherwise apply to the subject site if existing use rights did not apply. In this regard, no further assessment is provided in this report relating to the numerical non-compliances identified within the Built Form Controls table above. Instead, this report includes a merit based assessment having regard to the matters for consideration prescribed within Section 4.15 of the Environmental Planning and Assessment Act 1979.

Notwithstanding this, it is considered necessary that the proposal be amended so as to pull the awning structure back from the outer edges of the building so as to lessen its impact on the streetscape. It is considered subject to recommended condition that the proposed awning structure be setback 1 metres from the outer edges of the building directly below it.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

#### Detailed Assessment

#### **D1 Landscaped Open Space and Bushland Setting**

Given that the proposed works will not alter the Landscaped Open Space calculation, a detailed Landscaped Open Space Calculation Plan was not required and not requested.

#### **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**

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

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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

### **PLANNING CONCLUSION**

This proposal, for the addition of a Vergola louvred roof system attached to the existing top floor terrace of a residential flat building, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of more than 10% to Clause 4.3 Height of Buildings of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

The maximum permitted building height under the WLEP2011 is 8.5 metres. The proposed building height is 10.9 metres resulting in a variation of 28.2%.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with no submissions received.

In this case, it is considered that 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. As such, on balance, and considering the preceding detailed assessment of

the application, the proposal is recommended for approval subject to the below conditions.

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

## RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 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.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/1405 for Alterations and additions to a residential flat building, on land at Lot 6 SP 6539, 6 / 21 Cavill Street, QUEENSCLIFF, 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
1 of 9	D	Site Analysis	Vergola	14 December 2023
2 of 9	D	Plan	Vergola	14 December 2023
3 of 9	D	Section	Vergola	14 December 2023
3A of 9	D	Section	Vergola	14 December 2023
4 of 9	D	Northern Elevation	Vergola	14 December 2023

5 of 9	D	Southern Elevation	Vergola	14 December 2023
6 of 9	D	Western Elevation	Vergola	14 December 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Performance Building Consultants	4 October 2023

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	undated

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

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

## BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

## 6. **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.

## 7. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The 'Vergola' awning structure shall be setback 1 metres from the northern and southern edges of the building below.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

**8. 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.

**9. 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](http://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.

## DURING BUILDING WORK

**10. 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.

**11. Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all structural elements 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.

**12. 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.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**13. Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

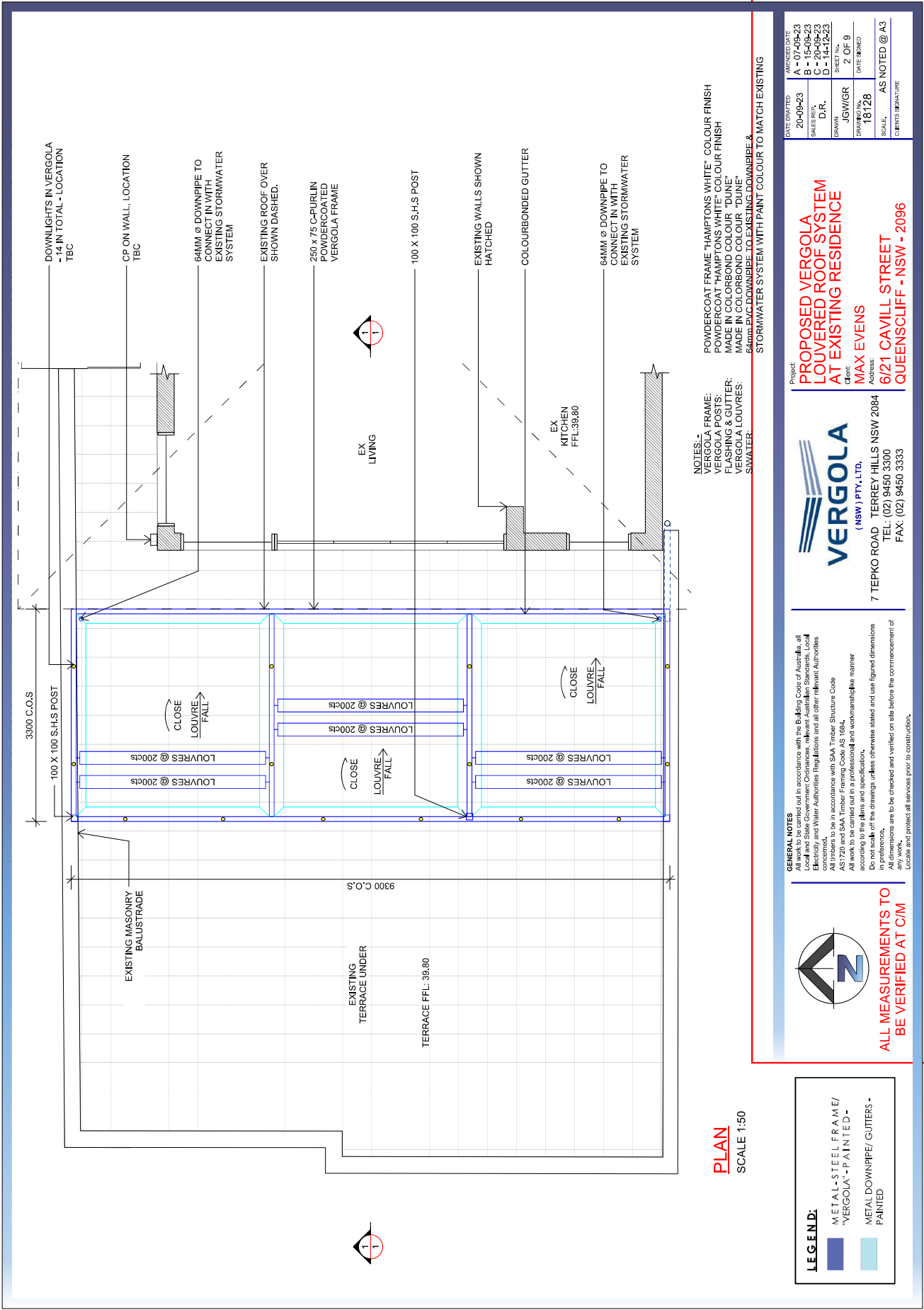
Reason: To ensure satisfactory management of stormwater.

**14. Waste Management Confirmation**

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

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







## GENERAL NOTES

**GENERAL NOTES**

1. All work to be carried out in accordance with the Building Code of Australia, all relevant Australian Standards, and all applicable local, state and federal laws.

2. Electricity and Water Authorities Regulations and all other relevant Australian standards, codes and regulations, shall apply.

3. All timbers to be in accordance with SAA Timber Structure Code AS1720 and SAA Timber Framing Code AS 1684.

4. All work to be carried out in a professional and workmanlike manner, according to the plans and specification.

5. Do not scale off the drawings unless otherwise stated and use figured dimensions in preference.

6. All dimensions are to be checked and verified on site before the commencement of any work.

7. Locate and protect all services prior to construction.

 **VERGOLA**  
(NSW) PTY. LTD.

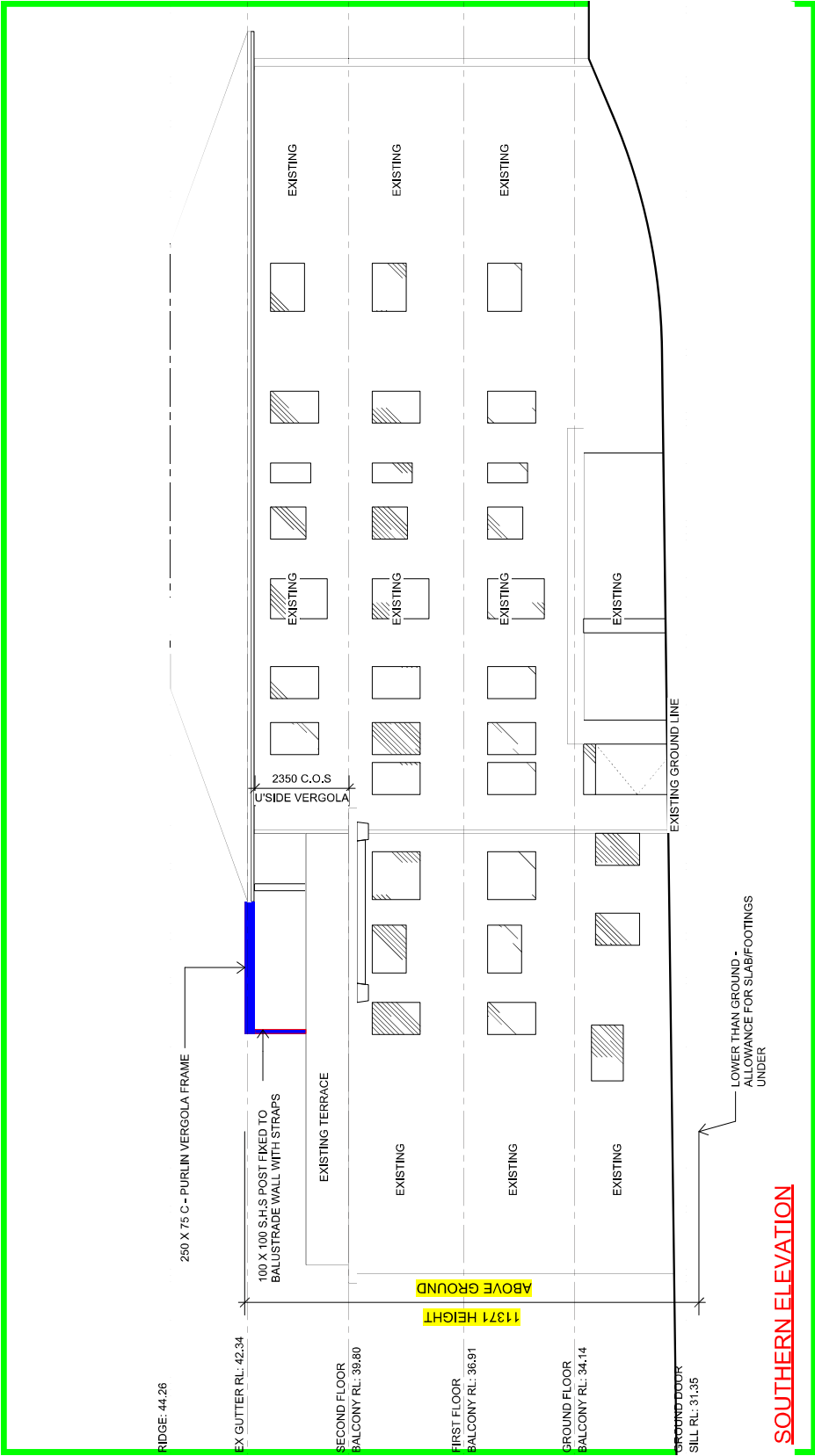
7 TEPKO ROAD TERREY HILLS NSW  
TEL: (02) 9450 3300  
FAX: (02) 9450 3333

Project: **PROPOSED VERGOLA  
LOUVERED ROOF SYSTEM  
AT EXISTING RESIDENCE**

Client: **MAX EVENS**

Address: **6/21 CAVILL STREET  
QUEENSClIFF - NSW - 2096**

DATE DRAFTED	AMENDED DATE
20-09-23	A - 07-09-23
SALES REP,	B - 15-09-23
D.R.	C - 20-09-23
	D - 14-12-23
DRAWN	SHEET NO.
JGW/GR	4 OF 9
DRAWING NO.	DATE SIGNED
18128	
SCALE.	AS NOTED @ A3
CLIENT'S SIGNATURE	



**LEGEND:**

	METAL STEEL FRAME/ VERGOLA - PAINTED -
	METAL DOWNPIPE/ GUTTERS - PAINTED

**GENERAL NOTES**

All work to be carried out in accordance with the Building Code of Australia, all Local and State Government Ordinances, relevant Australian Standards, Local Electricity and Water Authorities Regulations and all other relevant Authorities consented.

All dimensions are to be in accordance with SAA Timber Structure Code AS 1720 and SAA Timber Framing Code AS 1864.

All work to be carried out in a professional and workmanshiplike manner according to the plans and specification.

Do not scale off the drawings unless otherwise stated and use figured dimensions in preference.

All dimensions are to be checked and verified on site before the commencement of work.

Locate and protect all services prior to construction.

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TEL: (02) 9450 3300  
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**Project:**  
**PROPOSED VERGOLA LOUVERED ROOF SYSTEM AT EXISTING RESIDENCE**

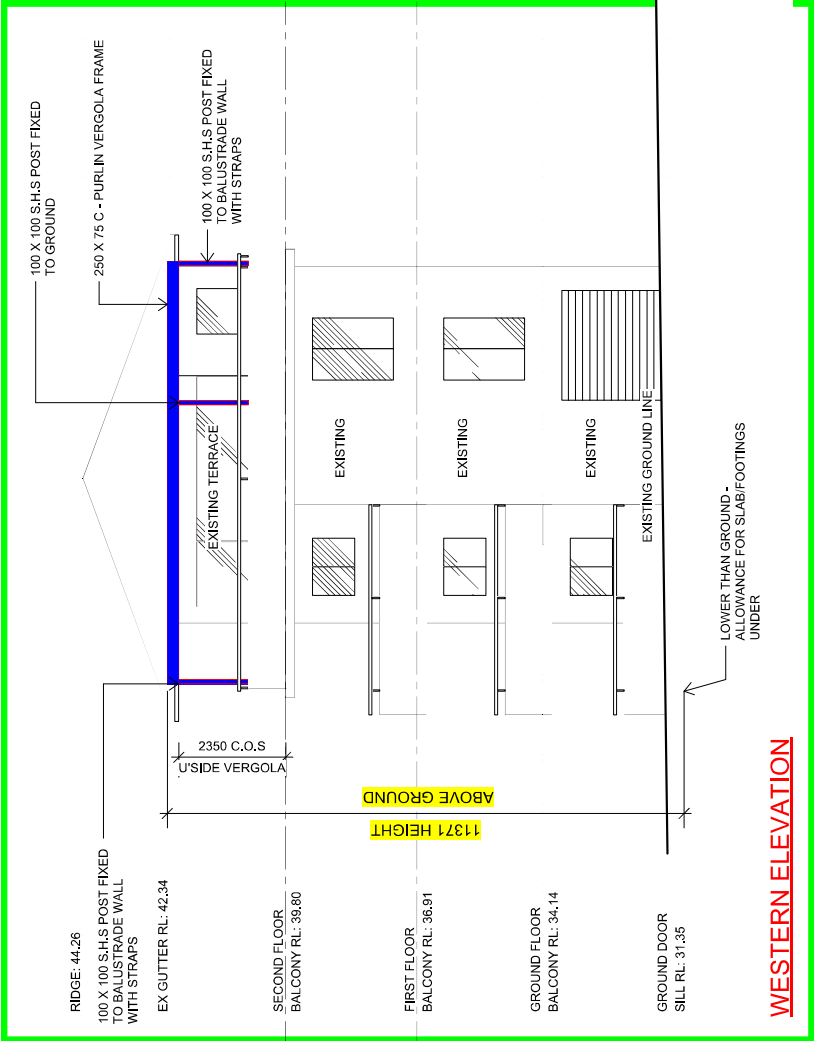
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DRAWING NO.	18128	SHEET NO.	D - 14-12-23
			5 OF 9
		DATE REVISION	
SCALE			AS NOTED @ A3
CUSTOMER SIGNATURE			

**ALL MEASUREMENTS TO BE VERIFIED AT C/M**





**LEGEND:**

	METAL - STEEL FRAME / VERGOLA - PAINTED -
	METAL DOWNPIPE / GUTTERS - PAINTED

**ALL MEASUREMENTS TO BE VERIFIED AT C/M**

**GENERAL NOTES**  
All work shall be carried out in accordance with the Building Code of Australia, all Local and State Government Ordinances, relevant Australian Standards, Local Electricity and Water Authorities Regulations and all other relevant Authorities consented.  
All work shall be in accordance with SAA Timber Structure Code AS 1720 and SAA Timber Framing Code AS 1864.  
All work to be carried out in a professional and workmanshiplike manner according to the plans and specifications.  
Do not scale off the drawings unless otherwise stated and use figured dimensions in preference.  
All dimensions are to be checked and verified on site before the commencement of work.  
Locate and protect all services prior to construction.



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**PROPOSED VERGOLA LOUVERED ROOF SYSTEM AT EXISTING RESIDENCE**

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**MAX EVENS**

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DATE CREATED	20-09-23	AMENDED DATE	A - 07-09-23
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DRAWN	JG/IGR	SHEET NO.	C - 20-09-23
DRAWING NO.	18128	DATE REVISION	D - 14-12-23
SCALE	AS NOTED @ A3		
CUSTOMER SIGNATURE			

## Application to Vary a Development Standard

### Unit 6 21 Caville Street, Queenscliff

The purpose of this submission is to formally request a variation to the Height of Buildings control pursuant to Clause 4.6 of the Warringah LEP 2011.

**1. What is the name of the environmental instrument that applies to the land?**

Warringah LEP 2011

**2. What is the zoning?**

R2 Residential

**3. What are the objectives of the zone?**

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

**4. What is the development standard being varied?**

Height of Buildings

**5. Under what clause is the standard listed?**

Clause 4.3

**6. What are the objectives of the standard?**

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

**7. What is the numeric value of the development standard in the environmental planning instrument?**

8.5m

**8. What is the proposed numeric value of the development standard in your development application?**

11.37m

**9. What is the percentage variation?**

28.8%

**10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

*In Wehbe v Pittwater Council [2007] NSW LEC 827, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 point test for consideration of a SEPP 1 objection set out in Winten Property Group Ltd v North Sydney Council (2001). The aim of this test is to determine whether requiring compliance with the standard would be unreasonable or unnecessary in the circumstances. The Chief Judge advised that the requirement to demonstrate that an objection is well founded could be satisfied in any of the following ways:*

- 1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The objectives of the standard have been achieved. The proposed Vergola will not add to the height of the approved building. The awning is consistent with the prevailing building height and streetscape character of the area. The roof form is an open structure, and fits well into the topography of the allotment without adding to the bulk or scale of the building.

There is no impact in terms of view sharing from adjacent neighbours or public areas. The awning has no impact with regard to privacy enjoyed by adjacent properties and maintains adequate sunlight access to the building itself.

This assessment takes into account the overall benefits of the proposed development and ensures that neighbouring properties continue to receive a reasonable level of sunlight throughout the year.

In terms of the zone objectives, the bulk and scale of the proposed development is generally consistent within the locality. The proposed increase to the height control will not result in adverse impacts on the amenity of existing and future residential premises.

The proposed has been designed to meet the day to day needs of the residents and will provide an active use of the common open space of the strata unit.

The objectives of the Height of Buildings control remain relevant, and the proposed development is generally consistent with, or not antipathetic to, the objectives of the Height of Buildings control, notwithstanding the numerical variation.

**11. How would strict compliance hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the Act?**

Strict compliance with the height control in this instance would hinder greatly the residents right to an active use of the open space of the strata unit. The proposed shade structure provides shelter and protection from the weather, contributing the protection of the health and safety of the occupants. The proposed Vergola does not change or add to, the existing and approved building height.

**12. Are sufficient environmental planning grounds to justify contravening the development standard?**

The proposed awning certainly achieves the objectives of the standard. As the height of the building remains the same as prior to the proposed awning, together with the reasons set out above, it is considered that sufficient environmental planning grounds have been met to justify contravening the development standard in this instance.

**The Environmental Planning and Assessment Act 1979**

*Objectives:*

- (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.*

**How are the objectives of the Act being met in this instance?**

The proposed Vergola is an open, steel, ecologically sustainable structure that will have minimal long-term effect on the environment. It will be built over an existing hardstand area and has no detrimental effect on neighbouring properties with regard to view sharing, solar access or privacy. It's a high-quality designed and constructed awning that will enhance the occupants use of the building.

**Conclusion**

This application has shown that there are sufficient environmental planning grounds to justify contravening the development standard and that the development standards relating to building height are unreasonable and unnecessary in this instance.

The proposed will sit over an existing and approved terrace and will not increase the height of the existing and approved building. The proposed is consistent with that of the existing building, will have

no adverse effect to the solar access, streetscape or the distinctive character of the area. It is consistent with the objectives of the standard and the objectives for development within the zone.

It is considered that the development will not compromise the planning intent for the site or the character and amenity of the surrounding area. This application has shown justification that the requirements as set out in the decision of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 have been met, to enable council to determine the application.

As part of this assessment, reference is made to Commissioner Roseth in *Pathburn v North Sydney* [2005] NSWLEC 444 where the Senior Commissioner expressed, in terms of the planning principle that deals with impacts on neighbouring properties, the following:

*“One should balance the magnitude of the impact with the necessary and reasonableness of the proposal that creates it. An impact that arises from a reasonable or necessary proposal should be assessed differently from an impact of the same magnitude that arises from an unreasonable or unnecessary proposal.”*

*An impact that arises from a proposal that fails to comply with a planning control is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”*

In this instance, the proposal will not have detrimental amenity impacts on the adjacent allotments in regard to loss of solar access or views resulting from the non-compliance.

In general terms, compliance with the Height of Buildings control is unreasonable or unnecessary in these particular circumstances, and there are sufficient environmental planning grounds to justify the proposed variation to the Height of Buildings control.