

# AGENDA

## **NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL MEETING**

Notice is hereby given that a Meeting of the Northern Beaches Independent Assessment Panel will be held in the Council Chambers, Civic Centre, Dee Why on

**WEDNESDAY 14 FEBRUARY 2018**

Beginning at 1.00PM for the purpose of considering and determining matters included in this agenda.



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

**Panel Members**

Paul Vergotis	Chair (Lawyer)
Steve Kennedy	Urban Design Expert
Lloyd Graham	Town Planner
Phil Jacombs	Community Representative

**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 a Meeting of the Northern Beaches Independent Assessment Panel**

**to be held on Wednesday 14 February 2018**

**in the Council Chambers, Civic Centre, Dee Why**

**Commencing at 1.00PM**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Independent Assessment Panel held 13 December 2017	
<b>3.0</b>	<b>NORTHERN BEACHES INDEPENDENT ASSESMENT PANEL REPORTS .....</b>	<b>3</b>
3.1	N0317/16 – 62 and 85 Hillside Road, Newport – Subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision .....	3
3.2	DA0190/2012 – 53-57 Pittwater Road, Manly – Section 96 to modify approved change of use to a Café including courtyard seating and interior signage – Part 2 .....	52
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3.4	N0380/17 – 2B Allen Avenue, Bilgola Beach – Demolition of existing dwelling and construction of a new two storey dwelling with associated landscaping works, driveway and front fence.....	123
3.5	DA0337/2016 – 9 North Harbour Street, Balgowlah – Section 96(1A) application to modify approved alterations and additions to the existing dwelling house – Part 3.....	166
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<b>4.0</b>	<b>REVIEW OF DETERMINATIONS</b>	
	Nil	
<b>5.0</b>	<b>PLANNING PROPOSALS</b>	
	Nil	
<b>6.0</b>	<b>CATEGORY 3 APPLICATIONS .....</b>	<b>229</b>
6.1	DA2017/0087 – 198 Forest Way, Belrose – Demolition, Boundary Adjustment, Construction of Child Care Centre and a Dwelling house.....	229







## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL HELD 13 DECEMBER 2017**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Independent Assessment Panel held 13 December 2017 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL REPORTS

ITEM 3.1 N0317/16 – 62 AND 85 HILLSIDE ROAD, NEWPORT –  
SUBDIVISION OF 62 HILLSIDE ROAD INTO 4 RESIDENTIAL  
LOTS PLUS CIVIL AND LANDSCAPING WORKS TO 62 AND 85  
HILLSIDE ROAD TO FACILITATE THE SUBDIVISION

REPORTING OFFICER TYSON EK-MOLLER

TRIM FILE REF 2018/088927

ATTACHMENTS 1 [↓](#) Assessment Report  
2 [↓](#) Site Plan

#### PURPOSE

To refer the attached application for determination as required under adopted delegations of Council.

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. N0317/16 for Subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision at Lot 1, DP 408800 and Lot 2, DP 1036400, 62 and 85 Hillside Road, Newport for the reasons outlined in the Assessment Report.

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**SUBJECT:** N0317/16 – 62 and 85 Hillside Road, NEWPORT NSW 2107 (Lot 1, DP 408800 and Lot 2, DP 1036400) Subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision

Determination Level: Northern Beaches Independent Assessment Panel

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**SUMMARY OF RECOMMENDATION      CONSENT WITH CONDITIONS**

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<b>REPORT PREPARED BY:</b>	Tyson Ek-Moller
<b>APPLICATION SUBMITTED ON:</b>	25 July 2016
<b>APPLICATION SUBMITTED BY:</b>	Peter Roach Cariste Pty Ltd PO Box 7099 MCMAHONS POINT NSW 2060
<b>OWNER(S):</b>	62 Hillside Road: Cariste Pty Ltd 85 Hillside Road: Amelia Anne Gordon Roach
<b>NUMBER OF SUBMISSIONS</b>	Twenty four (24)
<b>COST OF WORKS</b>	\$90,000

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**1.0 ISSUES:**

Pittwater Local Environment Plan 2014

- Clause 7.2 Earthworks
- Clause 7.6 Biodiversity
- Clause 7.7 Geotechnical Hazards

Pittwater 21 Development Control Plan

- A4.10 Newport Locality
- B2.2 Subdivision - Low Density Residential Areas
- B3.1 Landslip Hazard
- B3.2 Bushfire Hazard
- B4.17 Littoral Rainforest - Endangered Ecological Community
- B4.22 Preservation of Trees or Bushland Vegetation
- B5.1 Water Management Plan
- B5.10 Stormwater Discharge into Public Drainage System
- B5.12 Stormwater Drainage Systems and Natural Watercourses
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B6.7 Transport, Traffic Management
- B8.2 Construction and Demolition - Erosion and Sediment Management
- C1.3 View Sharing
- C1.13 Pollution Control
- C4.1 Subdivision - Protection from Hazards
- C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
- C4.5 Subdivision - Utility Services
- C4.6 Service and delivery vehicle access in subdivisions
- C4.7 Subdivision - Amenity and Design
- D10.1 Character as viewed from a public place

## 2.0 SITE DETAILS

The subject site consists of two allotments identified as 62 and 85 Hillside Road, Newport (Lot 2, DP 1036400 and Lot 1, DP 408800 respectively). Both allotments are irregularly-shaped and surround 87 Hillside Road; the primary boundaries are oriented towards the south and adjoin the Hillside Road road reserve. The combined area of the allotments is approximately 10,633m<sup>2</sup> (based on Council records) and is steeply sloped, with an elevational change of approximately 51 metres between the highest and lowest points.



**Figure 1:** An aerial photograph of the subject and the immediate surroundings. 62 Hillside Road is outlined by the yellow border, and 85 Hillside Road is outlined by the green border.



**Figure 2:** A panoramic streetscape photo of the subject site; the existing driveway entrance is located on the left side of 87 Hillside Road, which is located in the centre of the photo.

Both sites are heavily vegetated and an ephemeral creekline/natural watercourse runs in a northwest-to-southeast direction through the site. Development on the subject site includes a



driveway (approved by Development Application No. N0274/09) that is partially constructed; 62 Hillside Road contains a small detached dwelling within the southeast portion of the site and 85 Hillside Road contains a larger two storey residential dwelling that is centrally located on that site (adjacent to the aforementioned driveway).

The subject site is within an E4 Environmental Living zone. The eastern boundary adjoins an E2 Environmental Conservation zone (commonly known as "Attunga Reserve") while all other boundaries adjoin E4-zoned residential allotments. There are also a number of other zone boundaries within the surrounding area that are as follows:

- RE1 Public Recreation zones are located approximately 80m southwest, 100m southeast and 110m north of the subject site at their nearest respective points.
- An SP2 Infrastructure (Water Supply System) zone is located approximately 60m east of the site.
- An SP2 Infrastructure (Public Utility Undertaking) zone is located approximately 90m southeast of the site.
- An SP2 Infrastructure (Community Facility) zone is located approximately 190m southeast of the site.
- Other E4 Environmental Living zones are located approximately 190m southeast, 240m southeast and 300m southwest of the site at their nearest respective points.
- Other E2 Environmental Conservation zones are located approximately 120m north and 280m southwest of the subject site.
- R2 Low Density Residential zones are located approximately 160m west, 300m southeast and 300m south of the subject site.

Both allotments within the subject site are bushfire prone and are affected by a geotechnical hazard. Both allotments are also affected by Class 5 Acid Sulphate Soils and biodiversity mapping (Littoral Rainforest). A review of the respective deposited plans noted a variable width watercourse though the site. The subject site is not within a heritage conservation area nor does it contain a heritage item, and there are no heritage items within the immediate vicinity,

Development within surrounding residential-zoned sites and areas consists predominately of low-density residential development (i.e. detached dwelling houses and associated structures such as pools, outbuildings, etc.). Development is not apparent within the E2-zoned reserve while development within the broader area largely relates to zones in which they are located.

Inspections of the subject site were undertaken by the assessing officer on 29 August 2016, 12 December 2016, 21 April 2017 and 6 June 2017. All inspections confirmed that the existing layout of the site is consistent with the submitted plans. Some works associated with the approved driveway were also noted during these inspections, though no other significant issues were identified.

### 3.0 PROPOSAL IN DETAIL

The subject development application seeks consent for the following:

- A four (4) lot subdivision. While civil and landscaping works would affect both allotments within the subject site, the four proposed allotments would be located within the existing boundaries of 62 Hillside Road. The details of the four proposed allotments are as follows:
  - Lot 1a: 1372m<sup>2</sup>
  - Lot 1b: 2049m<sup>2</sup>
  - Lot 1c: 1277m<sup>2</sup>
  - Lot 1d: 1276m<sup>2</sup>
- Minor modifications to the driveway previously approved by Development Application No. N0274/09. Changes include:
  - Minor increases to the driveway width;
  - A 20m passing bay to compensate for a 3.5m "pinch point" adjacent to proposed Lot 1c;

- Provision of a turning Bay for service vehicles;
- Redesign of the turning "Y" bay to reallocate two off-street car visitor parking spaces
- Stormwater works to service the proposed allotments;
- Clearing of vegetation for Asset Protection Zones (APZs) and building footprints within the proposed allotments; and
- Demolition of the dwelling/associated development within 85 Hillside Road (Lot 1, DP 408800).

Apart from works associated with the subdivision, new dwellings are not proposed.

#### **4.0 BACKGROUND**

##### **4.1 Site background:**

Date	Affected site(s)	Comments
12/02/2001	85 Hillside Road, Newport	Development Application No. N1235/99 refused. The application proposed a residential subdivision comprising of one lot into three allotments. An appeal of the refusal before the NSW Land and Environment Court was discontinued on 10 September 2002.
12/02/2001	85 Hillside Road, Newport	Development Application No. N1236/99 refused. The application proposed the construction of a dwelling house on an allotment within the subdivision proposed by Development Application No. N1235/99.
12/02/2001	85 Hillside Road, Newport	Development Application No. N1237/99 refused. The application proposed the construction of a dwelling house on an allotment within the subdivision proposed by Development Application No. N1235/99.
20/03/2006	62 Hillside Road, Newport 85 Hillside Road, Newport	Development Application No. N0401/03 refused. The application proposed a residential subdivision comprising of eight allotments. An appeal of the refusal before the NSW Land and Environment Court was dismissed on 24 September 2007.
14/07/2010	62 Hillside Road, Newport 85 Hillside Road, Newport	Development Application No. N0274/09 approved for the construction of a driveway.  <b>Note:</b> The subject development application proposes modifications to this driveway. Despite the age of the original approval, the consent is not deemed to have lapsed due to the amount of work undertaken to date.
06/05/2011	85 Hillside Road, Newport	Development Application No. N0730/10 approved for the residential subdivision of one allotment into two allotments.  <b>Note:</b> This subdivision has not been registered, as completion of the driveway approved by Development Consent N0274/09 is required before the provision of services/utilities to the approved allotments can be completed. The registration of this approval would not affect the subject development application.
25/07/2016	62 Hillside Road, Newport 85 Hillside Road, Newport	Subject Development Application lodged.

##### **4.2 Application history:**

Date	Comments
25/07/2016	Subject Development Application lodged.

23/08/2016	Application reallocated to different assessment officer.
29/08/2016	Site inspection undertaken
24/10/2016	Request for additional information sent to the applicant.
25/11/2016	Additional information received.
12/12/2016	Site inspection undertaken
10/03/2017	External comments received from the NSW Rural Fire Service (RFS)
21/04/2017	Site inspection undertaken
12/05/2017	Final internal referral comments received.
06/06/2017	Site inspection undertaken
09/08/2017	Determination of subject application deferred by the Northern Beaches Independent Assessment Panel (NBIAP).  The deferral was made until the applicant could provide documentation that the proposed subdivision would not result in significant impacts under the <i>Environment Protection Biodiversity Conservation Act, 1999</i> (Cth) in relation to listed threatened species communities and/or populations.
25/08/2017	Request for additional information sent to the applicant.
29/01/2018	Additional information received (referral decision).

## 5.0 NOTIFICATION

### 5.1 Notification

The subject development application was advertised and notified; procedures associated with this processes included:

- The postage of notification letters to the owners of surrounding allotments and selected properties within Hillside Road;
- The placement of an advertisement in the Manly Daily (June 5, 2017); and
- The erection of a notification sign at the front of the property.

Despite objections to the contrary, inspections by the assessing officer noted that the sign was appropriately located and erected. The gate upon which the sign was erected was open during one of the inspections, however the notification sign was still visible from the public road reserve.

The subject development application was initially notified for a fourteen (14) day period from 2 August 2016 to 16 August 2016. In response, Council received twenty one (21) submissions containing twenty nine (29) signatures.

Following the submission of additional information in November 2016, the subject application was notified for a further thirty five (35) day period; the extended period was to account for the Christmas/New Year holiday period. In response, Council received a further eleven (11) submissions however ten of these were submitted by persons who had lodged a submission within the previous notification period.



It was later identified that the subject application constituted “threatened species development” and more specifically as “other advertised development” by Cl. 5(2)(b) of the *Environmental Planning and Assessment Regulation 2000*; in accordance with Cl. 89(3) of the Regulations, the subject application was advertised for a 30 day period from 6 June 2017 to 6 July 2017. In response, Council received four (4) submissions however three of these were submitted by persons who had lodged a submission within the previous notification period.

A further submission was also received following the deferral of the application by the NBIAP in August 2017.

In total, Council received a total of twenty four (24) submissions containing thirty three (33) signatures. All submissions objected to the proposal.

## **5.2 Addresses of objectors**

Where identified, the addresses of objectors are as follows:

- |                                 |                             |
|---------------------------------|-----------------------------|
| • 3 Kanimbla Crescent, Newport  | • 52 Hillside Road, Newport |
| • 11 Kanimbla Crescent, Newport | • 55 Hillside Road, Newport |
| • 23 Kanimbla Crescent, Newport | • 58 Hillside Road, Newport |
| • 38 Kanimbla Crescent, Newport | • 60 Hillside Road, Newport |
| • 53 Kanimbla Crescent, Newport | • 69 Hillside Road, Newport |
| • 25 Hillside Road, Newport     | • 73 Hillside Road, Newport |
| • 40 Hillside Road, Newport     | • 79 Hillside Road, Newport |
| • 42 Hillside Road, Newport     | • 81 Hillside Road, Newport |
| • 45-47 Hillside Road, Newport  | • 87 Hillside Road, Newport |
| • 6 Hillslope Road, Newport     |                             |

## **5.3 Issues raised by objections**

Due to the number of submissions received and the range of matters raised within them, the issues identified by the submissions have been broadly categorised and summarised below.

- Lack of detail about dwellings that would be situated on the proposed allotments
  - Visual impacts associated future residential development are unclear;
  - The visual impacts of four dwellings and fireproof fences would be significant;
  - Council should request design details about residential development on the allotments;
  - Approving a subdivision but later refusing dwellings on the lots would pointlessly sacrifice flora and fauna lost to subdivision works;
- Impacts on fauna/wildlife
  - The proposed development would have significant detrimental impacts on remaining native wildlife as the site adjoins Attunga Reserve;
  - There are no alternative locations for wildlife displaced by the proposed development. Affected wildlife would need to compete for habitat in the adjoining Attunga Reserve;
  - Changes to the vegetation canopy would be unsuitable for foraging animals;
  - The proposed development would disrupt the powerful owl, possum populations, bush hen, osprey, bats and flying foxes;
- Inadequate assessment of fauna/wildlife
  - Relevant animals are highly mobile and may be limited to occasional passage through the site, however such conclusions disregard that such animals may return to the site;
  - The fauna surveys were inadequate as they were undertaken in winter. A more comprehensive survey in different seasons would detect a greater number of species;
  - The findings of the flora and fauna report is at odds with the experiences of local residents, and a Species Impact Statement would require full community consultation;
- Impacts on flora
  - The proposed development would require the clearance of littoral rainforest, which is an endangered ecological community. The approval of any damage to such endangered communities would be inappropriate;

- Submitted information does not identify the likely effectiveness of the temporary three year vegetation management plan;
- Removal of dead wood and rocks would further degrade the area;
- Areas outside of the proposed building footprints would still be exposed/vulnerable to people moving around and storing items within "conservation areas";
- The vegetation management plan does not cover a sufficient period of time; after five years there are no assurances that vegetation management would continue, leading to further degradation of the natural environment;
- The vegetation management plan should be implemented indefinitely;
- The felling of trees would create visual, noise and traffic impacts;
- Impacts on the environment are more important in 2016 than in 2006 due to storm damage and clearing associated with the 10/50 vegetation clearing code;
- **Parking and traffic**
  - Hillside road is congested. An additional four dwellings and eight vehicles would have an unacceptable impact on the road;
  - Parking in Hillside Road is constrained, and there would be no parking for visitors. At least four spaces per allotment should be provided for residents and visitors to the site;
  - Parked cars within Hillside Road reduces the road to single lane traffic flows, prevents emergency vehicle and garbage truck access;
  - Parked cars within the cul-de-sac turning head restricts vehicular manoeuvring. If garbage trucks cannot enter the site, twelve additional bins would be placed with the turning head at the time of collection, further reducing manoeuvring space;
- **Geological hazards**
  - The site is geologically sensitive and subject to landslip, soil creep and loose boulders;
  - There would be a significant risk to property and life if a boulder became dislodged;
  - New development that could further destabilise the area;
  - Development above Hillside Road properties has affected lower sites through increased flooding, rock falls and falling trees. The proposed development would put residents at risk;
  - Heavy engineering works could worsen such issues and put residents at risk;
- **Bush fire hazard:**
  - Most of the proposed site disturbance is associated with bushfire mitigation works;
  - Future dwellings may attract a higher Bushfire Attack Level (BAL) rating, which could worsen land clearing and disturbance;
  - Rural Fire Service requirements may prevent the retention and protection of bushland;
  - A bushfire assessment report should accompany the application;
- **Impacts on water flows and creeklines**
  - The drainage line is an ephemeral creek and should be preserved as it affects water flowing from Bilgola Plateau into reserves below;
  - The site is within an upper catchment and contains numerous ephemeral rivulet waterways which vary in size and depth. The proposal only addresses the primary creekline and does not consider smaller onsite waterways, some of which are within proposed building footprints and bushfire Asset Protection Zones;
  - Disturbance of the creek would affect aquatic fauna;
  - Alterations to local hydrology, urban runoff/pollution, increases in nutrient loads and weed control have not been adequately considered;
  - Stormwater runoff from the site currently affects properties on Hillside Road. Proposed drainage arrangements would direct rainwater into the creek; existing issues would be worsened through land-clearing, increased stormwater volumes and water velocities;
- **Noise:**
  - The shape of the valley forms an amphitheatre that would enhance noise from the proposed dwellings;
  - Garbage trucks make a lot of noise if unable to pass parked vehicles in Hillside Road;

- There would be no means by which to enforce ongoing management of the site (i.e. stormwater facilities and vegetation management);
- The slope of the proposed allotments exceeds the 30% requirement within Pittwater 21 DCP;
- Approval of the subdivision should not be justified by better weed control, as the *Noxious Weeds Act 1993* enables Council to clear noxious weeds from the land and recover costs;
- The proposed development would not address the provisions of SEPP No. 19;
- The proposed development would contravene planning controls within the *Environmental Planning and Assessment Act 1979*;
- The allotments would not comply with minimum 1,200m<sup>2</sup> lot size requirements;
- The subject development application and associated environmental impacts has not significantly changed from earlier proposals;
- One dwelling per allotment within the locality is indicative of the topographical and environmental constraints. The size of 62 and 85 Hillside Road reflects the difficult topography of the area further subdivision should not be permitted; increased density and subdivisions of existing allotments should not be permitted;
- The site was subject to an agreement by the "first council" to be a "gentleman's property" that was not to be subdivided due to environmental and topographic constraints;
- The size of the development is too large and should be limited to two new lots to minimise impacts on the natural environment;
- The proposed development is not consistent with Council policy, as the subdivision would not create allotments that would be safe from hazards and that are appropriately serviced;
- Visual impact of streetlights and electricity wires has not been addressed;
- The location of the driveway adjacent to 85 Hillside Road could facilitate additional residential subdivision/development;
- It is unclear whether the future position and size of the allotments could be changed or incrementally expanded. The current submitted information may therefore be misleading;
- Earlier onsite sediment/erosion control measures have not been appropriately managed;
- Council should purchase the site and limit development to areas where the two existing dwellings are located;
- The Hornsby-based consulting engineers do not appreciate local requirements;
- The notification sign has not been appropriately located;
- Information was received by a resident(s) the day before the notification period closed;
- The integrity of Northern Beaches Council would be compromised by allowing the destruction of the small rainforest gully;
- The "matter" has already been determined by the Land and Environment Court; is the Council's authority above that of the court?

#### **5.4 Response to objector issues**

Matters raised within received submissions have been considered as part of this assessment, with most issues considered as part of the detailed assessments within Parts 5 and 7 of this report. Where not specifically addressed, issues capable of being considered are discussed within the following table:

Issue	Response
<b>Lack of detail about dwellings that would be situated on the proposed allotments</b>	<p>There is no requirement for design details to be provided if dwellings are to be subject to separate applications. Submitted plans and information are however required to consider any applicable constraints and demonstrate that the proposed allotments could sufficiently accommodate suitably-sized building platforms.</p> <p>If approved, the footprints of future dwellings would be limited to the proposed building envelopes as part of restrictions on title, though the design of any future dwelling on the allotments would however be subject to a separate assessment and determined accordingly.</p>
<b>Noise</b>	It is not possible to assess the impacts of any additional noise associated with future development until a future application(s) is lodged for development on the proposed

	allotments; it is however likely that the proposed lots would accommodate residential development, and such land uses are not typically associated with significant noise generating activities. Construction activity (e.g. hours of construction) is subject to recommended conditions.
<b>There is scope for further allotments to be created. The layout of the site/driveway may facilitate further subdivision and/or development. The applicant may modify the proposal at a later stage.</b>	Any change to development consent would require approval by the consent authority. While resident concerns are noted, there is no prohibition preventing the applicant from submitting a proposal: <ul style="list-style-type: none"> <li>To subdivide the site; and/or</li> <li>To modify a development consent.</li> </ul> Any such application(s) would be subject to an assessment in accordance with applicable legislation and regulations, and would be determined accordingly.
<b>The findings of the flora and fauna report is at odds with the experiences of local residents (i.e. in terms of observations of animals, etc.).</b>	While the experiences of local residents are noted, such observations are anecdotal and no formal reporting and/or documented evidence has been submitted to contradict the observations and findings of the submitted Species Impacts Assessment.

## 6.0 Referrals:

### 6.1 Internal referrals:

**Note:** Detailed comments from Council officers are contained within Part 7 of this report.

Officer	Comments
Development Engineer	<b>Recommendation:</b> Supported, subject to conditions.
Natural Environment	<b>Recommendation:</b> Supported, subject to conditions.
S94 Contributions officer	<b>Recommendation:</b> Supported, subject to conditions.
Property and Commercial	<b>Recommendation:</b> No objections, no conditions recommended.

### 6.2 External referrals:

External body	Comments
NSW Rural Fire Service (RFS)	The subject application was referred to the NSW Rural Fire Service (RFS) on 1 August 2016. Final comments were received on 8 March 2017; these indicated that the application was supportable, subject to conditions of consent.
Electricity supply authority (Ausgrid)	The subject application was referred to the relevant Electricity supply authority. No response was received.

## 7.0 STATUTORY AND POLICY CONSIDERATIONS

### Applicable instruments and policies:

Where applicable, the following relevant state, regional and local instruments and policies have been considered:

- Environmental Planning and Assessment Act 1979 (the Act)
- Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).
- Coastal Management Act 2016



- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
- Pittwater 21 Development Control Plan (P21 DCP)

Tables of Compliance:

T - Can the proposal satisfy the technical requirements of the control?	Y – Yes
O - Can the proposal achieve the control outcomes?	N – No
N - Is the control free from objection?	N/A or - – Not applicable

**7.1 Acts**

Environmental Planning and Assessment Act No. 203			
Clause	Assessment and Comment	T	O N
80 Determination	Submissions queried whether Council could act as the consent authority on the "matter". While it did not elaborate, it is assumed that the submission was referring to the dismissal of the appeal for Development Application No. N0401/03 (See Part 4 of this report). The subject development application is unrelated to earlier development proposals and is not subject to an appeal, therefore Council would be the Consent Authority.	Y	- N
147 Disclosure of political donations and gifts		Y	Y Y

Coastal Management Act 2016			
The provisions of the Act are not applicable to the subject application, as they relate to the identification of coastal areas and the establishment of coastal management programs and coastal management manuals.		-	- -

Noxious Weeds Act 1993			
A submission made reference to the <i>Noxious Weeds Act 1993</i> , however such legislation has been repealed and replaced with the <i>Biosecurity Act 2015</i> ; the provisions of this Act are not applicable to the proposal.		-	- N

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)			
<b>Biodiversity Officer comments:</b> <i>"Following preliminary assessment of the proposal by the Independent Assessment Panel in August 2017, the applicant referred the proposal to the Commonwealth Department of Environment and Energy in accordance with Section 75 of the Environment Protection and Biodiversity Conservation Act 1999.</i>  <i>The Department of Environment and Energy determined that the proposal did not constitute a controlled action on the 25 of January 2018."</i>		Y	Y Y

**7.2 State Environmental Planning Policies**

The following SEPPs would be applicable to the proposed development and have been assessed as follows:

State Environmental Planning Policies (SEPPs)			
SEPP	Assessment and Comment	T	O N
SEPP (Infrastructure) 2007	<b>Division 5 – Electricity transmission or distribution</b> Pursuant to Cl. 45(2) and as noted within Part 6 of this report, the subject application was notified to the relevant electricity authority; no response was received.	Y	- N

	<b>Division 17 – Roads and traffic</b> Division 17 of the SEPP is not applicable. The site does not have immediate access to part of the Classified Road Network, and the proposal is not considered to be "Traffic Generating Development" by Schedule 3 of the SEPP; a referral to RMS is not required.	-	-	-
Coastal Management SEPP (DRAFT)	The Coastal Management SEPP is currently in draft form. The site is within an area to which current local planning directions apply; such directions only apply however when a relevant planning authority prepares a planning proposal within affected areas. The draft SEPP is therefore not currently applicable to the subject development application.	-	-	-
SEPP No. 19 – Bushland in Urban Areas	Submissions indicate that the proposed development would not comply with the provisions of this SEPP. The SEPP does not reflect recent amalgamations, however under Schedule 1 the former Pittwater Local Government Area (LGA) was not an area to which the policy applies. The SEPP is subsequently not applicable.	-	-	<b>N</b>
SEPP No. 26 – Littoral Rainforest	While the Draft NSW Coastal Management State Environmental Planning Policy Maps indicates that Littoral Rainforest is present on the subject site, Council's Land Information Officer has confirmed that there is no land within the former Pittwater LGA to which SEPP No. 26 applies; the SEPP is therefore not applicable. The draft Coastal Management SEPP will replace SEPP 26, however it is not currently applicable (see above).	-	-	<b>N</b>
SEPP No. 55 – Remediation of Land	A review of the site history indicates that the subject site has been used for residential purposes for an extended period of time; apart from the shed and fibro dwelling, such uses and/or development are not typically associated with activities that would result in the contamination of the site. Submitted information, site inspections and this assessment did not identify evidence of contamination. With consideration to the above, and assuming that recommended conditions are satisfied, it is unlikely that the site is significantly contaminated and would be suitable for the proposed development.	Y	Y	Y

### **7.3 Pittwater Local Environment Plan (PLEP) 2014**

#### **7.3A Permissibility:**

The subject site is located within an E4 Environmental Living zone under Pittwater Local Environment Plan (PLEP) 2014. While subdivisions are not identified within the land use table as being a permissible form of development within the E4 zone, Clause 2.6(1) of PLEP 2014 permits the subdivision of land, subject to development consent.

#### **7.4B Zone objectives**

An assessment of the objectives of the E4 zone is as follows:

<b>Objective</b>	<b>Assessment and Comment</b>
<i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i>	The proposed subdivision would facilitate future construction of residential development within an area that is affected by ecological and aesthetic values.
<i>To ensure that residential development does not have an adverse effect on those values.</i>	An assessment of the proposal indicates that the proposed development would have an acceptable level of impact on the natural environment; refer to detailed comments within Part 7 of this report.

To provide for residential development of a low density and scale integrated with the landform and landscape.	As residential development is not proposed, the visual impacts of any future residential development would be subject to the assessment of a future application(s). The proposed allotments would however provide suitable areas for residential development; the size and slope of such areas would be capable accommodating development of a density, scale and design that would likely be similar to that of surrounding development and which could be integrated with the landform and landscape.
To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.	Assessments by Council officers (refer to Part 7 of this report) concludes that, subject to conditions, the proposed subdivision would be capable of being developed in a manner that would promote the retention and enhancement of most riparian vegetation and local wildlife corridors.  Foreshore vegetation considerations are not applicable.

In summary, the proposed development is permissible with consent in the E4 Environmental Living zone and would be consistent with the objectives of the zone.

#### 7.4C Assessment of LEP standards and requirements

Refer below to a table of compliance for applicable controls under the LEP.

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			-	-	-
4.1 Minimum subdivision lot size	Minimum lot size: 700m <sup>2</sup>  <b>Note:</b> A number of submissions refer to a minimum lot size requirement of 1200m <sup>2</sup>	Proposed lot sizes: • Lot 1a: 1372m <sup>2</sup> • Lot 1b: 2049m <sup>2</sup> • Lot 1c: 1277m <sup>2</sup> • Lot 1d: 1276m <sup>2</sup>	Y	Y	N
4.2 Rural subdivision			-	-	-
4.3 Building Height	Maximum allowable height: 8.5m		-	-	-
4.4 Floor Space Ratio			-	-	-
4.6 Exceptions to development standards			-	-	N
5.4 Controls relating to miscellaneous permissible uses			-	-	-
5.5 Development within the coastal zone			-	-	-
5.6 Architectural roof features			-	-	-
5.7 Development below mean high water mark			-	-	-
5.8 Conversion of fire alarms			-	-	-
5.9 Preservation of trees and vegetation		<b>Note:</b> This clause was previously considered, however following the deferral of the application, it was repealed as part of changes to the LEP which became effective on 25 August 2017.	-	-	N
5.10 Heritage conservation			-	-	-
7.1 Acid Sulphate Soils		Natural Environment officer comments: "Acid Sulphate Region 5."	Y	Y	Y
7.2 Earthworks			Y	Y	N
7.3 Flood planning			-	-	-
7.4 Floodplain risk management			-	-	-
7.5 Coastal risk planning			-	-	-
7.6 Biodiversity			Y	Y	N

Clause	Numerical Standard	Numerical Proposal	T	O	N
7.7 Geotechnical hazards			Y	Y	N
7.8 Limited development on foreshore area			-	-	-
7.9 Residual lots			-	-	-
7.10 Essential services			Y	Y	N
7.11 Converting serviced apartments to residential flat buildings			-	-	-
7.12 Location of sex services premises			-	-	-

#### 7.4D Detailed assessments of relevant provisions within (PLEP) 2014

7.6 Biodiversity (includes comments associated with the assessment of Part B4.17 (Littoral Rainforest - Endangered Ecological Community) and B4.22 (Preservation of Trees or Bushland Vegetation) of Pittwater 21 Development Control Plan)

##### Planner comments:

##### Clause 7.6 Biodiversity

As the subject site is subject to biodiversity mapping, Clause 7.6 is applicable to the proposal pursuant to Cl. 7.6(2) of PLEP 2014. More detailed comments addressing specific biodiversity issues are contained within comments by Council's Natural Environment officer (below), however a planning assessment of Clause 7.6 is as follows:

Clause	Comment	Compliance
(3) Before determining a development application for development on land to which this clause applies, the consent authority must 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 (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	Council as the consent authority have considered matters required to be assessed pursuant to Cl 7.6(3)(a) and (b).  Relevant assessments have identified that the site contains Littoral Rainforest and may contain some foraging habitat for certain species of fauna. While the proposal includes tree removal and some land clearing, the location of the proposed subdivision would situate large proportions of the proposed development within areas of the site that are of relatively poor environmental quality due to previous works/land clearing within those areas. The proposed locations of the building envelopes are within these disturbed areas, which would likely minimise adverse ecological impacts. As a result, the proposed development would have adverse effects on a relatively small proportion of the area consisting of good quality Littoral Rainforest. Ongoing management of remaining Littoral Rainforest within the subject site would (if approved and undertaken in accordance with recommended conditions) likely maintain and improve the quality of such areas. With regard to the above, it is unlikely that the proposed development would significantly fragment, disperse and/or reduce foraging habitats of fauna within the locality. Any impacts on threatened and local fauna are therefore unlikely to be significant.	YES
(4) 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 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	Appropriate measures to mitigate impacts of the development on the environment would be subject to recommended conditions; these include restrictions of the proposed allotments with regard to the placement of future development and ongoing vegetation management. Any future development on the proposed allotments would be subject to applicable planning provisions (including those within Cl. 7.6 of PLEP 2014) and title restrictions on the	YES



development will be managed to mitigate that impact.	individual allotments (included as part of recommendations for the approval of the subject application).	
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In summary, the proposed development would satisfy both the objectives and provisions of the clause, subject to recommended consent conditions.

#### **B4.17 Littoral Rainforest - Endangered Ecological Community**

More detailed comments addressing specific biodiversity issues are contained within comments by Council's Natural Environment officer (below), however a planning assessment of Part B4.17 (Littoral Rainforest - Endangered Ecological Community) of Pittwater 21 DCP is as follows:

<b>Control</b>	<b>Comment</b>	<b>Compliance</b>
Development shall retain, enhance and regenerate areas of Littoral Rainforest and its habitat.	The proposed development would be largely situated within disturbed parts of the site. While the proposal would remove approximately 6% of areas identified as "good quality Littoral Rainforest", ongoing vegetation maintenance (if undertaken in accordance with recommended consent conditions) should retain and enhance areas of Littoral Rainforest within the site.	<b>YES</b>
Development shall not result in an onsite loss of canopy cover or a net loss in native canopy trees or Littoral Rainforest	As indicated within the assessment by Council's Natural Environment officer, any proposed canopy loss would be classified as marginal since impacts associated with the proposed development would be mitigated by additional planting and management strategies that would improve the quality of the remaining Littoral Rainforest.	<b>NO</b>
Development shall retain and enhance habitat and wildlife corridors for locally native species, threatened species and endangered populations.	As indicated within Part 7.4 of this report, assessments indicate that the subject site contains suboptimal foraging and roosting habitats for most fauna species likely to be affected by the proposed development. In the event of an approval, it is likely that the development would be capable of retaining and enhancing habitats and wildlife corridors due to ongoing vegetation management works combined with maintained connectivity to adjoining reserves (which contains habitats of similar and/or better quality).	<b>YES</b>
Caretakers of domestic animals shall prevent them from entering bushland.	Subject to recommended conditions.	<b>YES</b>
Fencing, where permitted, shall allow the safe passage of native wildlife.	Subject to recommended conditions.	<b>YES</b>
Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Littoral Rainforest Endangered Ecological Community).	Subject to recommended conditions.	<b>YES</b>
Development shall ensure any landscaping works are outside areas of existing Littoral Rainforest Endangered Ecological Community and do not include environmental weeds.	Any future development and likely landscaping works within the proposed allotment would be restricted by the locations of respective building envelopes and individual vegetation management plans.  Any new planting associated with the subject application (if approved) would be subject to recommended conditions that would prohibit environmental weeds/exotic species. Approval of residential development is commonly subject to conditions that stipulate similar requirements; it is likely that such requirements would be imposed on any such future development within the proposed allotments.	<b>YES</b>

In summary, the proposed development would mostly comply with the development controls within Part B4.17 of Pittwater 21 DCP.

**Natural Environment officer comments:**

*"The properties contain two dwelling houses, a natural watercourse and native vegetation of which is a majority remnant Littoral Rainforest. There has been approval for a driveway to be built into both properties under N0274/09 and the land has been cleared for this already. The proposed works include subdivision of one lot into four lots and with building envelopes and establishment of APZs.*

*A previous development application was refused for this property (N0401/03). The main reason for refusal as stated by the court was the following:*

*'The outcome of this subdivision is undoubtedly the loss of an important littoral rainforest endangered ecological community that would be contrary to B4.15.'*

*The current application is significantly different from the previous in that the (application proposes) four lots. This has reduced the proposed encroachment into the Littoral Rainforest Endangered Ecological Community although not taken it away completely. A further reduction in proposed lots (for example the northern two lots being merged into one) would not significantly reduce the overall impacts of the development and is considered unnecessary.*

**Arboricultural Report**

*An arborist report has been submitted (Footprint Green, 22 June 2016) which assesses 111 trees which are within close proximity to the proposed subdivision works, building envelopes or APZs. Fifty seven (57) trees are proposed for removal. Nine (9) of those are exempt species and will not be discussed further. Nineteen (19) have been given short SULE and low to moderate landscape significance.*

*Removal is proposed due to either location within the set building envelopes or establishment of the APZ. The following trees are not impacted by the building envelopes and should be considered for retention or transplantation if possible: T33 (retention), T138 (retention), T43, 44, 45 and 46 (transplantation).*

*Tree 76 has been noted for retention in the tree impact table however it was marked for removal on the tree removal plan. This tree is not within the building envelope and therefore should be retained.*

*The southern side of the driveway is highly disturbed and requires only a small number of trees to be removed to accommodate the proposed subdivision. The northern side of the driveway requires numerous native trees to be removed to accommodate the proposed subdivision and building envelopes however reduction from two to one lot would not significantly reduce the number of trees which require removal. It is also noted the majority of those trees proposed for removal are of low to moderate significance. In regards to impacts on trees only (excluding impacts to Littoral Rainforest or fauna) the proposed building envelopes appear to be located in the most suitable spots with the least impact.*

**SPECIES IMPACT STATEMENT**

*A species impact statement (SIS) has been submitted (Cumberland Ecology, June 2016).*

**Observations/Recordings**

*Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregions Endangered Ecological Community has been identified in the subject site.*

*Littoral Rainforest and Coastal Vine Thickets of Eastern Australia is listed as Critically Endangered Ecological Community and parts of the vegetation mapped in the subject site comply with this listing.*

*Flora and fauna surveys, including targeted threatened species surveys within the subject site were carried out from March 2015 to June 2015. Data from previous studies was also analysed and helped supplement the survey data.*

*Limitations for the fauna surveys were acknowledged in that early winter (June 2015) is not the ideal season to detect the majority of fauna seasons. This was justified with the reasoning that the surveys were targeting the Powerful Owl and also that previous studies over several years on the subject site can supplement the survey data. It was noted that accessibility was limited in parts of the subject site due to ground conditions being boggy in June 2015.*

*Littoral Rainforest – Closed native canopy with native dominated understorey and closed native canopy with exotic dominated understorey was found throughout the subject site. The vegetation conforms to the TSC Act (Threatened Species Conservation Act 1995) listing however does not meet the conditioned threshold for the listed community under the EPBC Act (Environment Protection and Biodiversity Conservation Act 1999).*

*These communities along with two others was mapped and displayed in Figure 4.2. This map indicates the entire area north of the approved driveway is Littoral Rainforest closed native canopy with native dominated understorey and south of the driveway is a mixture of Littoral rainforest closed native canopy with exotic dominated understorey and urban native/exotic vegetation.*

*No threatened flora species was identified within the subject site.*

*Potential habitat for fauna species was found throughout the site and included rainforest habitat (dense canopy for foraging and roosting of passerine birds and the Powerful Owl and understorey for foraging and nesting for small mammals), drainage line (foraging and breeding for amphibians), rock outcrops (habitat for reptiles and potential roost sites for microchiropteran bats), leaf litter and ground stratum (cover for amphibians, reptiles and small mammals) and old shed (possible roosting habitat for microchiropteran bats).*

*No threatened bird species were recorded during diurnal bird surveys. A list of recorded bird species from the surveys is provided in Table 4.6 and a full list of bird species identified between 1999 and 2015 has been provided in Appendix C.*

*Two (2) threatened microchiropteran bats were recorded in the targeted survey. These are the Eastern Bentwing-bat and Little Bentwing-bat. Both listed as Vulnerable under the TSC Act.*

*Other surveys resulted in some common fauna species being identified including the Common Ringtail Possum, Common Brushtail Possum, Tawny Frogmouth and Common Eastern Froglet. A list of potentially occurring threatened fauna species have been listed and are mostly avifauna and bats.*

### **Impacts**

*The primary and direct impact from the proposed works is the loss of vegetation and associated habitat with the subject site. The establishment of proposed building envelopes and APZs will result in complete removal of 6% of all Littoral Rainforest which is a majority good quality. A further 17% will be modified as part of an APZ and other purposes which is a majority good quality.*

*Three key threatening processes are applicable to the habitat to be removed including: clearing of native vegetation, bushrock removal, removal of dead wood and dead trees. The majority of the habitat which would be utilised by threatened species is within the Littoral Rainforest. It was noted that the habitat to be removed is relatively small and suitable habitat was being retained within the subject site along with connectivity to the adjacent reserve.*



*Habitat for threatened species will be removed however with the exception of microchiropteran bats it was stated that the majority of threatened species would only use the subject site as part of a broader foraging range. The suitable roosting habitat for microchiropteran bats is likely utilised for breeding and nursing. The report states that removal of this habitat is unlikely to be important in the long-term survival of the local population.*

*It is acknowledged that the development would result in habitat fragmentation however the retained vegetation will not be completely isolated as connectivity to the offsite reserve will remain. Similarly, the 'edge effects' are likely to increase however flora and fauna on site are already experiencing these effects therefore the increase will only have a minor impact. Increased light penetration will occur at the margins which may reduce some habitat in these areas however like the 'edge effects' the additional area will only result in a minor impact. The existing drainage depression is going to be maintained and additional run-off from new dwellings will be managed as detailed in the Stormwater Management Plan and therefore will only minimally impact the hydrological regimes.*

*An assessment of species likely to be affected has been carried out and included in Section 5.2 of the SIS. The following is a summary:*

- *Superb Fruit-Dove: no breeding habitat present as is it now known to breed in the Pittwater CMA sub-region. Only a small area of potential sub-optimal, foraging habitat is to be removed which is not considered significant within the local context as larger areas of higher quality habitat remain within the locality. Connectivity between the subject site and offsite reserves will also be maintained.*
- *Barking Owl: no records within the study area and the species has a large foraging range up to 6000ha. Little to no roosting habitat is present. Some potential foraging habitat is present however it is not preferred due to the lack of hollows. Only a small amount of habitat to be removed however higher quality habitat is present in the local area and connectivity to this will remain.*
- *Powerful Owl: Records exist for the subject site and it has been determined by previous studies that the Powerful Owl both nests and forages in the locality. No nesting sites are recorded in the subject site and although it contains suitable foraging habitat it is not ideal as it lacks hollows suitable for the preferred prey.*
- *Eastern Bentwing-bat: Records exist for the subject site and in the locality. The subject site provides both potential foraging and roosting habitat for the Eastern Bentwing-bat. The proposal will remove a small area of both potential foraging and roosting habitat for this species. The report states that this removal is unlikely to be significant in the long-term due to presence of suitable habitat in nearby reserves and the retention of some habitat on site. The report concludes that due to the ability of the species to be highly mobile and able to access habitat both connected and not connected the removal of the habitat is not considered likely to affect habitat connectivity.*
- *Large-eared Pied Bat: There are no records within the site however there are some records for the locality. The site provides potential roosting habitat with sandstone boulders along existing drainage line. No foraging habitat is present. Habitat will be removed from the site however some will be retained and connectivity will remain to habitat off-site. The species is also capable of moving to unconnected habitat therefore the report concludes the proposal is not likely to affect habitat connectivity for the Large-eared Pied Bat within the site or locality.*
- *Little Bentwing-bat: Records exist for the site and the locality. The site provides suitable roosting and foraging habitat. The proposal will result in a loss of suitable foraging and sub-optimal roosting habitat. This is not considered significant due to the presence of larger areas of the same or better quality habitat nearby. For the same reasons as the other bats the proposal is not considered likely to affect habitat connectivity.*
- *Squirrel Glider: There are no records for the site but they have been recorded in the locality. Some suitable foraging habitat is present however the site is lacking suitable hollows to support a local population. As better foraging habitat exists nearby in a reserve it is unlikely a*

local population would be solely dependent on the site for long-term survival. Retention of suitable foraging habitat and connectivity are the reasons given for the proposal not having a significant impact on the population.

- Grey-headed Flying Fox: Records exist in the locality however the site does not contain a roosting camp but suitable foraging habitat is present. It is unlikely the known roosting camps are solely dependent on the site foraging. Due to the retention of foraging habitat on site and in connected reserves the report concludes the removal of habitat is unlikely to be significant to the survival of the species in the locality in the long term.

#### **Consideration of alternatives**

- Original proposal was 8 lots and was refused.
- Proposal at pre-lodgement stage was 5 lots and after discussion with Council this has been reduced to 4 lots.
- A reduced scale from the proposed 4 would result in the proposed development being financially unviable.
- The design has been done in conjunction with the RFS and has included avoidance of significant rock outcrops, boulders and mature trees.
- There is limited scope for redesign due to the approved driveway position.
- The building footprints are located in areas which have the greatest disturbed area and will reduce ecological impacts.
- Larger lots and set building envelopes reduces the impact on the Littoral Rainforest. They are also tightly clustered to avoid edge effects.
- Canopy loss will be offset by supplementary planting with the quality of Littoral Rainforest improved by management.
- The loss of canopy cover is considered marginal.

#### **Impacts on EEC – Littoral Rainforest**

- A total of 0.61ha of good quality Littoral Rainforest is present on the subject site. A total of 0.23ha of low quality Littoral Rainforest is present on the site.
- Generally, the upslope portions of the site contain high quality Littoral Rainforest.
- Without management a number of 'transformer' weeds would spread in the future and cause a decline in the condition of the Littoral Rainforest on site. Development will help fund the removal of those weeds.
- If left without management the Littoral Rainforest will likely degrade over time however with management actions it will be able to regenerate.
- The area of Littoral Rainforest on the Subject Site, a total of 0.84ha, contributes significantly to the local extent of this community.
- Only 0.05ha (6%) out of the 0.61ha of good quality Littoral Rainforest will be removed. A further 0.15ha (17%) of Littoral Rainforest will be modified as part of an APZ and other purposes.
- Littoral Rainforest retained on the site is to be actively managed under a Vegetation Management Plan (VMP) to restore the degraded areas and maintain the integrity of the Littoral Rainforest patch present in the Study Area.
- The proposed development will not reduce the width of the local corridor.
- Mitigation measures named under the VMP are aimed to reduce the impact of the threatening processes which the development will exacerbate and improve the condition of the Littoral Rainforest overall.

#### **Ameliorative Measures**

- These include during construction measures and long-term management strategies. Pre-construction measures are also required.
- Impacts during construction include runoff, sedimentation, erosion and pollution. Stormwater and Sediment and Erosion plans have been prepared by Martens and Associates (2016) to

address those issues. A Waste Management Plan will be developed to mitigate waste and pollution entering the surrounding environment.

- Long-term Management: Vegetation Management Plan (VMP) has been prepared. It is for 3 years to start from the date of land subdivision. A trust is to be established to pay for implementation of the VMP which will be funded by a portion of the sale from each lot with limited future maintenance works.
- Additional measures include installation of nestboxes.
- Ongoing monitoring is proposed.

#### **Assessments of Significance**

- These were completed for Littoral Rainforest, Superb Fruit-dove, Barking Owl, Powerful Owl, Microchiropteran bats (Eastern Freetail-bat, Greater Broad-nosed Bat) and Squirrel Glider.
- The impact on the Littoral Rainforest was not considered to be significant due to the implementation of the VMP.
- The proposal is not considered to significantly impact on the other assessed species.

#### **Conclusion**

- When considered in terms of the improvements in condition that can be achieved through implementation of the VMP, and prescribed mitigation measures to improve the water quality and control flow of run-off on the site, no significant impact is expected to occur to any species, populations or communities, as listed under the TSC Act and EPBC Act.
- Furthermore, the long term security of the Littoral Rainforest present on the Subject Site will be confirmed by the establishment of a protective covenant (S88B) placed on each of the new lots under the proposed subdivision.

#### **VEGETATION MANAGEMENT PLAN**

A Vegetation Management Plan (VMP) has been submitted (Cumberland Ecology, June 2016) which was referenced in the Species Impact Statement.

The VMP addresses conservation requirements for the Littoral Rainforest across Lot 1, 21 and 22. The management period should apply for five (5) years. After this a review is proposed.

Three Management Zones have been created – Intact Littoral Rainforest (Zone 1), Degraded Littoral Rainforest (Zone 2) and Asset Protection Zones and Development Setbacks (Zone 3).

Section 4.2 provides flora and fauna management actions to be adopted pre and during construction.

Section 5.2 outlines weed management actions for the site with a timeline for the first 6 months and then the remaining 4 ½ years of the VMP. Site visit frequency is outlined specifically however there is scope for change if site weed loads are lower.

Section 8.1 indicates a monitoring program will be carried out for the duration of the VMP with the intention that if the regeneration and weeding works are not performing as they should then changes will be made to the program. A yearly report will be produced and given to Council for approval for the duration of the VMP. A final report at the end of 5 years will certify completion of works.

A letter from Cumberland Ecology was submitted (25/11/16) which addresses previously requested information.

The implementation phase will include the primary weeding program of 6 months.

- (1) Four sub-plans have been provided so that each proposed lot has a management plan (identified as Lot 1a, 1b, 1c and 1d) that can be independently funded by the property owner



*and which refers back to the master Vegetation Management Plan that has already been provided.*

- (2) *A draft example of the S88B has been provided with an outline of the details which are included. The creation of these covenants for each lot must be finalised prior to issue of the Subdivision Certificate. In summary the covenant notes the registered proprietor must at their own expense sufficiently maintain the lot according to the VMP. If this does not occur even after requests from Council then they must pay for Council to carry out the necessary works. Only the Northern Beaches Council has the power to alter the covenant. This is acceptable.*
- (3) *The 'indicative' wording has been removed from the subdivision plan and the letter confirms the building envelopes on the subdivision plan represent the maximum building footprint and no additional structures will be permitted outside of the footprint.*
- (4) *The letter confirms that the reviews of each VMP sub-plan and implementation of the master VMP will be carried out by an appropriately qualified ecologist or bush-regeneration contractor appointed by the landowner of each lot. Council will be provided a brief report at years 3, 5 and 10 of the program. This is acceptable."*

7.2 Earthworks, 7.7 Geotechnical hazards (includes comments associated with the assessment of P21 DCP Part B3.1 Landslip Hazard and C4.1 Subdivision - Protection from Hazards)

As indicated within Part 2 of this report and noted within numerous submissions, the subject site is affected by a geotechnical hazard; the provisions of Clause 7.7 and Parts B3.1 and C4.1 of the DCP are applicable to the proposal.

Information submitted with the subject application was provided in accordance with Council's Geotechnical Risk Management Policy, and was twice referred to Council's Development Engineers for assessment; these assessments considered Cl. 7.7(3) of the LEP and applicable matters to which the clause applies. As a result of these assessments and in accordance with Cl. 7.7(4) of the LEP, Council (as the Consent Authority) is satisfied that the proposed subdivision would be appropriately designed and sited to minimise adverse impacts on the site. In accordance with Part B3.1 of the DCP, the design and proposed methods of construction would (if undertaken in accordance with consent conditions) reduce risks associated with geotechnical hazards to an acceptable level. Ongoing management of the proposed subdivision would be subject to recommended conditions to also minimise risks associated with the proposed development. In addition to addressing applicable provisions within the LEP, both the outcomes and controls within Parts B3.1 and C4.1 of Pittwater 21 DCP would be satisfied.

If the proposed subdivision were approved, any future residential development on the proposed lots would be subject to planning provisions (including Clauses 7.2 and 7.7 of the LEP and applicable parts of the DCP) to ensure that any such future development minimises risks on both the subject site and surrounding sites.

While broader concerns raised by submissions have been addressed above and elsewhere within Parts 5, 6 and 7 of this report, a number of submissions have expressed specific concern about increased geotechnical and associated flooding risks to surrounding properties and the dislodgment of boulders during construction. In response to such concerns, Council's development engineer indicated that:

- The proposed subdivision is in accordance with controls and policies relating to stormwater management and both geotechnical and vegetation management requirements;
- Any future development on the proposed allotments would need to be designed in accordance with the same policies and specific requirements associated with any approval of the proposed subdivision ;and
- Any work that is conditioned to comply with the recommendations of the submitted geotechnical hazard assessment would need to be completed under the supervision of the Consulting Geotechnical Engineer.

If the proposed subdivision and future residential development were undertaken in accordance with such measures, disturbance and risk to surrounding properties would be minimised.

In summary, the proposed development (if approved and undertaken in accordance with recommended conditions) would minimise risks associated with geotechnical hazards that affect the site. Any future development on the proposed allotments would also be subject to further assessments to ensure that such development is both suitable for the site and would minimise risks associated with relevant site hazards.

## **7.5 Pittwater 21 Development Control Plan**

### **7.5A Assessment of DCP controls**

Refer below to a table of compliance for applicable controls under the DCP; more detailed assessments and elements of noncompliance are also assessed/discussed in depth below.

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Preliminary</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	N
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification		Refer to Part 5 of this report.	Y	Y	N
3.5 Building code of Australia			Y	Y	Y
3.6 State Environmental Planning Policies		Refer to individual assessments within Part 7.2 of this report.	Y	Y	N
3.7 Designated development			-	-	-
4.1 Integrated Development: Water Supply, Water Use and Water Activity			-	-	-
4.2 Integrated Development: Rivers, Streams and Foreshores			-	-	-
4.3 Integrated Development: Fisheries Management			-	-	-
4.5 Integrated Development: Bushfire			Y	Y	Y
4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects			-	-	-
4.7 Integrated Development - Protection of the Environment			-	-	-
4.8 Integrated Development - Roads			-	-	-
5.1 Referral to RMS under SEPP (Infrastructure) 2007			-	-	-
5.2 Referral to the NSW Police Service			-	-	-
5.3 Referral to NSW Office of Environment and Heritage			-	-	-
<b>Section A Shaping Development in Pittwater</b>					
<b>A1 Introduction</b>					
A1.7 Considerations before consent is granted			Y	Y	Y
<b>A4 Localities</b>					
A4.10 Newport Locality			Y	Y	N
<b>Section B General Controls</b>					
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014			-	-	-
B1.2 Heritage Conservation - Development in the vicinity of heritage			-	-	-



items, heritage conservation areas, archaeological sites or potential archaeological site					
B1.3 Heritage Conservation - General			-	-	-
B1.4 Aboriginal Heritage Significance		<b>Natural Environment comment:</b> "No apparent issues." <b>Assessing officer comment:</b> Subject to recommended conditions.	Y	Y	Y
B2.2 Subdivision - Low Density Residential Areas			N	Y	N
B3.1 Landslip Hazard		Refer to assessment within Part 7.4 of this report	Y	Y	N
B3.2 Bushfire Hazard			Y	Y	N
B3.3 Coastline (Beach) Hazard			-	-	-
B3.4 Coastline (Bluff) Hazard			-	-	-
B3.6 Contaminated Land and Potentially Contaminated Land		Refer to SEPP 55 assessment within Part 7.2 of this report.	Y	Y	Y
B3.13 Flood Hazard - Flood Category 1 - Low Hazard - Shop Top Housing, Business and Industrial Development			-	-	-
B3.19 Flood Hazard - Flood Category 1 - High Hazard - Other Development			-	-	-
B3.22 Flood Hazard - Flood Category 3 - Overland Flow Path - Major			-	-	-
B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume)			-	-	-
B3.25 Flood Hazard - Flood Emergency Response planning			-	-	-
B4.17 Littoral Rainforest - Endangered Ecological Community		Refer to the assessment within Part 7.4 of this report.	N	Y	N
B4.22 Preservation of Trees or Bushland Vegetation		Refer to the assessment within Part 7.4 of this report.	Y	Y	N
B5.1 Water Management Plan			Y	Y	N
B5.3 Greywater reuse			-	-	-
B5.4 Stormwater Harvesting			-	-	-
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development			-	-	-
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential			-	-	-
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	N
B5.11 Stormwater Discharge into Waterways and Coastal Areas			-	-	-
B5.12 Stormwater Drainage Systems and Natural Watercourses			Y	Y	N
B5.13 Development on Waterfront Land			-	-	-
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)			-	-	-
B6.1 Access driveways and Works on the Public Road Reserve			Y	Y	N
B6.2 Internal Driveways			Y	Y	N
B6.3 Off-Street Vehicle Parking Requirements	<b>Required number of car-parking spaces:</b> None (individual parking provisions are subject to future applications for residential development on approved lots)	<b>Proposed number of car-parking spaces:</b> Two (2) visitor car parking spaces proposed within the eastern side of the modified driveway  Residential parking would be subject to future assessment(s).	Y	Y	N

B6.6 On-Street Parking Facilities			-	-	-
B6.7 Transport and Traffic Management			Y	Y	N
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management		Subject to standard conditions irrespective of submissions.	Y	Y	N
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		Not deemed to be applicable by the applicant but addressed by recommended conditions in the event that 100m <sup>3</sup> + of material requires importation and/or removal/ to/from the site.	Y	Y	Y
<b>Section C Development Type Controls – C1 Design Criteria for Residential Development</b>					
C1.3 View Sharing		Not applicable, however issues within submissions are discussed within Part 5 of this report.	-	-	N
C1.13 Pollution Control			-	-	N
<b>Section C Development Type Controls – C4 Design Criteria for Subdivision</b>					
C4.1 Subdivision - Protection from Hazards			Y	Y	N
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities			Y	Y	N
C4.3 Subdivision - Transport and Traffic Management			Y	Y	N
C4.4 Subdivision - Public Roads, Footpath and Streetscape			-	-	-
C4.5 Subdivision - Utility Services			Y	Y	N
C4.6 Service and delivery vehicle access in subdivisions			Y	Y	N
C4.7 Subdivision - Amenity and Design			Y	Y	N
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots			-	-	-
<b>Section D Locality Specific Development Controls – D10 Newport Locality</b>					
D10.1 Character as viewed from a public place			Y	Y	N

#### **7.5B - Detailed assessments of relevant provisions within Pittwater 21 DCP**

**NOTE:** Sections of the DCP relating to biodiversity and geotechnical hazards are assessed within Part 7.4D of this report.

##### **A4.10 Newport Locality**

Most desired character requirements relate to residential development that is not proposed by the subject application. The proposed development would satisfy relevant character requirements as follows:

- Ensuring that future allotments would be serviced by adequate infrastructure;
- Designing allotments that would be safe from hazards; and
- Siting residential allotments in a location that would allow future designs to be integrated with the landscape.



**Figure 3:** A photograph of the subject site and surrounding area as viewed from the eastern side of Burke Street, Newport. For reference, the dwelling at 87 Hillside Road is outlined by the red box.

It is unlikely that proposed and/or future development would have a significant visual impact on the area, despite concerns within numerous submissions. The proposed development and/or future residential development would not be visible from existing public areas above the site (i.e. along Kanimbla Crescent and Wollombi Road). Further, while the designs of future dwellings would be subject to future assessments, the proposed subdivision would not front any public road reserve; visual impacts from surrounding public areas would likely be mitigated by the following:

- The large dwelling and associated landscaping at 87 Hillside Road would largely screen proposed/future development from the Hillside Road road reserve (refer to Figure 2); and
- Vegetation both on and around the subject site would at least partially screen future development from public areas downhill and towards the southeast (i.e. Porter Reserve and Newport Rugby Club; refer to figure 4).

#### **B2.2 Subdivision - Low Density Residential Areas**

The areas of each allotment have been assessed within Part 7.4C of this report. Subdivision controls within Part B2.2 of the DCP that apply to the proposal are assessed within the following table:

<b>Control</b>	<b>Comment</b>	<b>Compliance</b>
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.	All allotments would have proposed depths of at least 35m.	<b>YES</b>
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on the Landscaped Area Map shall have a minimum lot width at the building line of 16 metres.	All allotments would have proposed width at respective front building lines of at least 24m	<b>YES</b>
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 2 or 3 on the Landscaped Area Map shall have a minimum lot width at the building line of 15 metres.	Not applicable; the site is within Landscaped Area 1.	N/A
Any lot (or lots) to be created by a subdivision of an	Not applicable.	N/A

existing lot (or lots) shall have a minimum lot width at the building line of 9 metres at the waterfrontage.		
Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.	As assessed within Part 7.4 of this report, the proposed subdivision would not propose unreasonable impacts on the natural environment and would be designed to be safe from hazards. Further, the proposed subdivision would provide adequate access and services to all proposed allotments. Aboriginal heritage considerations would be subject to recommended conditions.	<b>YES</b>
A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s).	Variation proposed; refer to assessment below.	<b>NO</b>
The minimum area for building shall be 175m <sup>2</sup>	All proposed allotments contain 200m <sup>2</sup> building envelopes; development within such areas would contain side and rear setbacks that would comply with P21 DCP Part D controls.	<b>YES</b>

As indicated above, the proposed development would satisfy most development controls, however the applicant proposes a variation to requirements which seek to limit the slope of new allotments to 16.7 degrees (30%), as measured between the highest and lowest points of the slope. Justifications provided by the applicant are summarised as follows:

- The slope within proposed development footprint are less than 30%;
- All proposed allotments are consistent with both the desired character of the Newport locality and the subdivision layout of the surrounding area;
- The geotechnical assessment concludes that associated risks are acceptable;
- Adequate bushfire measures can be implemented to mitigate bushfire risks;
- The slopes would not be an impediment to stormwater drainage and disposal;
- Despite the slope, the proposed subdivision would be capable to providing adequate services and access to the proposed allotments; and
- A sloping site could enhance visual amenity from public areas, as retained vegetation and rock outcrops could enhance landforms and environmental features

The proposed noncompliance is associated with the heavily sloped topography of the area; while the applicant acknowledges that the slope of the proposed allotments would exceed 30%, they indicate the proposed building envelopes (i.e. allocated areas that would accommodate any future dwellings) would contain a slope of less than 30%. Each of these 200m<sup>2</sup> building envelopes would account for a relatively small area (i.e. between 9.8%-15.7%) of each allotment, therefore the majority of the area to be subdivided (i.e. areas containing the largest/most significant slopes) would not contain residential development.

An assessment of the slopes for each allotment and respective building envelopes is as follows:

Allotment	Maximum proposed slope of each allotment (measured between the highest and lowest points of each lot, rounded to one decimal place)		Average gradient under the building footprint of each allotment (rounded to one decimal place)	
	Grade (degrees)	Grade (percent)	Grade (degrees)	Grade (percent)
<b>1a</b>	27.2 degrees	51.4%	17.9 degrees	32.5%
<b>1b</b>	23.5 degrees	43.6%	15.5 degrees	27.9%
<b>1c</b>	17.1 degrees	30.8%	15.3 degrees	27.4%
<b>1d</b>	21.4 degrees	39.1%	15.4 degrees	27.6%



This assessment largely concurs with the applicant's claims, finding that three of the four proposed building envelopes would contain an average slope of less than 30%; while the average 32.5% envelope within proposed allotment 1a would not comply, it is considered to be a relatively minor (i.e. 8.3%) variation to the 30% slope requirement.

With regard to the above, the proposed development would still be capable of satisfying the outcomes of Part B2.2 as follows:

- Where applicable, the proposal would be consistent with desired locality characteristics;
- The existing natural environment would be largely maintained;
- Due to the locations of the proposed building envelopes in relation to the locations/heights of surrounding allotments, the proposed subdivision and future development would not obstruct views nor significantly affect vistas from public areas and/or residential sites;
- The built form (as currently proposed) would not dominate the natural setting; and
- The proposed subdivision would not significantly increase local population density in a manner that would exceed the capacity of local infrastructure and services.

Further, assessments by Council staff and the RFS have indicated that the proposed development would be capable of addressing site hazards (i.e. geotechnical and bushfire issues) irrespective of the noncomplying slopes. Comments from Council's Development Engineer also indicate that slopes of the allotments would not be an impediment to future development, as there are locations on the proposed allotments that would permit the construction of residential development, subject to consent.

Numerous submissions object to a lack of information about future residential development in relation to the slope of the site, specifically:

- Dwelling design and construction that would appropriately address applicable hazards;
- The influence that the slope of the site may have upon the design and appearance of future residential development and the subsequent impacts (i.e. character, height/bulk/scale, view loss, etc.) associated with such development.

As no residential development is proposed, such issues are not able to be considered within this assessment; any future proposals(s) for such development would however be required to satisfy such requirements. The height standard for residential areas within the locality is 8.5m; noting this and the very substantial elevation change (i.e. 25+m) between the proposed building envelopes and adjoining properties along Kanimbla Crescent and Wollombi Road, it is highly unlikely that future residential development on the allotments would adversely affect views from surrounding areas on Bilgola Plateau towards the ocean and Newport locality.

In summary, the proposed development would broadly comply with applicable development controls within Part B2.2 of the DCP. While the proposed slopes of the allotments would not comply with the DCP, the development would still be capable of satisfying the outcomes of Part B2.2 and would be unlikely to facilitate future residential development that would adversely affect the surrounding locality. For such reasons, the noncompliance is considered to be supportable.

### B3.2 Bushfire Hazard

Contrary to issues raised within submissions, a bushfire protection assessment (Report Ref. A15164, prepared by Travers Bushfire & Ecology, dated 18 May 2016) was submitted with the subject application. As indicated within Part 6 of this report, the subject application was referred to the NSW RFS; comments from this organisation confirmed that the proposal is satisfactory, subject to recommended conditions; Council's Natural Environment Officer has confirmed that such conditions are consistent with those recommended by Council staff. Recommended conditions would include title restrictions, and any future development proposal on the proposed allotments would need to consider such restrictions in addition to other relevant controls.

B5.1 Water Management Plan, B5.10 Stormwater Discharge into Public Drainage System and B5.12 Stormwater Drainage Systems and Natural Watercourses

The subject application proposes that stormwater would be discharged from the driveway and proposed allotments to the main drainage depression via energy dissipating outlets (Drainage points from some sections of the driveway would remain unchanged from those approved by Development Consent No. N0274/09). An assessment of this proposal by Council's Development Engineers indicates that such an arrangement is satisfactory, subject to recommended conditions.

Numerous submissions have raised concerns regarding the proposed stormwater management plan and impacts associated with future development. The design and specifications of stormwater systems within each allotment would depend on the final design of future dwellings, therefore it is not possible for onsite stormwater systems to be designed and constructed at the subdivision stage. Council's Development Engineer has advised that that design of stormwater systems for residential development would be subject to more onerous requirements, as the design of such systems would require appropriately designed reuse tanks and Onsite Stormwater Detention (OSD) systems. Future development on the allotments would require OSD systems to capture and release larger volumes of water into the drainage depression, however this would be mitigated by:

- Progressive releases of water over longer durations;
- Measures that would reduce runoff velocities during future residential construction; and
- Measures to maintain the quality of water for the life of the development.

In summary, the proposed development would be capable of satisfying the controls and outcomes of Parts B5.1, B5.10 and B5.12 of the DCP. It is not possible for residential stormwater systems to be designed at the subdivision stage, however the future design of such systems would be subject to more onerous requirements

B6.2 Internal Driveways, B6.3 Off-Street Vehicle Parking Requirements, B6.7 Transport, Traffic Management, C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities and C4.6 Service and delivery vehicle access in subdivisions

Submissions have objected to the proposal on the following parking and traffic-related grounds;

- There is insufficient parking within Hillside Road;
- Hillside Road does not have the ability to carry additional traffic;
- There would be issues with vehicles entering/exiting the driveway; and
- Parked vehicles within the Hillside Road road reserve would prevent service/emergency vehicles from obtaining access to the proposed subdivision.

An assessment by Council's Development Engineers has not identified any traffic-related issues associated with the proposed subdivision; further, trip data indicates that the development would have minimal impacts on travel. As indicated by Part 7.3 of this report, the proposal does not constitute "Traffic Generating Development" (as defined by Schedule 3 of SEPP (Infrastructure) 2007) and has therefore not been referred to RMS for comment.

It is noted that submissions refer to issues with large vehicles accessing Hillside Road due to parked vehicles, however such an issue would be a matter associated with existing parking arrangements and is not an issue that would be created by development within the subject site.

Off-street parking facilities are not required as no residential development is proposed, however two off-street visitor car parking spaces are proposed within the "Y" turning head at the end of the driveway. On-site car parking facilities (i.e. a minimum of two per dwelling) associated with future dwellings would need to be in accordance with the DCP, though the size of the building



envelopes suggests that there would be sufficient space for such facilities to be provided by future development proposals.



**Figure 4:** Extracts of the approved plans from Development Consent No. N0274/09 (left) and proposed driveway plans (right) comparing the differences between the approved driveway and proposed modifications.

In response to concerns about road safety, the individual actions and movements of drivers and vehicles within public road reserves is not a matter that is capable of being assessed within the scope of the subject application; the suitability of the driveway crossover's location is also not capable of being assessed as it would remain unchanged from that approved by Development Consent No. N0274/09. The addition of new/modified internal turning bays (refer to figure 5) have been designed to permit manoeuvring of vehicles (including Medium Rigid Vehicles (MRVs)) within the subject site, thereby allowing the forward entry/exit of such vehicles without the need to manoeuvre within the cul-de-sac turning head; recommended conditions would also require that:

- The driveway be capable of accommodating the weight of MRVs, including fully loaded fire-fighting vehicles; and
- The applicant enter a waste service agreement with Council allowing for Council's waste collection contractor to collect bins within the proposed subdivision. This requirement would address concerns raised by residents about the placement of bins from future dwellings within the cul-de-sac turning head).

Further, to address concerns regarding parking and associated manoeuvring/safety issues within the cul-de-sac turning head, Council's Development Engineer has recommended a condition requiring that:

- "No Parking" zones be imposed between the driveways at 81 and 87 Hillside Road; and
- Kerbs and gutters (with sealed pavements) be constructed between the driveways at 81 and 87 Hillside Road

The proposed development otherwise addresses applicable development controls and outcomes within Parts B6.2, B6.3 and B6.7 of the DCP and is considered to be satisfactory.

### C1.3 View Sharing

Part C1.3 of the DCP is not applicable to residential subdivisions, however view impacts associated with future residential development on the proposed allotments were raised within submissions. Future residential development would be subject to future assessments, however due to:

- The 8.5m height standard; and

- Significant elevational changes between the proposed building envelopes and properties along Kanimbla Crescent and Wollombi Road, it is highly unlikely that future residential development would obstruct views from surrounding areas on Bilgola Plateau towards the ocean, foreshore areas and the Newport locality.

#### C1.13 Pollution Control

Part C1.13 of the DCP is not applicable to the subject application, however pollution associated with runoff from any future gardens within the proposed allotments was raised within submissions. Conditions regarding air/land/water pollution are recommended regardless, and it is expected that similar such conditions would be recommended should future residential development be approved on the lots.

#### C4.5 Subdivision - Utility Services

All proposed utility services are to be situated underground in accordance with the development controls; there are no overhead utility services within the road reserve in front of the site, therefore the requirement to underground such services is not applicable. A condition is recommended that would require the design of any driveway lighting to minimise impacts on surrounding residences and environmentally sensitive areas.

#### C4.7 Subdivision - Amenity and Design

In addition to the controls within Part B2.2 of the DCP, development controls within Part C4.7 of the DCP also apply to the proposal and have been assessed within the following table:

Control	Comment	Compliance
<b>Subdivision design</b>		
Subdivision should be designed to ensure that:		
a) all properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;	As indicated within the assessments of Parts A4.10 and A10.1 of the DCP, the proposed design of the subdivision would be consistent with development in the surrounding area.	YES
b) the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.	As assessed elsewhere within this report, any impacts on the natural environment by the proposed works are considered to be acceptable.	YES
A comprehensive site analysis taking into account the following characteristics is to be carried out as part of the subdivision design process. This analysis should take into account the final development which will occur on the site as a result of the subdivision. The analysis and resultant subdivision design should address the following issues:- <ul style="list-style-type: none"> <li>the slope, topography and any natural features (e.g. creeklines);</li> <li>trees and vegetation (particularly trees worthy of retention);</li> <li>viewlines from within the proposed lots and from adjoining properties;</li> <li>solar access to the subdivision site;</li> <li>the side, rear and front setbacks of future dwellings and structures in relation to the proposed new boundaries and development on adjoining properties;</li> </ul>	An assessment of the of the listed characteristics is as follows:- <ul style="list-style-type: none"> <li>Refer to assessments within Parts 7.5 and 7.4 of this report.</li> <li>Refer to the assessment within Part 7.4 of this report.</li> <li>Refer to assessments within Part 7.5 of this report.</li> <li>Solar access is obtainable to the subdivision, however specific impacts would be subject to the assessment of future application(s) for development on the proposed lots.</li> <li>The proposed setbacks of the building envelopes would ensure that future development complies with side and rear setbacks requirements.</li> </ul>	YES



<ul style="list-style-type: none"> <li>the visual impact of built development which will occur as a result of the subdivision process (building height, bulk and scale, visual impact of buildings);</li> <li>the provision of vehicular access to the future buildings on the proposed lots;</li> <li>the provision of landscaping and/or recreation space for each proposed lot;</li> <li>the provision of onsite car parking on each proposed lot;</li> <li>the provision of services to each lot, including sewerage, water, electricity, communications and gas (where available);</li> <li>the provision of emergency services to each (bushfire, fire brigade, ambulance).</li> </ul>	<ul style="list-style-type: none"> <li>The proposed development would not have any significant visual impacts from public areas. Refer to assessments within Part 7.5 which relates to the appearance of the site from public areas.</li> <li>Refer to the assessment within Part 7.5 of this report.</li> <li>Provision of landscaped/POS area would be subject to future assessment of residential development, though such development would be capable of complying with relevant Part D controls.</li> <li>Subject to future assessment, though such development would be capable of complying with relevant Part C controls.</li> <li>Complies; to assessment within Part 7.5 of this report.</li> <li>Complies; to assessment within Part 7.5 of this report.</li> </ul>	
<p>In order to address these issues, a building envelope area is to be nominated on each proposed lot within which any future building is to be contained. The application should clearly demonstrate that a building envelope can be built on site that has regard for the following:</p> <ul style="list-style-type: none"> <li>retention of trees and bushland,</li> <li>vehicular access,</li> <li>provision of services,</li> <li>provision of emergency services,</li> <li>and safety from hazard,</li> <li>A building which achieves the desired character of the area and is commensurate with the amenity standards of surrounding development, and does not overly impact on the environment, and can be erected within that envelope.</li> </ul> <p>In this regard, an assessment of the buildings which will be erected as a result of the proposed subdivision is to be carried out demonstrating that the requirements and outcomes of the controls in this DCP which will apply to those buildings will be able to be complied with.</p>	<p>The proposed building envelopes have been assessed against relevant assessable criteria as follows:</p> <ul style="list-style-type: none"> <li>57 trees are proposed to be removed from the site. An assessment deems such works to be satisfactory, subject to conditions; refer to Part 7.4 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessments within Parts 7.4 and 7.5 of this report.</li> <li>The proposed building envelopes would be appropriately sited to accommodate residential development that should be consistent with the character of the area. Where applicable, the proposed development would be consistent with the desired development characteristics for the locality; refer to relevant assessments within Part 7.5 of this report.</li> </ul> <p>The design of dwellings on the proposed allotments would be subject to a separate assessment(s). The layout of the proposed allotments and building envelopes could however accommodate future development capable of complying with applicable development standards, controls and associated outcomes.</p>	<p><b>YES</b></p>
<p><b>Usable Site Area</b></p>		
<p>Where a right-of-carriageway to another lot is provided over a lot, the width of that right-of-carriageway shall not be more than 20% of the required minimum width of the lot over which it is located.</p>	<p>Not applicable</p>	<p>N/A</p>

Where an allotment has a boundary dimension of 6.5 metres or less to a road, then the site area of the allotment shall be increased by 20% over that required for the area.	Not applicable	N/A
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In summary, the proposed development satisfies the applicable development controls and outcomes of Part C4.7 of Pittwater 21 DCP.

#### D10.1 Character as viewed from a public place

The proposed development would satisfy controls requiring that general services be situated underground; other controls within Part 10.1 of the DCP are not applicable and/or capable of being assessed, as no residential building works are proposed. Most outcomes are also not applicable as they are not capable of being assessed within the context of the subject application. As indicated within the assessment of Part A4.10 of the DCP (see above), the proposed subdivision layout is consistent with the desired character of the area, as the layout of the proposed allotments are similar with that of the surrounding area, the design of the allotments would be safe from hazards and the proposed placement of the building envelopes would facilitate development consistent with applicable development standards and controls.

### **8.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of applicable planning legislation, planning instruments and policies as listed within Part 7.1 of this report. Twenty four submissions were received which objected to the proposed development; comments and issues raised within these submissions have been addressed within Parts 5 and 7 of this report.

This assessment has found that proposed development is mostly consistent with the relevant statutory and policy controls and outcomes. It is acknowledged that the site forms part of an environmentally sensitive area, however the building envelopes within the proposed allotments would be situated within an area of the subject site that is already highly disturbed; this assessment has found that impacts associated with the proposed development would be acceptable, provided that demolition/construction works and ongoing management of the proposed allotments are undertaken in accordance with recommended conditions of consent. A referral to the Department of Energy and the Environment has confirmed that the proposal would not constitute a "controlled action" pursuant to S75 of the *Environmental Protection and Biodiversity Conservation Act 1999*.

While the slope of the proposed allotments would exceed the maximum requirements stipulated by the DCP, the layouts of the allotments would not be inconsistent with other residential development within the locality. Any future development on the proposed allotments (if approved) would be subject to future assessment(s) under applicable statutory and policy controls and outcomes; the size and slope of the proposed building envelopes could reasonably accommodate future residential development and associated utilities that would be consistent with the desired characteristics of the locality and which would be capable of satisfying applicable development standards, controls and outcomes. Further, assessments by Council officers and the NSW Rural Fire Service concluded that hazards affecting the site could be appropriately managed, subject to recommended conditions attached below. For these reasons and due to the otherwise high level of compliance with other development controls, the noncomplying slope of the proposed allotments should not warrant the refusal of the subject development application.

In summary, the proposal is consistent with the relevant statutory and policy controls and outcomes (refer to relevant assessments above). The impacts associated with the proposed

subdivision are considered to be acceptable and supportable subject to recommended conditions. The application is therefore recommended for approval.

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#### **RECOMMENDATION OF PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 **approve** Development Application N0317/16 for the subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision at 62 and 85 Hillside Road, Newport (Lot 1, DP 408800 and Lot 2, DP 1036400), subject to the recommended conditions attached to this report.

#### **Report prepared by**

Tyson Ek-Moller  
**PRINCIPAL PLANNER**  
**PLANNING AND ASSESSMENT**

### Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

**Note:** Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

#### A. Prescribed Conditions:

1. This development consent does not approve and/or regularise any new development on the site that is not indicated on the approved plans and/or subject to conditions within this consent. Consent shall be sought for any development on approved Lots 1a, 1b, 1c and 1d that is not:
  - Approved by this consent; and/or
  - Exempt development.
2. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
3. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
4. A sign must be erected in a prominent position onsite only showing:
  - A. The name, address and telephone number of the Principal Certifying Authority for the work, and
  - B. The name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - C. That unauthorised entry to the work site is prohibited.

The sign must 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.

5. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - A. in the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor, and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
  - B. in the case of work to be done by an owner-builder:
    - i. The name of the owner-builder, and



- ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
  - C. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information
6. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
7. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
8. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

**B. Matters to be incorporated into the development and maintained over the life of the development:**

1. Any power lines and/or electricity infrastructure within the site shall be located underground. New electrical connections to the site are to be carried out using underground cabling.
2. Any lighting for the driveway shall be designed as follows:
  - Lighting is to illuminate the driveway only, and shall be designed/shielded to prevent light being projected up/into vegetated areas;
  - Any lighting is to be designed and/or shielded to prevent disturbance to surrounding residential properties.
3. Any retaining wall associated with the subdivision and/or driveway that are visible from public areas are to be constructed with sandstone and/or sandstone-like external materials and finishes.
4. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
5. The landowner must comply with all aspects of the approved Vegetation Management Plan and Sub-plans (Cumberland Ecology, June 2016 and November 2016) and over the life of the development.
6. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for noxious/environmental weed lists.

7. No environmental weeds are to be planted on the site. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for environmental weed lists.
8. In accordance with Part B4.22 (Protection of Trees and Bushland Vegetation) of Pittwater 21 Development Control plan, all existing trees as indicated in the approved Arborist Report shall be retained (except where Council's prior written consent has been obtained for trees that stand within the envelope of approved development areas and removal is approved through an arborist report). For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
9. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.
10. Fencing is to be erected along the boundary line between Management Zone 1 and 3 for those lots identified as Lot 1a and 1b.
11. Any vegetation planted onsite outside of any approved landscape zone is to be consistent with:
  - Species listed in the Vegetation Management Plan
  - Species listed from the Endangered Ecological Community
12. No water pollution shall result from the operation of any plant or equipment or activity carried out.
13. No emissions of air pollution shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
14. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
15. All utility services including overhead power supply and communication cables to service the lots to be created are to be placed underground.
16. Fire hydrants are to be provided in all proposed roads and adjoining public road reserves in accordance with the requirements of Sydney Water and the NSW Rural Fire Service.
17. Street lighting facilities to the development street frontages of the site and to the existing Public Road reserve adjacent to the development site are to be provided at the full cost of the developer and in accordance with the requirements of Energy Australia.
18. Where relevant, all appropriate infrastructure is to be provided to service the proposed lots, including roads and accessways, drainage facilities, water management facilities, reticulated water, reticulated sewerage, electricity, gas and telecommunication services.

**C. Matters to be satisfied prior to the issue of the Construction Certificate:**

**Note:** All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The applicant is to consult with Sydney Water to establish whether there are any Section 73 Compliance Certificate requirements for this proposal, under the provisions of the *Sydney Water Act, 1994*. A copy of any Notice of Requirements letter which may be issued by Sydney Water, is to be provided to the Private Certifying Authority with the Construction Certificate application.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

4. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
  - A. after excavation for, and prior to the placement of, any footings, and
  - B. prior to pouring any in-situ reinforced concrete building element, and
  - C. prior to covering of the framework for any floor, wall, roof or other building element, and
  - D. prior to covering waterproofing in any wet areas, and
  - E. prior to covering any stormwater drainage connections, and
  - F. after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

5. Construction works approved by this consent must not commence until:
  - A. Construction Certificate has been issued by a Principal Certifying Authority
  - B. a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
  - C. at least 2 days notice, in writing has been given to Council of the intention to commence work.
6. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the

prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.

7. A contribution of **\$60,000** is payable to Northern Beaches Council for the provision of public infrastructure and services pursuant to the Pittwater Section 94 Contributions Plan for Residential Development.

The contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate (whichever occurs first) or prior to the issue of the Subdivision Certificate where no Construction Certificate is required.

The proponent may negotiate with Council for the direct provision of facilities and services specified in the Section 94 Plan, the dedication of land or another material public benefit in lieu of full or partial payment of the monetary contribution. Any agreement shall be in accordance with the Pittwater Section 94 Contributions Plan for Residential Development. The agreement must be finalised, formally signed and in place prior to payment being due.

The Pittwater Section 94 Contributions Plan for Residential Development may be inspected at Council's Mona Vale office, 1 Park Street Mona Vale or on Council's website.

Cashier Codes:

SOPS – \$24,000

SCSF – \$10,500

SLEL – \$6000

SVSS – \$19,500

8. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
9. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).

**Note:** Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.

10. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.



11. Engineering plans and specifications for all roads, drainage and other civil engineering works within an existing Public Road reserve must be submitted and approved in writing by Northern Beaches Council prior to submission to the Accredited Certifier or Council of the Construction Certificate application.

Payment of the Engineering Plan Assessment fee (in accordance with Councils adopted Fees and Charges) is required prior to Council releasing the approved engineering plans.

The installation of traffic facility signs and markings, including parking signs and speed restrictions will require the approval of Council prior to commencement of installation.

12. If/where applicable, any external glazing must be of low glare and reflectivity. The reflectivity index (expressed as a percentage of the reflected light falling upon any surface) of all external glazing is to have a maximum reflectivity index of 25%. Written confirmation of the reflectivity index of the material is to be submitted with the Construction Certificate. (Note: the reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement. This is to ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development).

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

**Note:** It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

**Note:** This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- A. Protection of site workers and the general public.
- B. Erection of hoardings where appropriate.
- C. Asbestos handling and disposal where applicable.
- D. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.

4. The following facilities must be provided on the site:
  - A. toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - B. a garbage receptacle for food scrapes and papers, with a tight fitting lid.

Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

5. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
6. Where possible, waste materials generated through any demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

7. The site must be fenced throughout demolition and/or construction works; such fencing must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
8. Where site fill material is necessary, any fill materials must:
  - A. Be Virgin Excavated Natural Material (VENM) only, as approved under the Department of Climate Change "General Resource Recovery Exemption ;and
  - B. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
9. Native plants located within the zone of construction (specifically Trees 43, 44, 45, 46 as identified in the arborist report) are to be translocated by a suitably qualified person into an undisturbed area onsite where possible (based on size and viability). If an Ecological Sustainability Plan or Bushland Management Plan applies to the property, a Bushland Management Consultant is to certify that native plants have been adequately translocated prior to the commencement of works.
10. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Footprint Green, dated 22/6/16 are required to be complied with before and throughout the development period, particularly with regard to the following:
  - A. Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials,

soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;

- B. Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
- C. All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
- D. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
- E. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

- 11. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.

Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

- 12. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 13. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
- 14. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
- 15. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
- 16. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
- 17. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.

18. No works are to be carried out in Council's Road Reserve without the written approval of the Council.

**Note:** Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.

19. No skip bins or materials are to be stored on Council's Road Reserve.
20. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
  - A. The builder's name, builder's telephone contact number both during work hours and after hours.
  - B. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
  - C. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
  - D. That no skip bins or materials are to be stored on Council's Road Reserve.
  - E. That the contact number for Northern Beaches Council for permits is 9970 1111.
21. Construction access to the property is to be via the approved driveway only.
22. If/where the volume(s) of excavated materials to be transported from the site or the importation of fill material to the site is equal to 100m<sup>3</sup> or greater, a satisfactory construction traffic management plan (CTMP) shall be prepared by a suitably qualified traffic consultant and submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
  - A. Quantity of material to be transported
  - B. Proposed truck movements per day
  - C. Proposed hours of operation
  - D. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the former Pittwater Council Local Government Area
  - E. Location of on/off site parking for construction workers during the construction period.
23. Demolition works must be carried out in compliance with WorkCovers *Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 The Demolition of Structures. The site must be provided with a sign containing the words *DANGER ASBESTOS REMOVAL IN PROGRESS* measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility. All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the



Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

**E. Matters to be satisfied prior to the issue of Occupation Certificate:**

**Note:** Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

**Note:** It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. A copy of the Section 73 Compliance Certificate issued under the provisions of the *Sydney Water Act, 1994*, is to be forwarded to Council or the Private Certifying Authority with the Occupation Certificate.
3. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
4. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

5. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

**F. Matters to be satisfied prior to the issue of Subdivision Certificate:**

**1. Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- A. At the issue of a subdivision certificate, a positive covenant and restriction to the land use shall be created over the proposed lots pursuant to Section 88 of the *Conveyancing Act 1919*. The instruments shall prohibit the construction of residential dwellings outside the proposed building

envelopes and require land to be managed as an inner protection area (IPA) as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2). The IPA shall be managed as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the instruments.

- B. At the issue of a subdivision certificate, a restriction to the land use shall be placed on adjoining Lot 2/1036400 to the west of the subject site requiring the provision of asset protection zones (APZs) to the west and north west of the proposed building envelope on proposed Lot 1(a), as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2). These APZs shall be maintained as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the covenant.
- C. At the issue of a subdivision certificate, a positive covenant pursuant to Section 88 of the *Conveyancing Act 1919* shall be placed on the proposed lots which requires the ongoing implementation of the measures proposed in the vegetation management plan prepared by Cumberland Ecology referenced 15023RP and dated June 2016 for the site. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the covenant.

## 2. **Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- A. New water, electricity and gas services shall comply with Section 4.1.3 of *Planning for Bush Fire Protection 2006*.

## 3. **Access**

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

- A. Proposed road(s) shall comply with the following requirements of Section 4.1.3(1) and Section 4.1.3(2) of *Planning for Bush Fire Protection 2006*:
  - Road(s) shall be two wheel drive, all weather roads, with a carriageway 6.5 metres minimum kerb to kerb.
  - Any construction of the minimum carriageway width, due to existing site constraints, shall be no less than 3.5 metres for no greater than 30m along the access road.
  - Passing bays shall be 20 metres long by 2 metres wide, making a minimum trafficable width of 6 metres at the passing bay.
  - Dead end roads shall be clearly signposted as dead end and direct traffic away from the hazard.
  - Dead end roads shall incorporate the proposed 'Y' tuning head as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2).

- Roads shall have a cross fall not exceeding 3 degrees.
  - Curves of roads (other than perimeter roads) shall provide a minimum inner radius of 6 metres.
  - the minimum distance between inner and outer curves shall be 6 metres.
  - Maximum grades for sealed roads shall not exceed 15 degrees and an average grade of not more than 10 degrees of other gradient specified by road design standards, whichever is the lesser gradient.
  - The capacity of road surface and bridges shall be sufficient to carry fully loaded fire fighting vehicles (approximately 25 tonnes for areas with reticulated water, 28 tonnes or 9 tonnes per axle for all other areas).
  - Roads directly interfacing the bush fire hazard vegetation shall be provided with roll top kerbing to the hazard side of the road.
  - A minimum vertical clearance of 4 metres shall be provided to any overhanging obstruction, including tree branches.
4. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report (Footprint Green, 22/6/16) are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Subdivision Certificate.
  5. The Bushland Management Consultant to certify that:
    - A. Native plant selection and planting as per Plan (Vegetation Management Plan and sub-plans, Cumberland Ecology, June and November 2016) has been completed,
    - B. All actions prescribed in the approved Vegetation Management Plan and sub-plans have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan, and
    - C. That areas/features requiring protection have been adequately protected and are in an acceptable condition.
  6. A positive covenant as proposed in the letter from Cumberland Ecology (November 2016) on restriction on the use of land is to be created prior to the issue of the Subdivision Certificate.
  7. At the issue of a subdivision certificate, a positive covenant and restriction to the land use shall be created. The instrument shall prohibit domestic pet animals from entering wildlife habitat areas and areas identified as Management Zone 1 in the vegetation management plan at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
  8. A Certificate is to be submitted to the Principal Certifying Authority with the Subdivision Certificate application by a qualified practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Private

Certifying Authority that the driveway has been constructed in accordance with the approved plans and relevant conditions of Development Consent.

9. Prior to the issue of any subdivision certificate, a detailed design plan showing the following works within the public road reserve shall be submitted to, and approved by Council:
  - A. Replacement of the existing parking restriction signs within the turning head with standard "No Parking" signs; this zone is to be extended from the driveway at 81 Hillside Road around the kerb line to the driveway at 60 Hillside Road; and
  - B. Kerbs and gutters with sealed pavement shall be constructed to the Hillside Road turning area between the driveway at 81 Hillside Road and the existing kerb and gutter adjacent to 87 Hillside Road.
10. Prior to the issue of any subdivision certificate, the applicant shall submit to the Principle Certifying Authority a waste service agreement from Council indicating that the proposed subdivision will be serviced under a deed to indemnify the contractor for collection on the private road.
11. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Subdivision Certificate application.
12. A plan showing details of the location of separate water, sewerage, electricity and telephone services to each lot is to be submitted to the Principal Certifying Authority, with the Subdivision Certificate application.
13. Appropriate easements are to be created where service lines or drainage lines pass through private property other than the lot which they benefit. These are created through the registration of the Plan of Subdivision.
14. A Restriction on Use of Land is to be created, burdening Lots 1a, 1b, 1c and 1d, the terms of which restrict future buildings within Lots 1a, 1b, 1c and 1d to the building envelopes and areas shown on the approved plans. Full details in this regard are to be submitted to Council on the final plan of Subdivision / and an accompanying Section 88B instrument. The creation of the Restriction on Use of Land is achieved through registration of the Plan of Subdivision.
15. Prior to the issue of any subdivision certificate, the applicant must submit a report from a practicing geotechnical engineer, such report is to address the following matters:
  - A. The classification, or - in the case of lots which have been subject to bulk filling - the reclassification of all lots on a lot by lot basis in accordance with Australian Standard AS 2870; and
  - B. Recommendation for appropriate footing systems on a lot by lot basis in accordance with Australian Standard AS 2870.
16. The following documents and payments are to be submitted to Council in a single package to ensure the efficient release of the Subdivision Certificate:-
  - A. Evidence of Payment of the Section 94 Contribution.
  - B. A copy of the Section 73 Compliance Certificate issued under the provisions of the Sydney Water Act, 1994.
  - C. Copies of the Subdivision Plans (original plus 6 copies).



- D. The Private Certifying Authority Compliance Certificate. Each component of the works as outlined above are to be certified as being carried out in accordance with the relevant plans and documentation by suitably qualified professional persons as outlined in this development consent. In particular, the construction of the Water Management System is to be supervised and certified by person(s) with appropriate experience and expertise in Environmental Science, Hydrology and Hydraulics, and must be NPER registered members of the Institution of Engineers (Australia).
- E. Where Material Public Benefits are involved, a Bank Guarantee for the difference between the value of the Material Public Benefit (MPB) and the value of the MPB works constructed for that stage.
- F. Work-as-executed plans for all structures or facilities which will be dedicated to Council or which are located within drainage easements or which will require ongoing maintenance by Council. The plans are to be in paper and electronic format (dwg or dxf file) and comprise at least the following:-
  - i. Boundary layout;
  - ii. Kerb and gutter, road pavement, footpaths, traffic devices, retaining walls;
  - iii. Signage (including type and wording), line marking;
  - iv. Easements, survey numbers and marks, reduced levels and co-ordinates;
  - v. Stormwater drainage, pipe sizes and types, pit sizes and types, subsoil drains;
  - vi. Water quality devices, ponds, creekline corridors, parkland, play equipment;
  - vii. Significant landscaping.
- G. A security deposit of a value to be determined by Council is to be made to ensure rectification of any defects during the maintenance period. A maintenance period is to apply to all works to be dedicated to Council or which will require ongoing maintenance by Council. The maintenance period will apply for six (6) months after the issue of the Subdivision Certificate. In that period the applicant will be liable for any part of the works which fail to perform in the manner required by the relevant certifications, or as would be reasonable expected under the design conditions.

**G. Advice:**

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or [www.1100.com.au](http://www.1100.com.au)
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.

4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
9. This approval does not prejudice any action in respect of upgrading the building pursuant to the provisions of the Section 121B of the *Environmental Planning and Assessment (Amendment) Act, 1997*.
10. Littoral Rainforest Endangered Ecological Community as listed on Schedule 1 of the NSW Threatened Species Act 1995 has been recorded on or near this property. Under the TSC Act it is an offence to harm Endangered Ecological Communities, Endangered Populations or Threatened Species. No unapproved site disturbance or other activities shall be carried out on the property which adversely impacts on threatened species or EEC's.





ITEM 3.2	DA0190/2012 – 53-57 PITTWATER ROAD, MANLY – SECTION 96 TO MODIFY APPROVED CHANGE OF USE TO A CAFÉ INCLUDING COURTYARD SEATING AND INTERIOR SIGNAGE – PART 2
REPORTING OFFICER	BENJAMIN PRICE
TRIM FILE REF	2018/091560
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. DA190/2012 for Section 96 to modify approved change of use to a Café including courtyard seating and interior signage – Part 2 at Lot 14 SP 91855, 53-57 Pittwater Road Manly for the reasons outlined in the Assessment Report.

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2018/061357

<b>DA #</b>	190/2012
<b>Site Address</b>	53-57 Pittwater Road Manly; Lot 14 SP 91855
<b>Proposal</b>	Section 96 to modify approved change of use to a Café including courtyard seating and interior signage – Part 2
<b>Officer</b>	Ben Price

### Approval

## An aerial photograph of a residential neighborhood. The image shows several houses with their property lines and parcel numbers overlaid in red. A specific parcel, located in the upper-middle section, is highlighted with a red border. This parcel is labeled with the number '86' in red. Other visible parcel numbers include '8' in the top left, '100' in the top right, '11237' in the middle left, '53445' in the middle right, and '50512' in the bottom right. The houses are mostly single-story with light-colored roofs. The surrounding area includes streets and some greenery.

The surrounding area predominantly consists of residential accommodation including residential flat buildings a hostel and semi-detached dwellings.

**Property Burdens and Constraints**

There are no burdens or constraints that would preclude the proposed development.

**Site History/Background**

The following applications are relevant to the site history:

**DA175/2011** – for Establishment of use as a convenience store (food shop/ delicatessen) with limited takeaway food, coffee service, outdoor eating in the rear courtyard and shop fitout – Approved on the 8 September 2011.

On the 8 August 2012 a notice of intention to serve an order was issued as the building was being used as a café without development consent.

**DA190/2012** – for Change of use to a Café including courtyard seating and interior signage – Approved by the Manly Independent Assessment Panel on the 20 December 2012 subject to conditions – The following conditions are of particular relevance to this application:

*“ANS02*

*Prior to any use of the space in the courtyard the courtyard is to be fully enclosed using sound attenuating materials. The courtyard space is to be ventilated by mechanical or convection means in such a way that additional noise is not generated adversely affecting the current amenity of residents of 53-57 Pittwater Road and 51 Pittwater Road. Roofing materials shall be low reflectivity. Details are to be submitted to and approved by Council prior to issue of the Construction Certificate.*

*Reason: To maintain the visual and acoustic amenity of neighbouring residents*

*16 (6BS01)*

*The hours of operation of the premises (i.e. hours open for business) must not exceed 7.00am – 7.00pm Monday – Friday and 7.30am – 7.00pm Saturday, Sunday and public holidays without the prior approval of Council.*

*Reason: To ensure amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality.”*

There is no evidence of a Construction Certificate or Occupation Certificate on the file. Councils Building Surveyor made the following note on the development application file on the 1 February 2016

*“A search of Council records has revealed that no Construction certificate was issued for DA190/2012, where an Occupation certificate had been applied for on the 7<sup>th</sup> July 2015.”*

The occupation certificate was not issued and there is no evidence of a Building Certificate being applied for or issued for this property.

**DA40/2014** – for Enclosure of the existing ground floor terraces to extend tenancies 1 and 2. This application was approved on the 19 June 2014 subject to conditions. A Final Occupation Certificate was issued on the 16 January 2015.

This development constructed in accordance with DA40/2014 was required in order to achieve compliance with condition ANS02 of development consent 190/2012. It is therefore considered that DA190/2012 achieved physical commencement due to construction of this application.

**Description of proposed development**

The proposal includes the modification of the approved hours of operation.

The approved hours of operation are:

- 7.00am – 7.00pm Monday – Friday and
- 7.30am – 7.00pm Saturday, Sunday and Public Holidays.

The proposed hours of operation are:

- 7.00am to 10.00pm Sundays to Thursdays and
- 7.00am to 12.00am Fridays and Saturdays

### **Internal Referrals**

#### **Environmental Health**

Council's Environmental Health Officer has reviewed the acoustic report and offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

### **Planning Comments**

#### **Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*  
(i) *any environmental planning instrument, and*

#### **Manly Local Environmental Plan 2013**

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed modifications will maintain the approved use as a *restaurant or café*. The development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone B2 Local Centre**

##### **Objectives of zone**

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

The proposal will ensure the premises continues to serve the needs of people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

The proposal will encourage employment opportunities in an accessible area.

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

The proposed development is in an accessible location and will encourage public transport patronage, walking and cycling.

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

The proposed development subject to the recommended conditions of consent will minimise conflict between land uses in the zone and ensure the amenity for the people who live in the local centre.

#### **Part 4 Principal development standards**

There are no relevant provisions of Part 4 of the Manly LEP 2013 to consider as part of the assessment.

**Part 5 Miscellaneous Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposal is for hours of operation only. The proposal complies with the objectives of this clause.

**Part 6 Local Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.21	Noise impacts – licensed premises	Yes	Yes	<p>The proposal has been assessed in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the assessment found that while the proposal is located in the Manly Town Centre the hours of 10pm-12am on Friday and Saturday are not reasonable. This was due to the location of the premises on the outer fringe of the Manly Town Centre and in close proximity to the surrounding residential accommodation and the associated amenity impacts relating to customer activities and associated operational noise created by the use. As such it is recommended to limit the hours on Friday and Saturday to 10pm and not grant approval for a Late Night Venue. A condition of consent is also recommended to require the submitted plan of management to be amended to include the requirements as set out in Condition ANS04. This condition requires sufficient detail to ensure the premises is appropriately managed and does not result in any unreasonable impacts to the locality.</p> <p>The proposal will maintain the use of the premises as a restaurant or café. The consumption of alcohol in accordance with this use will not generate any unreasonable acoustic privacy impacts subject to conditions limiting the hours of operation and a suitable Plan of Management. Furthermore the recommended conditions of consent are appropriate to ensure adequate acoustic privacy for the neighboring residential accommodation. The proposal complies with this Clause.</p>



**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

**Manly Development Control Plan 2013:**

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

**Part 3 General Principles of Development**

Issues	Consistent with principle	Inconsistent with principle
Townscape	✓	
Heritage – In Vicinity	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	
Sustainability	✓	
Accessibility	✓	
Stormwater management	✓	
Waste Management	✓	
Mechanical Plant Equipment	✓	

**Comment:**

**3.4.2 Privacy and Security**

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

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

The proposal includes the modification of the hours of operation from 7.00am – 7.00pm Monday – Friday and 7.30am – 7.00pm Saturday, Sunday and Public Holidays to 7am to 10pm Sundays to Thursdays and 7am to 12am Fridays and Saturdays.

The site is within the Manly Town Centre however is on the northern fringe of the designated Town centre. The surrounding area is dominated by residential accommodation and the site is located in close proximity to residential accommodation to the east, south and west.

The property directly to the north is a shop and above are office premises with the following opening hours:

DA353/2010 - Establishment of Use as offices and fitout including a new mezzanine level – Suites 1 and 2 – 53-57 Pittwater Road – Approved hours of operation 9am to 5.30pm Monday to Friday.

DA92/2016 – Alterations and additions to an existing commercial building (shop) – 53-57 Pittwater Road – Approved hours of operation of 9am-6pm Monday to Wednesday, Thursday 9am-9pm and Saturday-Sunday 9am to 5pm without the prior approval of Council.

The proposal will introduce a late night venue to an area that is highly dominated by residential accommodation and sensitive to impacts on acoustic privacy. The residential buildings to the rear directly open onto the enclosed area of the subject site. The proposed hours from 10pm to 12am will generate conflict between the site and the surrounding residential development. Given the context of the site the proposed hours of 10pm to 12am Friday and Saturday are not reasonable.

The property is located within the zone B2 Local Centre which aims to support retail uses and encourage employment opportunities in accessible locations. The application was supported by an acoustic report that provided recommendations to ensure the premises does not result in any unreasonable impacts to acoustic privacy. Furthermore the enclosure of the rear courtyard and the original conditions of consent are designed to minimise the impacts on acoustic privacy. As such it is recommended the condition of consent be amended to restrict the hours of operation to 7am to 10pm Monday to Sunday inclusive. The recommended condition of consent will sufficiently restrict the hours to ensure an appropriate degree of amenity for the surrounding residents while still allowing the premises to achieve dinner trade. Councils Environmental Health Officer has also recommended a condition of consent requiring a Plan of Management be submitted to the Certifying Authority prior to the issue of the Occupation Certificate. This condition highlights key areas to be addressed in the plan of management. The required plan of management will ensure the premises is operated with no unreasonable impacts to the surrounding area.

The proposed use of the premises will remain as a restaurant or café as defined by the Manly LEP 2013. This proposed use and the hours of operation are reasonable for the area and will not result in any unreasonable impacts on the safety/security of the neighbouring properties.

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

The proposal as modified by the recommended conditions of consent will ensure reasonable acoustic privacy to the surrounding residents without compromising access to light and air.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposal as modified by the recommended conditions of consent will ensure an appropriate awareness of neighbourhood security.

#### **Part 4 - Development Controls**

##### **4.2.5.6 Late Night Venues**

*Objective 1) To achieve for Manly's entertainment precinct as a place of excellence in which all people can use and enjoy Manly's highly valued natural amenity qualities as a place:*

- *for leisure and entertainment;*
- *in which late night venues can safely entertain and provide for the enjoyment of social and recreational pursuits;*

*without disturbing the peace of the community in terms of safety and security.*

The proposal will introduce a late night venue to an area dominated by residential accommodation and sensitive to impacts on acoustic privacy. The residential buildings to the rear directly open onto the enclosed area of the subject site. The proposed hours from 10pm until 12am will generate conflict between the site and the surrounding residential development. Given the context of the site the proposed hours of 10pm to 12am Friday and Saturday are not reasonable. It is recommended the condition of consent be amended to restrict the hours of operation to 7am to 10pm Monday to Sunday inclusive. The recommended condition of consent will sufficiently restrict the hours to ensure an appropriate degree of amenity for the surrounding residents while still allowing the premises to achieve dinner trade.

*Objective 2) To regulate the activities and design of late night venues to minimize late night disturbances to the public and promote Manly as a safe place for all the community late at night such that:*

- *frontages to public spaces must be designed to minimize conflict between customers within the establishments and public using the public spaces;*
- *the applicant demonstrate (see lodgement requirements at paragraph 2.1) that the premises will not detract from the safety and security of the Entertainment Precinct and as a place which is acceptable for families; and*
- *obligations of any current Accord are addressed in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.*

The proposal for a late night venue is not supported due to the impacts on the surrounding properties. A condition of consent is recommended to restrict the hours of operation to 7am to 10pm Monday to Sunday inclusive. The recommended condition of consent will sufficiently restrict the hours to ensure an appropriate degree of amenity for the surrounding residents while still allowing the premises to achieve dinner trade.

#### Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area	✓	
Foreshore Scenic Protection Area		✓
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

#### Comment:

The proposal will not result in any unreasonable impacts on the Pittwater Road Conservation Area.

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No applicable planning agreement.

#### **79C(1)(a) (iv) - the regulations**

The proposal is consistent with the applicable regulations.

#### **79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

#### **79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed development subject to the recommended conditions of consent will ensure no unreasonable impacts on the natural or built environments nor will it result in any unreasonable social or economic impacts in the locality.

#### **79C(1) (c) - the suitability of the site for the development,**

The proposal subject to the conditions of consent is suitable for the site.

**79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with 17 submissions opposed and 1 submission in support received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Palk R. 23/51 Pittwater Road Manly	<ul style="list-style-type: none"> <li>Privacy and security</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> </ul>
2. Confidential	<ul style="list-style-type: none"> <li>Privacy and security</li> <li>Alcohol</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> <li>The liquor licences that allow the service of Alcohol are issued by the Office of Liquor and Gaming. The noise impacts due to the service of alcohol associated with a restaurant or café will not result in any unreasonable impacts on the locality.</li> </ul>
3. Potter J.	<ul style="list-style-type: none"> <li>Privacy and security</li> <li>Service of Alcohol</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> <li>The liquor licences that allow the service of Alcohol are issued by the Office of Liquor and Gaming. The noise impacts due to the service of alcohol associated with a restaurant or café will not result in any unreasonable impacts on the locality.</li> </ul>
4. De Vries C. 18/62-64 Pittwater Road	<ul style="list-style-type: none"> <li>Privacy and security.</li> <li>There is no need for a bar in this area of Pittwater road.</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> <li>The proposal was approved as a Café. The modification does not include a change of use to a bar.</li> </ul>



5. Gatenby S. 14/53-57 Pittwater Road Manly	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• Waste Management</li> <li>• No parking</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• The proposal is for hours of operation only. The original application assessed the waste facilities. Conditions were imposed to ensure commercial waste was appropriately disposed.</li> <li>• This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.</li> </ul>
6. O'Brien B. 18/61 - 63 Pittwater Road MANLY 2095	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• Parking</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.</li> </ul>
7. Taylor A. 17/61-63 Pittwater Road, Manly NSW 2095	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• Parking</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.</li> </ul>
8. Powell S. 3/51 Pittwater Road Manly	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• Smoking on street</li> <li>• Parking</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• The proposal is for hours of operation. Smoking is restricted by separate legislation</li> <li>• This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.</li> </ul>

9. Shephard K.	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• Parking</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.</li> </ul>
10. Skinner L. 2/60 Pittwater Road Manly	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• Liquor licence</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• The liquor licences that allow the service of Alcohol are issued by the Office of Liquor and Gaming. The noise impacts due to the service of alcohol associated with a restaurant or café will not result in any unreasonable impacts on the locality.</li> </ul>
11. Boschen R. 62-64 Pittwater Road Manly	<ul style="list-style-type: none"> <li>• Privacy and security</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> </ul>
12. Van Gorcom K. 14/51 Pittwater Road Manly	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• The site does not contain a grease trap, mechanical ventilation or waste facilities.</li> <li>• parking</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• The proposal is for hours only. The original application included conditions to ensure the appropriate fitout and management of waste.</li> <li>• This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.</li> </ul>
13. Halpin S. & V. 16/53-57 Pittwater Road Manly	<ul style="list-style-type: none"> <li>• Privacy and security</li> <li>• Waste</li> <li>• Use of fire exit stairs</li> </ul>	<ul style="list-style-type: none"> <li>• See comments below regarding privacy, noise and security.</li> <li>• The original application included conditions to ensure waste was appropriately disposed.</li> <li>• The proposal is for modification to the hours of operation. The use of the fire exit stairs is not relevant to this proposal.</li> </ul>

14. Confidential	<ul style="list-style-type: none"> <li>Privacy and security</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> </ul>
15. Hanson S. 6/51 Pittwater Road Manly	<ul style="list-style-type: none"> <li>Privacy and security</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> </ul>
16. Friedman J. & J. 76 Pittwater Road Manly	<ul style="list-style-type: none"> <li>Privacy and security</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> </ul>
17. Blakemore K. 10 and 20/53-57 Pittwater Road Manly	<ul style="list-style-type: none"> <li>Privacy and security</li> <li>Cooking Smells and smoke.</li> </ul>	<ul style="list-style-type: none"> <li>See comments below regarding privacy, noise and security.</li> <li>The proposal is for hours only. The original application included conditions to ensure the fitout of the food premises was appropriately completed and cooking smells/smoke does not result in any unreasonable impacts on neighboring properties.</li> </ul>
18. Moss A. 51 Pittwater Road Manly	<ul style="list-style-type: none"> <li>In support.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>

#### Privacy – Acoustic

The proposal has been assessed above with regards to Clause 3.4.2 Privacy and Security. In summary the assessment found that the proposal will achieve an adequate level of privacy, safety and security subject to compliance with the conditions of consent, the submitted acoustic report and Plan of Management. Councils Environmental Health Officer has assessed the Acoustic Report and raised no objection to the findings and recommendations.

#### **79C(1) (e) - the public interest.**

The proposal as modified by the recommended conditions of consent is not contrary to the the public interest.

#### **S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- the dedication of land free of cost, or*
  - the payment of a monetary contribution, or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

#### **Comments:**

In this case, the contributions imposed on the original application, as indexed with CPI, are applicable to the development.

**Section 96 (1A) of the Environmental Planning and Assessment Act 1979****(1A) Modifications involving minimal environmental impact**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with 17 submissions opposed and 1 in support received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

**CONCLUSION:**

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for approval, subject to conditions.

This report is referred to the Manager of Development Assessment for determination in accordance with the delegations granted by the General Manager.

**RECOMMENDATION**

That pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 190/2012 for Change of use to a Café including courtyard seating and interior signage at 53-57 Pittwater Road Manly be **approved** subject to:

**ANS01**

**No cooking/BBQ facilities are to be installed/operated in the courtyard area at any time.**

**Reason: To comply with legislation and protect public health.**

**ANS02**

**Prior to any use of the space in the courtyard the courtyard is to be fully enclosed using sound attenuating materials. The courtyard space is to be ventilated by mechanical or convection means in such a way that additional noise is not generated adversely affecting the current amenity of residents of 53-57 Pittwater Road and 51 Pittwater Road. Roofing materials shall be low reflectivity. Details are to be submitted to and approved by Council prior to issue of the Construction Certificate.**

**Reason: To maintain the visual and acoustic amenity of neighbouring residents**

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#### ANS03

An acoustic report be submitted to Council verifying that the noise emissions from the premises shall not be greater than 5DBA above the background noise level as required by Noise Control Act.

Reason: To protect the acoustic amenity of the neighbourhood.

The following Condition No. ANS04 is to be added as per Section 96(1A) Application – Part 2:

#### ANS04

A plan of management for the operation of the café must be submitted to the certifier prior to issue of an Occupation Certificate. The ongoing operation of the café must be in accordance with the Plan of Management.

The Plan of Management must include, but not be limited to:

- Measures implemented to minimise noise impacts from patrons of the restaurant and entertainment provided on the premises, on surrounding residential premises
- Operational procedures of the restaurant
- Waste management procedures including disposal of glass waste
- Security arrangements
- Method of recording and actioning complaints received directly from affected residents
- Mitigating measures to minimise amenity impacts on the residential units
- Managing noise impacts from the premises
- Ensuring odours do not become a public nuisance
- The service of alcohol
- Waste management

Reason: This condition has been applied to maintain a reasonable level of amenity to the area.

The following Condition No. ANS05 is to be added as per Section 96(1A) Application – Part 2:

#### ANS05

Recommendations detailed in the Acoustic report prepared by Acoustic works titled Proposed development Shop 1,53-55 Pittwater Road Manly Acoustic report, report no. 1017012 R01A Shop 1 53-55 Pittwater Road Manly ENV dated 3 October 2017, shall be implemented prior to the issue of any Occupation Certificate.

Reason: To maintain a reasonable level of amenity to the area.

#### GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(1A) Application – Part 2:

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Plans affixed with Council's stamp relating to Development Consent No. 190/12*

Plan No. / Title	Issue/ Revision Date	Date Received by Council
Proposed Layout		09/11/12
Kitchenette Layout		09/11/12

Documentation affixed with Council's stamp relating to Development Consent No. 190/12

- Letter of 7<sup>th</sup> November 2012 from Foundry Fiftythree received by Council 9/11/12 and attachments.

Except as amended by:

**Reference Documentation relating to this Section 96(1A) Application – Part 2:**

- **Acoustic Report prepared by Acoustic Works dated 3 October 2017.**

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

#### GENERAL CONDITIONS RELATING TO APPROVAL

##### 1 (1AP04)

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

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

##### 2 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

##### 3 (2BS01)

The fit out of the food premises must comply with the following:

- Food Act 2003,
- Food Regulations 2004,
- Australian Standard AS 4674-2004:Construction and fit out of food premises,
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment.

Reason: To ensure compliance with legislation and to protect public health and safety.

Internal Note: This condition is to be imposed in conjunction with 4BS01 and 6BS02.

##### 4 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$200. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

5 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

6 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

7 (2US03)

Payment of contribution in lieu of seventeen (17) car parking spaces which cannot be provided on a site within the Business Zone, under the Manly Local Environmental Plan 1988, shall be made in accordance with the provisions of Council's Section 94 Contributions Plan 2004, pursuant to Section 94 of the Environmental Planning and Assessment Act 1979. The current amount of contribution (2011 – 2012) for each parking space not provided on site is: (i) Balgowlah - \$16,910.79 per space, and (ii) Manly CBD - \$33,453.37 per space. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.

Total contribution for this development of Change of use to a Cafe/Bar including courtyard seating and signage at Shop 1/53-57 Pittwater Road, Manly is \$568,707.29. The amount of the payment shall be in accordance with the Section 94 charges as at the date of the payment and must be paid prior to issue of the Construction Certificate.

The calculations for DA 190/2012 are as follows:  $17 \times 33,453.37 = \$568,707.29$ .

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

8 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan for Waste Minimisation and Management 2000.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

9 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

10 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

11 (4BS01)

The construction of the food premises must comply with the following:

- Food Act 2003,
- Food Regulations 2004,
- Australian Standard AS 4674-2004: Construction and fit out of food premises,
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment.

Reason: To ensure compliance with legislation and to protect public health and safety.

Internal Note: This condition is to be imposed with 2BS01 and 6BS02.

12 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 11) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.



- 12) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 13) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 14) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 15) Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 16) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 17) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

#### 13 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday. No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

#### 14 (4MS01)

Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction, then the following inspection/certification are required:

- Final inspection.

The cost of these inspections by Council is \$290. (being \$290 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$160.

Reason: To ensure that the development is completed in accordance with the terms of the development consent and with the Building Code of Australia.

### **ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

#### 15 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

The following Condition No.16 (6BS01) is to be amended as per Section 96(1A) Application – Part 2:

**16(6BS01)**

The hours of operation of the premises (i.e. hours open for business) must not exceed 7.00am – 10.00pm Monday – Sunday without the prior approval of Council.

Reason: To ensure amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality.

**17 (6BS02)**

The ongoing operation and fit out of the premises must be maintained in accordance with the following requirements:

- Food Act 2003
- Food Regulations 2004
- Australian Standard AS4674-2004: Construction and fit out of food premises
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment
- Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements

Reason: To ensure compliance with legislation and to protect public health and safety.

Internal Note: this condition is to be imposed in conjunction with 2BS01 and 4BS01.

**18 (6BS05)**

All potentially hazardous food must be kept under temperature control. Adequate equipment must be provided for the storage of such food, in addition, a Food Safety Plan shall be developed to manage temperature control on a daily basis.

A food safety program must be made available to Council upon request.

Reason: To ensure compliance with legislation and to protect public health.

**19 (6BS06)**

All food contact surfaces including but not limited to; glasses, plates, cutlery, chopping boards, preparation benches and wipe clothes are to be cleaned and sanitised whenever they are a likely source of contamination. Sanitising can be achieved through heat or chemical and is the second step after cleaning. Adequate facilities must be provided and include a double bowl sink for manual cleaning and sanitising or a mechanical dishwasher. Machines used for sanitising are to operate on a sanitising rinse cycle at the manufacturers recommended temperature and time. Preparation benches and dishwash cloths are to be first cleaned to remove any dirt or food debris then rinsed with a food grade sanitiser to disinfect and minimise bacteria present to a safe level in accordance with the Food Standards Code.

Reason: To ensure compliance with legislation and to protect public health.

**20 (6BS07)**

The premises must prevent access to pests including but not limited to; insects and rodents. Insect and pest proofing will include mesh screening to prevent access and the use of insect devices that should be placed away from work areas where food may be contaminated. Holes and inaccessible spaces are to be sealed.

Reason: To ensure compliance with legislation and to protect public health.

**21 (6BS08)**

**Saturated and Trans Fats - General**

To minimise the risk of cardiovascular disease to the community, the ongoing operation of the premises shall be in accordance with Council's Saturated and Trans Fats Reduction Policy.

Reason: To comply with Council Policy in minimising saturated and trans fats in the retail food industry in the interest of public health and safety.

22 (6BS09)

**Saturated and Trans Fats - Foodservice Industry**

Cooking oils containing trans fats cannot be used when preparing or cooking food in order to minimise the risk of cardiovascular disease to the community.

*Reason: To comply with Council Policy in minimising saturated and trans fats in the retail food industry in the interest of public health and safety.*

23 (6BS10)

The designated handwash basin(s) are to be located no greater distance than 5m from any food preparation area and used for solely for the purpose of washing all food handlers hands, arms or face. Appropriate signage is to be installed and maintained in a prominent position stating "HANDS ONLY" and the handwash basin(s) must be accessible at all times. Handwash basin(s) must not be used for any purpose other than to wash hands and each hand basin must be provided with warm water out of a single spout and supplied with soap and paper towel.

*Reason: To ensure compliance with legislation and to protect public health.*

24 (6FP01)

No sandwich boards, goods or the like are to be placed on Council's footpath.

*Reason: To ensure pedestrian safety.*

25 (6NL01)

Glare from internal lighting is not permitted to extend beyond the limits of the building authorised by this approval.

*Reason: To ensure there is no glare from internal lighting to neighbouring properties and land.*

26 (6NL02)

All lights used to illuminate the exterior of the buildings or site must be positioned and/or fitted with cut off luminaires (baffles) so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

*Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.*

27 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

*Reason: To ensure compliance with legislation and to protect public health and amenity.*

28 (6NL04)

External sound amplification equipment or loud speakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purposes.

*Reason: To protect the acoustic amenity of neighbouring properties and the public.*

29 (6NL05)

The use of amplified sound equipment and public address systems is not permitted, unless located entirely within the shop and used in such a manner that the noise cannot be heard in any public place.

*Reason: To ensure compliance with legislation and to protect public health and amenity.*

30 (6WM01)

Activities must not detrimentally affect impact existing and future amenity of the adjoining occupations and the neighbourhood in general by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot, ash, waste water, waste products, oil, electrical interference or otherwise.

*Reason: To protect existing and future amenity of the adjoining occupations from excessive waste emissions.*

## 31 (6WM02)

Waste collection from the premises must not occur between the hours of 10:00pm and 7:00am Monday to Sunday, without the prior approval of Council.

Reason: To minimise disruption to neighbouring properties.

## 32 (6WM03)

Waste bins used for commercial premises are to be left on public footpaths for the minimum time necessary for waste collection and then promptly removed. Lids should be closed to prevent littering.

Reason: To ensure waste and bins are promptly removed from public places following collection; to limit obstruction of footpaths or roads; and to minimise public amenity impacts.

## 33 (6WM04)

All non-recyclable waste from commercial premises must be presented for collection in a lidded receptacle. Waste receptacles are not to be stored in public spaces such as footpaths.

Reason: Public amenity and litter minimisation.

## 34 (6WM05)

No waste generated on site from any commercial operation is to be placed in public place bins. Commercial operators must maintain their commercial waste bins in an organised, clean and sanitary condition, preventing potential for litter from overflowing bins.

Reason: To communicate policy regarding illegal trade waste dumping in public bins; and maintenance of trade waste bins.

## 35 (6WM08)

This commercial premises should investigate opportunities to compost food waste wherever practicable and recycle commonly recycled (non-putrescible) items such as paper and cardboard, steel and aluminium cans and recyclable plastic containers.

Reason: To promote waste minimisation in accordance with Manly Council's waste policies, the Waste Avoidance and Resource Recovery Act 2001 and the Manly Development Control Plan for Waste Minimisation and Management 2000.



**ITEM 3.3**                      **DA0240/2017 – 13A UPPER GILBERT STREET MANLY –  
ALTERATIONS AND ADDITIONS TO AN EXISTING  
RESIDENTIAL FLAT BUILDING**

**REPORTING OFFICER**      **BENJAMIN PRICE**

**TRIM FILE REF**            **2018/095240**

**ATTACHMENTS**            1 [↓](#) **Assessment Report**  
                                     2 [↓](#) **Site Plan and Elevations**

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. DA0240/2017 for Alterations and additions to an existing Residential Flat Building at SP9475, 13A Upper Gilbert Street, Manly for the reasons outlined in the Assessment Report.

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northern  
beaches  
council

## Northern Beaches Independent Assessment Panel Report

2018/076871

<b>DA #</b>	240/2017
<b>Site Address</b>	13A Upper Gilbert Street Manly SP9475
<b>Proposal</b>	Alterations and additions to an existing Residential Flat Building
<b>Officer</b>	Ben Price

### **SUMMARY:**

<b><u>Application Lodged:</u></b>	24 October 2017
<b><u>Applicant:</u></b>	Kelly
<b><u>Owner:</u></b>	Rebecca Kelly
<b><u>Estimated Cost:</u></b>	\$2,687,859.00
<b><u>Zoning:</u></b>	MLEP, 2013 – R1 General Residential
<b><u>Heritage:</u></b>	Adjacent to I2 All Stone Kerbs and opposite from I237 Reserve Park
<b><u>NSW LEC:</u></b>	Not applicable
<b><u>Notification:</u></b>	26 October 2017 – 13 November 2017
<b><u>Submissions received:</u></b>	13
<b><u>Site Inspected:</u></b>	8 January 2017
<b><u>LEP (4.6) Variations proposed:</u></b>	Nil
<b><u>DCP Variations proposed:</u></b>	4.1.2 Height of Building, 4.1.4 Setbacks (front, side and rear) and Building Separation, 4.1.5 Open Space and Landscaping 4.1.6 Parking and Vehicular Access and Loading (Including Bicycle Facilities), 4.4.5 Earthworks (Excavation and Filling)
<b><u>Recommendation:</u></b>	Approval

### **Subject Property and surrounding area**



R1, R2, R3, E3 & E4 Zones

1 of 43

The subject property is commonly known as 13a Upper Gilbert Street Manly and legally known as Strata Plan 9475. The site is located on the southern side of Upper Gilbert Street. The property has a frontage of 1.07m to West Esplanade and a frontage of 27.685m to Upper Gilbert Street. The property has an average depth of 14.6m and an overall site area of 442.7m<sup>2</sup>. The access handle to west esplanade is not in use and access to the site is gained from Upper Gilbert Street via an existing driveway to an existing hardstand space to the side of the existing residential flat building. The property is relatively flat.

The surrounding area predominantly consists of residential accommodation and includes a residential flat building to the west, a dwelling house and a residential flat building to the south and a residential flat building to the east.

#### **Property Burdens and Constraints**

There are no burdens or constraints that would preclude the proposed development.

#### **Site History/Background**

DA005/2017 Alterations and additions to the existing residential flat building – Council requested the application be withdrawn due to non-compliances that could not be supported by Council. The applicant subsequently withdrew this application.

#### **Description of proposed development**

The site currently contains a building with 4 apartments with associated at grade carparking for 3 vehicles.

The existing building will be altered to provide 3 apartments with the addition of an upper floor addition and garage/carstacker parking arrangement for 5 vehicles.

The proposal specifically includes:

##### **Level 00**

- Internal alterations to create a 2 bedroom dwelling with open plan dining, living, kitchen, study and attached terrace.

##### **Level 01**

- Internal alterations to create a 2 bedroom dwelling with open plan dining, living, kitchen, study and attached balcony.

##### **Level 02**

- Demolition of existing roof and upper floor addition to create a 2 bedroom dwelling with study laundry, bathroom and open plan dining, living and kitchen.

##### **External**

- Demolition of western stairs and construction of an integrated access on the eastern side of the building.
- Façade treatment of pre-cast concrete columns to allow for vertical planters.
- Alterations to windows and installation of southern facing doors on Level 00.

##### **Site**

- Construction of a 5 car mechanical stacking garage with turntable and driveway.
- Demolition of part of front boundary wall.
- Landscaping.

An assessment of the characterisation of the development as alterations and additions has been conducted below.

In this case, the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) has been considered in order to establish whether the proposed development is classified as alterations and additions or new development. An assessment of the qualitative and quantitative issues set by the planning principle is as follows:

<b>Qualitative Issues</b>	
How is the appearance of the existing building to be changed when viewed from public places?	The proposal includes the demolition of the stairs, construction of a consolidated common stairway, façade treatment, second floor addition, balcony and terrace. The proposal will retain the existing external walls and floor levels. The proposal also includes alterations to the existing windows. As viewed from Upper Gilbert Street, the appearance of the proposal will be different due to the façade treatment, balconies and second floor.
To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?	The proposal does not include the removal of any significant landscape features.
To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?	The proposal has been assessed by Councils Heritage officer and was found to be acceptable in term of impact on the adjacent heritage items.
What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?	The stairs that access the western side of the building will be demolished.
What is the extent, if any, of any proposed change to the use of the building?	The proposal will maintain the use of the building as a residential flat building however, will reduce the number of dwellings on the site from 4 to 3.
To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?	The proposal has been assessed below with regard to the objectives of Clause 3.1 Streetscape and Townscapes. The proposal was found to have no unreasonable impact on the streetscape and unlikely to result in any unreasonable change to the streetscape.
To what extent, if any, are the existing access arrangements for the building proposed to be altered?	The existing building gains access from the western and eastern sides. The proposal will demolish the first floor access on the western side and provide an integrated access on the eastern side.
To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?	The outlook of the building will not be changed significantly.
Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?	The proposal will retain the external walls of the existing building. The demolition will not result in the loss of the characteristics of the basic form of the existing structure.
<b>Quantitative Issues</b>	
To what extent is the site coverage proposed to be changed?	The proposed garage is located over the existing hardstand area and the proposed balconies will increase the site coverage of the building.



To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?	The non-compliance with the front setback control of Clause 4.1.4 Setbacks (front side and rear) and Building Separation will be increased. The proposal will reduce the non-compliance with the density control of Clause 4.1.1 Dwelling Density, Dwelling size and Subdivision of the Manly DCP 2013 by the removal of one dwelling. The proposal will increase the non-compliance with the total open space and reduce the non-compliance with the soft landscaped area controls of Clause 4.1.5 Open Space and Landscaping of the Manly DCP 2013. The proposal will also reduce the non-compliance with the private open space control by providing level 00 and level 01 with private open space. The proposal will reduce the non-compliance with the minimum parking requirement of Clause 4.1.6 Parking Vehicular Access and Loading (including bicycle facilities) of the Manly DCP 2013.
To what extent is the building envelope proposed to be changed?	The building envelope will be changed due to the proposed balconies and the second floor addition, however the existing buildings footprint will be substantially retained in relation to the habitable portions.
To what extent are boundary setbacks proposed to be changed?	The proposal will maintain the existing western eastern and southern setbacks of the building. The proposal will reduce the northern (front) setback due to the proposed balconies but the building proper retains the existing footprint. The proposed garage will significantly reduce the eastern side setback but is retained for carparking purposes.
To what extent will the present numerical degree of landscaping on the site be changed?	The proposal will result in a significant increase to the landscaping on the site.
To what extent will the existing floor space ratio be altered?	The floor space ratio will be increased due to the second floor addition. The proposal will remain compliant with Clause 4.4 Floor Space Ratio of the Manly LEP 2013.
To what extent will there be changes in the roof form?	The proposal includes the provision of a new roof form.
To what extent will there be alterations to car parking/garaging on the site and/or within the building?	The existing hardstand area will be replaced with a 5 car stacker garage. This areas use as carparking is retained.
To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?	The proposed garage requires excavation, otherwise there is no significant excavation required.
What relationship does the proportion of the retained building bear to the proposed new development?	The external walls of the existing building will be retained and the second floor addition is designed to generally follow the setbacks of the existing building. The proposed façade treatment to the building will tie the addition into the existing building and ensure there is an appropriate relationship between new and existing development on the site.

**Comment:**

Given the assessment above, the proposed development is considered alterations and additions and has been assessed as such.

**Internal Referrals****Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Landscaping Comments**

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Heritage Comments**

Council's Heritage Officer has commented on the proposal as follows:

*"Further to a review of the available documents and site visit,  
The site of proposed development is not a listed heritage item in its own right, however,  
it is located in the vicinity of heritage items, including stone kerbs and a public park.  
Given the nature of the proposal and the separation between sites, and given the  
favourable topography, the impact on heritage values is assessed as acceptable.  
Based on the above, I have no objections to this proposal from heritage perspective."*

**Waste Comments**

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Access Comments**

Council's Access Officer offered no objections to the proposal.

**Traffic Comments**

Council's Traffic Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Driveway Comments**

Council's Driveway Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**External Referrals****AUSGRID**

The proposal was referred to AUSGRID. Ausgrid provided comments on the application. It is recommended the comments be incorporated in the consent documents.

**Planning Comments****Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*  
(i) *any environmental planning instrument, and*

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**  
Satisfactory

**State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.**

This policy does not apply to the development application as the application proposes only 3 dwellings.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

**Manly Local Environmental Plan 2013**

The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

**Zone R1 General Residential**

**Objectives of zone**

- To provide for the housing needs of the community.*

The proposal will provide three dwellings on the site. The site will continue to provide for the housing needs of the community.

- To provide for a variety of housing types and densities.*

The proposal will go from 4x1 bedroom apartments to 3x2 bedroom apartments. The proposed development will maintain the existing housing type of the site and provide for a greater variety of density in the area.

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

Not applicable.

**Part 4 Principal development standards**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	11m	RFB 9.2m - 9.6m Garage 4.7m - 4.9m	Yes	The proposal complies with this clause.
4.4	Floor Space Ratio	0.75:1 332.025m <sup>2</sup>	0.67:1 297.75m <sup>2</sup>	Yes	The proposal complies with this clause.

#### Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposal complies with this clause.

#### Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.1	Acid Sulfate Soils	Yes	Yes	The proposal complies with this clause.
6.2	Earthworks	Yes	Yes	The proposal complies with this clause.
6.4	Stormwater Management	Yes	Yes	The proposal complies with this clause.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal complies with this clause.
6.12	Essential services	Yes	Yes	The proposal complies with this clause.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

#### Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

#### Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	



**Comment:**

**3.1 Streetscapes and Townscapes**

**Streetscape**

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

The proposal will maintain the majority of the existing brick boundary wall. The proposed car parking is setback 6m from the street front boundary and will not impose on the streetscape. The proposed car parking and wall will not result in any unreasonable negative impacts on the streetscape.

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

The southern side of Upper Gilbert Street predominantly consists of residential flat buildings of variable architectural styles and setbacks. The neighbouring property directly to the east is a 2-5 storey residential flat building with a primary frontage to West Esplanade and a 3 car garage dominating the boundary to Upper Gilbert Street. The property directly to the west is a 9 storey residential flat building with a primary frontage to West Esplanade. The building has a setback of approximately 14m to Upper Gilbert Street with the site excavated and retained for vehicular access 7m from Upper Gilbert Street. Within this 7m is a grassed area and hedge on the boundary. The properties on the southern side of the street further to the west include two and three storey residential buildings with minimal street front setbacks and some landscape treatment to the frontage. The buildings on the northern side of Upper Gilbert Street are two and three storey residential buildings with large masonry walls and garages built to the front boundaries. The proposed development includes a third storey addition terrace/balconies and an architectural treatment to the frontage. The proposal will reduce the existing front setback due to the terrace/balconies and Unit 3. The proposal will retain a minimum 1.875m setback to the street front boundary. Due to the varied nature of the streetscape the proposal is not out of character for the streetscape and will not result in any unreasonable impacts on the streetscape. The development also includes landscape treatment to the balconies and landscaping to the front of the site to soften the impact of the building on the street.

The street does not contain a discernible architectural style that characterises the locality. Therefore the proposal will not result in a departure from any architectural themes within the locality. The architectural treatment of the proposal will not result in any unreasonable impacts on the character of the locality.

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

The proposal will maintain the existing masonry front boundary wall. However the frontage of the site is proposed to be landscaped to soften the frontage of the building.

**3.2 Heritage Considerations**

*Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The proposal is adequately designed and separated from the heritage items to ensure it does not result in any unreasonable impacts within the locality.

*Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*

Not applicable.

*Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*

The proposal is adequately designed and separated from the heritage items so as not to detract from the significance of the items.

*Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

The proposal will not result in any unreasonable impacts on the surrounding character or locality.

*Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

Council's heritage officer commented on the proposal as follows:

*"The site of proposed development is not a listed heritage item in its own right, however, it is located in the vicinity of heritage items, including stone kerbs and a public park.*

*Given the nature of the proposal and the separation between sites, and given the favorable topography, the impact on heritage values is assessed as acceptable.*

*Based on the above, I have no objections to this proposal from heritage perspective."*

Heritage management and conservation has been integrated into the planning process.

### 3.3.1 Landscaping Design

*Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*

The proposed native/endemic tree (Tristania laurina 'luscious' Water Gum) on the southern boundary is in an inappropriate location and will result in an unreasonable impact on the neighbouring property. It is recommended a condition is imposed to delete this tree. The proposed landscaping subject to this condition is appropriate for the site and includes adequate tree planting. The proposal does not include the removal of any significant existing vegetation.

*Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

The proposal does not include the removal of any important landscape features or remnant populations of native flora and fauna.

### 3.4.1 Sunlight Access and Overshadowing

*Objective 1) To provide equitable access to light and sunshine.*

The proposal has been assessed below and was found to allow for adequate sunlight to penetrate the private open spaces, windows to living spaces/habitable rooms of both the development and the adjoining properties. The proposal will maintain an equitable access to light and sunshine within the locality.

*Objective 2) To allow adequate sunlight to penetrate:*

- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

The proposed development will result in additional overshadowing of the neighbouring properties.

The overshadowing to 86 West Esplanade is predominantly to the courtyard at the rear and the north facing windows. The courtyard is currently significantly overshadowed by the existing garage to the north of the residential flat building. The proposal will not eliminate more than 1/3 of the existing sunlight accessing the private open space between the hours of 9am to 3pm of the winter solstice. The northern facing windows will retain adequate access to light in the morning and during midday of the winter solstice. The application was also accompanied by equinox shadow diagrams. These diagrams demonstrate that the courtyard and the northern facing windows of 86

west esplanade will retain good access to sunlight during the morning and mid-afternoon of the equinox. The overshadowing of 86 West Esplanade due to the proposed development is not unreasonable and will allow adequate sunlight to penetrate the private open spaces and windows to habitable rooms.

The building at 87-88 West Esplanade will receive additional overshadowing to the private open spaces and the eastern and northern facing windows. The northern facing windows are to the bedrooms, bathrooms and sunrooms of the building. The main living areas have eastern facing windows. The development will retain the solar access to these windows with the exception of the ground floor unit which will receive minor additional overshadowing. The proposed development will maintain adequate sunlight to penetrate the living rooms of the development site. The proposal will result in significant overshadowing of the northern facing windows of 87-88 West Esplanade. The building at 87-88 West Esplanade is set below the development site and is setback 1.5m-2m from the rear boundary. The northern facing windows of 87-88 West Esplanade are to lower use rooms and the sunroom of the first floor unit will retain some solar access during the morning of the winter solstice. The proposed development will allow adequate solar access to windows to habitable rooms and habitable spaces of 87-88 West Esplanade. The proposal will not remove 1/3 of the existing sunlight accessing the private open spaces of 87-88 West Esplanade. The proposed development will allow adequate sunlight to access the private open spaces of 87-88 West Esplanade.

The proposal will not result in any unreasonable impacts on the solar access of 91-92 West Esplanade. The proposed development is appropriately designed to ensure the dwellings receive adequate solar access to the private open spaces and habitable rooms of the dwellings.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposal is adequately designed to allow for the penetration of midwinter sunlight into the habitable rooms of the dwellings on the site. The southern (rear) setback will be retained as existing and is consistent with the character of the locality. The proposal will not result in any unreasonable loss of solar access to the surrounding properties.

#### 3.4.2 Privacy and Security

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

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

The proposed development is appropriately designed to maintain the privacy of the neighbouring properties. The southern elevation of the ground and first floor will retain most of the existing windows. With the exception of two windows proposed to be changed to doors on the ground floor. The existing windows are adequately offset to ensure no direct viewing between windows and the proposed ground floor doors are adequately setback and incorporate landscaping to ensure no unreasonable overlooking. The southern elevation of the second floor includes highlight windows and one large window. The large window uses a planter box to create greater physical separation. Due to the height of the window above the neighbouring properties and the incorporation of the planter box, overlooking will be minimised. The side elevations are set forward of the neighbouring properties and will not result in any direct viewing. The proposed second storey is adequately setback to ensure no unreasonable impacts on the acoustic privacy of the neighbouring properties. The proposed mechanical garage stacker and lift are enclosed and are subject to the Protection of Environment Operations Act 1997 which will ensure reasonable acoustic amenity within the locality.



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

The proposed development is appropriately designed to maintain the privacy within the locality while ensuring no unreasonable access to light and air. The proposal will achieve a balanced outlook from the habitable rooms and private open spaces of the dwellings.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposal will encourage good passive surveillance of the streetscape and an awareness of neighbourhood security.

#### 3.4.3 Maintenance of Views

A number of submissions raised concerns regarding the loss of views from the properties nearby 13a Upper Gilbert Street. A site inspection was conducted on the affected properties and pictures of the views were taken. An assessment of the view loss with regard to the Views planning principle established by the NSW Land and Environment Court NSW in Tenacity Consulting vs Warringah Council [2004] NSWLEC 140 at 25-29 has been conducted below.

*"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example 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, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

The proposal will result in the disruption of views from the dwellings and roof of 87-88 West Esplanade to the local heritage item I237 Reserve Park. The proposal will disrupt views from the dwellings within 1 Tower Street to the water views of Sydney Harbour and the local heritage items I251 Park on the foreshore. The proposal will also disrupt views from 6 Upper Gilbert Street to Sydney Harbour.

*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.*

The views from 87-88 West Esplanade are obtained from looking across the rear boundary from both a standing and sitting position. The views from 1 Tower Street are obtained from looking across the front boundary from a standing and sitting position. The views from 6 Upper Gilbert Street are obtained from overlooking the front boundary from a standing and sitting position.

*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 percent 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.*



1/1 Tower Street

The following photos were taken from the lounge room and terrace of 1/1 Tower Street.



*Figure 1 View from Terrace of 1/1 Tower Street*



*Figure 2 View from Loungeroom Standing*



*Figure 3 View from Lounge Room Sitting*

The proposal will be 1.97m higher than the existing ridge level and Level 02 will maintain the existing western side setback. The view loss from the terrace and lounge room of 1/1 Tower Street will be of the trees of the Local Heritage item I251 Park and water. The views will be lost from a sitting and standing position on the terrace and a standing position from the lounge room. The property lose views to the trees within heritage item I251 and a small portion of water views. The extent of the view loss is most accurately described as minor.

#### 4/1 Tower Street Manly

The following photos are taken from the lounge room and balcony of 4/1 Tower Street.



*Figure 4 View from balcony - standing*



*Figure 5 View from Loungeroom - standing*



*Figure 6 View from Loungeroom - sitting.*

The proposal will result in the loss of views to the trees within the Heritage item I251 Park and some loss of water views. The property at 4/1 Tower Street will retain access to almost all of the water views and lose the views to the trees within the heritage item I251. The view loss is most accurately described as negligible

8/1 Tower Street Manly

The following photos are taken from the balcony and lounge room of 8/1 Tower Street



*Figure 7 View from balcony*



*Figure 8 View from lounge room - Standing position*





*Figure 9 View from Loungeroom – Sitting position*

The view loss from 8/1 Tower Street will be of the trees within the heritage item I251 Park. This property will retain access to the water views. The proposals impact on this property is most accurately described as negligible.

#### **87-88 West Esplanade Roof**

The following photos were taken from the roof of 87-88 West Esplanade.



*Figure 10 View loss from roof of 87-88 West Esplanade*

The views lost from 87-88 West Esplanade is of the Heritage item I237 Reserve Park from the roof of the property. The building will maintain views of the park to the east and extensive water views to the south. The view loss is most accurately described as minor.

9/87-88 West Esplanade

The following photos were taken from the sitting room of 9/87-88 West Esplanade.



*Figure 11 View from Loungeroom*

The views lost from 9/87-88 West Esplanade is of the Heritage item I237 Reserve Park from the sitting room attached to the living room of the property. The views will be lost due to the consolidated entry to the proposed development. This property will retain access to views to the park by looking over the car stacker garage. The view loss is most accurately described as minor.

6/87-88 West Esplanade

The following photo was taken from the sitting room attached to the living area of 6/87-88 West Esplanade.



*Figure 12 View loss from sitting room of 6/87-88 West Esplanade*

The views will be lost due to the consolidated entry and the car stacker garage. The second floor addition will also result in a loss of view of the top of the trees within the heritage item. The sitting room will retain a small corridor of views to the heritage item between the car stacker garage and the consolidated entry. The view loss is most accurately described as moderate.

#### 6 Upper Gilbert Street

The following photos were taken from the deck and loungeroom of 6 Upper Gilbert Street.



Figure 13 View from balcony of 6 Upper Gilbert Street - Standing

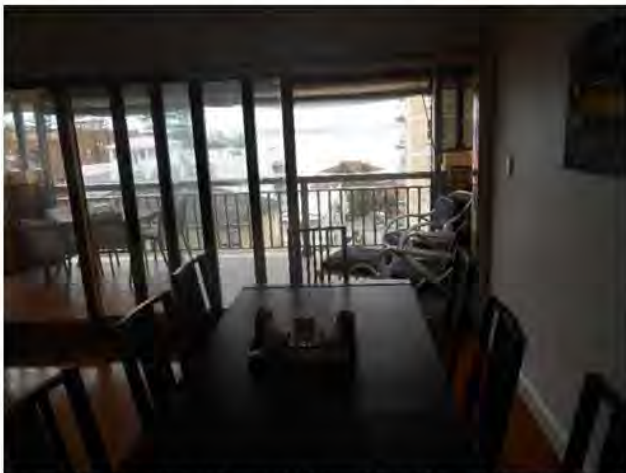


Figure 14 View from dining area of 6 Upper Gilbert Street - Standing

The submitted survey indicated that the top of the wall/balustrade of 87-88 West Esplanade is RL23.7. The proposed maximum height of the development is RL24.37. The proposal will be 0.67m above the balustrade of 87-88 West Esplanade. From these levels it is evident a small portion of views will be lost from the eastern side of the lounge room and balcony of 6 Upper Gilbert Street due to the first floor addition. However, access to these views will be retained from the dining area and the western side of the balcony. The view loss is most accurately described as negligible.

*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."*

With regard to the views lost from 1 Tower Street, The proposal is compliant with Clause 4.3 height of buildings and Clause 4.4 floor space ratio of the Manly LEP 2013. The non-compliance with the western side setback is minor and compliance would not result in any significant reduction in the loss of views. The proposal is a reasonable development, the view impact from 1 Tower Street is acceptable and the view sharing reasonable.

With regard to the views lost from 87-88 West Esplanade, the proposal is compliant with Clause 4.3 height of buildings and Clause 4.4 Floor Space Ratio of the Manly LEP 2013. The proposal is not compliant with the rear setback. However, compliance would not result in any significant reduction of view loss. The proposed consolidated entry is compliant with the side setback control. The proposed garage is not compliant with the side setback control. However if the garage was to comply with the side setback control it would most likely obstruct the view corridor and result in the obliteration of views from 6/87-88 West Esplanade. The proposal is a reasonable development, the view impact from 1 Tower Street is acceptable and the view sharing is reasonable.

With regard to the view loss from 6 Upper Gilbert Street, the proposal is compliant with Clause 4.3 height of buildings and Clause 4.4 Floor Space Ratio of the Manly LEP 2013. The proposal is non-compliant with the western side setback. This non-compliance is minor and compliance would not result in any significant reduction in the loss of views. The proposal is a reasonable development and the view impact from 6 Upper Gilbert Street is acceptable and the view sharing reasonable.

All the non-compliances of the development have been assessed and found to meet the relevant objectives. The proposed developments impact on views is acceptable and the view sharing is reasonable.

The following is an assessment of the view loss with regard to the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013.

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

The proposal has been assessed above and the view loss was found to be acceptable and the view sharing reasonable for both existing and future manly residents.

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

The proposal is of an adequate design to minimise the disruption of views from adjacent and nearby development.

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

The proposed development has been assessed with regard to its non-compliances and found to be satisfactory. The proposal will result in an acceptable level of view loss.



**Part 4 - Development Controls**

Site Area:	442.7m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Residential Density – Area D2	150m <sup>2</sup> of site area per dwelling	147m <sup>2</sup> of site area per dwelling		No, see comments below.
Dwelling Size	Unit 1 & 2 - 70m <sup>2</sup> Unit 3 - 90m <sup>2</sup>	Unit 1 93.6m <sup>2</sup> Unit 2 93.6m <sup>2</sup> Unit 3 112.3m <sup>2</sup>		Yes
Wall height East side	9m	9.236m		No, see comments below.
West side	9m	9.15m		No, see comments below.
Number of Storeys	3	3		Yes
Roof height	Max 2.5m	0.3m		Yes
Setback Front	6.0m	1.875m-3.4m (Existing 4.5m)		No, see comments below.
East setback side	RFB 3.1m Garage 1.6	RFB 7.6m Garage Nil		No, see comments below.
West setback side	3.05m	2.5m-3m (Existing 2.8m-3m)		No, see comments below.
Wall on boundary height	3m	4.85m		No, see comments below.
Wall on boundary length	35% of site boundary (5.1m)	6.23m		No, see comments below.
Setback Rear	8.0m	2.4m-2.7m (Existing 2.7m)		No, see comments below.
Open space - total OS2	Min. 50% of Site Area (221.35m <sup>2</sup> )	No calculable total open space (Existing 74m <sup>2</sup> )		No, see comments below.
Open space - landscaped	Min. 30% of Total Open Space (0m <sup>2</sup> )	123.6m <sup>2</sup>		Yes
Open space - above ground	Max. 40% of Total Open Space (0m <sup>2</sup> )	23.18m <sup>2</sup> (Existing 0m <sup>2</sup> )		No, see comments below.
Number of Endemic Trees	1	1		No, subject to conditions.
Private Open Space	12m <sup>2</sup>	Unit 1 23m <sup>2</sup> Unit 2 23m <sup>2</sup> Unit 3 Nil.		Yes Yes No, see comments below.
Car Parking – Residents	4 spaces	5 spaces (Existing 3 spaces)		Yes

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Site Area: 442.7m²	Permitted/ Required	Proposed	Complies Yes/No
- Visitors	1 space	Nil (Existing Nil)	No, see comments below.
Bicycle Parking	2 spaces	2 spaces	Yes
Excavation	Generally 1m  Dilapidation or Geotechnical report	2.3m	No, see comments below.

**Comment:**

**4.1.1 Dwelling Density, Dwelling Size and Subdivision**

The proposal will reduce the density on the site from 4 to 3 dwellings however remains noncompliant with the density control of Clause 4.1.1 Dwelling Density, Dwelling Size and Subdivision of the Manly DCP 2013. An assessment of the non-compliance with regard to relevant objectives has been conducted below.

*Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

The proposal will provide 3x2 bedroom dwellings of adequate proportions and amenity. The proposal will not result in any significant impact on the existing variety of dwelling types, allotment sizes and residential environments in Manly.

*Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

The proposal will not result in any unreasonable impacts on existing vegetation, waterways, riparian land and the topography.

*Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

The proposal will maintain housing diversity within the locality. The proposal provides an adequate variety of dwelling sizes and internal amenity for new dwellings.

*Objective 4) To maintain the character of the locality and streetscape.*

The proposal is of a density that is consistent with the locality. The proposal will not result in any unreasonable impacts to the character of the locality.

*Objective 5) To maximise the use of existing infrastructure.*

The proposal is of a density that is more consistent with the envisaged density of the area. The proposal will ensure the appropriate use of the existing infrastructure of the locality.

**LEP Clause 4.3 Height of buildings**

The proposed development is not compliant with the wall height control of the Manly DCP 2013. An assessment of the non-compliance with regard to the objectives has been conducted below.

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

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

Comment: The proposal is compliant with Clause 4.3 Height of buildings of the Manly LEP 2013. The proposal is consistent with the building heights of the neighbouring properties and the desired building height of the locality.

- (b) *to control the bulk and scale of buildings,*

Comment: The proposal will not result in an unreasonable bulk and scale within the locality.

- (c) *to minimise disruption to the following:*

- (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) *views between public spaces (including the harbour and foreshores),*

Comment: The non-compliant wall height will not result in the unreasonable loss of views to nearby residential development from public spaces, from nearby residential development to public spaces or between public spaces.

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

Comment: The proposal has been assessed above with regard to the objectives of Clause 3.4.1 Sunlight Access and Overshadowing. The proposal was found to provide an equitable access to sunlight within the locality.

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

Comment: Not applicable.

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

The proposed development is not compliant with Clause 4.1.4 Setbacks (front, side and rear) and Building Separation due to the front, side and rear setbacks. An assessment of the non-compliances with regard to the objectives of the control has been conducted below.

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

The proposed front setback is not out of character within the locality and will not result in any unreasonable impacts on the streetscape.

*Objective 2) To ensure and enhance local amenity by:*

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

The proposal has been assessed above with regard to the objectives of Clause 3.4.2 Privacy and Security of the Manly DCP 2013. The assessment found that the proposal will result in an acceptable level of privacy for the neighbouring properties.

The proposal has been assessed above with regard to the objectives of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. The assessment found that the proposal will not result in any unreasonable overshadowing of the neighbouring properties.

The proposal has been assessed above with regard to the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the NSW Land and Environment Court. The assessment found that the proposal will not result in any unreasonable loss of views within the locality.

*Objective 3) To promote flexibility in the siting of buildings.*  
The requested flexibility is satisfactory in this circumstance.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The proposal will enhance the natural features of the site and includes good landscaping including planting in deep soil zones.

*Objective 5) To assist in appropriate bush fire asset protection zones.*  
Not applicable

#### 4.1.5 Open Space and Landscaping

The proposal is not compliant with Clause 4.1.5 Open Space and Landscaping due to the proposed total open space, private open space and above ground open space. The proposal will reduce the total open space from 74m<sup>2</sup> to no calculable total open space on the site. This is due to the requirement for total open space to have a minimum horizontal dimension of at least 3m measured in any direction, and a minimum unbroken area of 12m<sup>2</sup>. It is however noted that the proposal will provide 123.6m<sup>2</sup> of landscaped area that is mostly at a minimum horizontal dimension of 2.5m, and 23.18m<sup>2</sup> of private open space to both units 1 and 2. An assessment of the non-compliance with regard to the objectives of the control has been conducted below.

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

The existing site does not contain any important landscape features or vegetation. The proposal includes adequate landscaping to augment native vegetation on the site.

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

The proposal will increase the landscaped open space from the existing situation (from 61.5m<sup>2</sup> to 123.6m<sup>2</sup>) and provides good landscaping of the site.

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

The existing development does not provide private open space to any units. The proposal will provide 23.18m<sup>2</sup> to units 1 and 2. Unit 3 does not include any private open space. However, the proposal is in close proximity to public open space and the northern elevation of unit 3 provides for significant areas of sliding doors to create an indoor/outdoor living area. This function will ensure sufficient amenity for unit 3. The proposal has been assessed above with regard to amenity and was found to achieve an acceptable level of amenity for the site streetscape and surrounding area.

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

The proposal will increase the porous landscaped area on the site from the existing situation. The proposal has been appropriately conditioned to ensure stormwater run-off is appropriately disposed.

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

The proposed landscaping is adequate to minimise the spread of weeds and the degradation of private and public open space.



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

The proposal is adequately landscaped to maximise wildlife habitat and the potential for wildlife corridors.

#### 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposal is not compliant with Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) as it does not provide a visitor parking space. An assessment of the non-compliance with regard to the objectives of the control has been conducted below.

*Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

The proposed development will reduce the number of units on the site and increase the number of parking spaces provided. The proposed parking is adequate to service the needs of the residents on the site. The proposed parking is accessible and will ensure users can enter and leave in a forward direction. The proposal will provide accessible and adequate parking on the site relative to the development.

*Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

The proposal will significantly reduce the existing parking non-compliance on the site and subsequently reduce the demand for on-street parking within the locality. The provision of no visitor parking spaces is considered acceptable given the site constraints and the significant reduction in the parking non-compliance.

*Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

The design of the parking area will use the location of the existing driveway and crossover. The design will ensure vehicles can enter and leave the site in a forward direction. The design is adequate to ensure the vehicle access is efficient, safe and convenient. The proposed parking is adequately designed and setback from the street to ensure there is no unreasonable impacts on the streetscape.

*Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

The proposed excavation for the car parking was supported by a geotechnical report that demonstrated the development could be carried out without any unreasonable impacts to the locality.

*Objective 5) To ensure the width and number of footpath crossings is minimised.*

The proposal will utilise the existing location of the driveway crossover. Appropriate conditions have been recommended to ensure the driveway crossing is appropriately designed. The proposal will minimise the width and number of footpath crossings.

*Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

The proposal will reduce the existing impervious parking area and is adequately landscaped to screen internal accesses.

*Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

The proposal is not located within the B2 Local Centre Zone. However, the proposal is in close proximity to this zone and is well serviced by public transport. The proposal limits parking provision and provides compliant bicycle storage to encourage the use of public transport and bicycle use.

#### 4.4.5 Earthworks (Excavation and Filling)

The proposal is not compliant due to the excavation for the mechanical stacker garage. An assessment of the proposal with regard to the objectives of the control has been conducted below.

*Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:*

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

The proposed garage will maintain the appearance of a garage at the existing ground level. The proposal will maintain the existing landscape character of the area. The proposal is supported by a geotechnical report that provides recommendations to ensure no unreasonable impacts in the locality. The conditions will ensure sedimentation does not enter the drainage lines.

#### Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

#### Comment:

The proposal is consistent with the additional matters for consideration within Clause 5.4.1 Foreshore Scenic Protection Area of the Manly DCP 2013.

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
Not applicable

#### 79C(1)(a) (iv) - the regulations

The proposal and this recommendation is consistent with the applicable regulations.

#### 79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

#### 79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposal will not result in any unreasonable impacts to the natural or built environments within the locality. The proposal will not result in any unreasonable social or economic impacts in the locality.

#### 79C(1) (c) - the suitability of the site for the development,

The proposal is suitable for the development site.

#### 79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with 13 submissions received from the following objectors raising the following concerns:

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Submission and Address	Main Issues raised in the submission	Comments on submission
1. Griffin T. 6/87-88 West Esplanade	<ul style="list-style-type: none"> <li>• Size and bulk.</li> <li>• New building not alterations and additions.</li> <li>• Adverse impacts as a result of proposed car stacker</li> <li>• Inadequate building separation and setbacks</li> <li>• Loss of solar access to main living rooms and private open space</li> <li>• Adverse visual impacts</li> <li>• Loss of views to heritage listed Tower Hill Park</li> <li>• Apparent omission of key details in DA</li> </ul>	<ul style="list-style-type: none"> <li>• The proposal is compliant with Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio. An objective of these development standards is to control the bulk and scale of development in the locality. The proposal is of a reasonable bulk and scale within the context of the site.</li> <li>• The proposal has been assessed in accordance with the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) and found to be most accurately classified as alterations and additions to the existing building.</li> <li>• The proposed car stacker is entirely enclosed and is not likely to result in any unreasonable acoustic impacts in the locality. A conditions of consent has been recommended to ensure the development does not exceed 5dba. This will ensure acoustic amenity within the area. The Protection of Environment Operations Act 1997 also provides Council with enforcement powers to ensure reasonable acoustic amenity within the locality. The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory. The view loss has been assessed above with regard to the Views planning principle established by the Land and Environment Court NSW and was found to be reasonable. The proposal has been assessed above with regard to Clause 3.1 Streetscape and 4.1.6 Parking Vehicular Access and Loading (including bicycle facilities). In summary the proposal was found to be satisfactory in terms of visual impact.</li> </ul>

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		<ul style="list-style-type: none"> <li>The State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings does not apply as the building has less than 4 dwellings. The setbacks have been assessed with regard to the objectives of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation. In summary the proposed setbacks were found to be satisfactory.</li> <li>The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory.</li> <li>The proposal has been assessed above in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the proposal was found to achieve an adequate degree of privacy within the locality.</li> <li>The view loss has been assessed above in accordance with Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the NSW Land and Environment Court. In summary the view loss was found to be acceptable.</li> <li>An Independent assessment has been conducted by Council that has been informed by an inspection of the site and the surrounds. The submitted plans of the proposal are to scale and accurate and adequate information is available to appropriately determine this application.</li> </ul>
2. Swan Obo Langbourne 9/87-88 West Esplanade Manly	<ul style="list-style-type: none"> <li>Alterations and additions</li> <li>Overshadowing</li> <li>Loss of Outlook</li> <li>Setbacks and Visual Bulk</li> <li>Visual and Acoustic Privacy</li> </ul>	<ul style="list-style-type: none"> <li>The proposal has been assessed in accordance with the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) and found to be most accurately classified as alterations and additions to the existing building. Furthermore Sepp 65 is not applicable as the proposal contains less than 4 dwellings.</li> </ul>



		<ul style="list-style-type: none"> <li>The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory.</li> <li>The view loss has been assessed above in accordance with Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the Land and Environment Court. In summary the view loss was found to be acceptable.</li> <li>The setbacks have been assessed with regard to the objectives of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation. In summary the proposed setbacks were found to be satisfactory.</li> <li>The SEPP 65 does not apply as the proposed building contains less than 4 dwellings. Visual and acoustic privacy was assessed under Clause 3.4.2 Privacy and Security. In summary the proposal was found to maintain adequate visual and acoustic privacy.</li> </ul>
3. Charles Hill Planning 1/1 Tower Street Manly	<ul style="list-style-type: none"> <li>Notification</li> <li>Views</li> <li>Height of Buildings</li> <li>Floor Space Ratio</li> <li>Conditions to limit the height of vegetation and ensure the roof area be non-trafficable.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal was notified in accordance with the Manly DCP 2013.</li> <li>The view loss has been assessed above in accordance with Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the NSW Land and Environment Court. In summary the view loss was found to be acceptable.</li> <li>The proposal was assessed with regard to the objectives of Clause 4.3 Height of Buildings with regard to the wall height. The assessment found the bulk and scale to be satisfactory.</li> <li>The floor space ratio was measured in accordance with the Manly LEP 2013 and found to be 0.67:1.</li> <li>The landscape plans specify the maximum height of the plantings are 10m. As such a condition limiting the height is not justified.</li> </ul>

<p>4. K. Olah and G. Shadwick 1 87-88 West Esplanade</p>	<ul style="list-style-type: none"> <li>• New building not alterations and additions.</li> <li>• The development fails to comply with code with respect to height, set back, parking and, arguably, landscaping.</li> <li>• The proposed development would have an unreasonable impact on the amenity of our property with respect to over-shadowing, loss of view, noise and privacy, affecting our quality of living, maintenance costs and property values.</li> <li>• The proposal is an unattractive over-development of a small site, conflicting with the neighbouring properties and streetscape.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposal has been assessed in accordance with the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) and found to be most accurately classified as alterations and additions to the existing building.</li> <li>• The proposal has been assessed with regard to all non-compliances. In summary the proposal was found to be satisfactory.</li> <li>• The proposal was assessed above with regard to Clause 3.4.1 Sunlight Access and Overshadowing, Clause 3.4.2 Privacy and Security and 3.4.3 Maintenance of Views of the Manly DCP 2013. All assessments found the proposed development to be reasonable.</li> <li>• The proposal has been assessed above with regard to Clause 3.1 Streetscape of the Manly DCP 2013. The assessment found that the proposal would not have any unreasonable impacts on the streetscape of the locality.</li> </ul>
<p>5. S &amp; R Taggart</p>	<ul style="list-style-type: none"> <li>• Procedural failures, no notice of revised development was placed onsite and difficulty in downloading relevant documents from Councils website.</li> <li>• Non-compliance with front and rear yard requirements. Further the balconies will significantly increase the bulk and scale.</li> <li>• Architectural purpose of rods is puzzling. If they are to grow vegetation a commitment is required by the owners for the maintenance.</li> <li>• Noise and durability of car lift.</li> <li>• Further work in the area of view loss is warranted.</li> <li>• Our opposition to additional development of the site would be overcome if the development proposal better</li> </ul>	<ul style="list-style-type: none"> <li>• On review the documents were able to be accessed through the website and a notice was at the site during the inspection. The assessing officer emailed S. Taggart a link to the plans.</li> <li>• The front and rear yard non-compliances have been assessed above and found to be satisfactory. The bulk and scale of the development was assessed above and found to be reasonable given the locality.</li> <li>• The assessment with regard to Clause 3.1 Streetscape was conducted based on the submitted elevations that show no vegetation. This assessment found the proposal to be satisfactory. Council's landscape officer has recommended conditions to ensure the longevity of the landscaping.</li> <li>• The car lift is completely enclosed and will not result in any unreasonable acoustic impacts to the locality. The onus is on the land</li> </ul>

	<p>maintained the existing footprint, height and roofline of the existing structure and provided parking in more orthodox ways.</p>	<p>owner to maintain the site as approved post determination.</p> <ul style="list-style-type: none"> <li>The view loss has been assessed above in accordance with Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the Land and Environment Court. In summary the view loss was found to be acceptable.</li> <li>The proposal has been assessed above in accordance with 79c of the Environmental Planning and Assessment Act 1979 and was found to be satisfactory.</li> </ul>
6. C & M Hook 7/86 West Esplanade	<ul style="list-style-type: none"> <li>Environmental impact - shadowing and access to natural light</li> <li>Environmental impact - noise pollution from car-stacker and associated pumps/motors.</li> <li>Arboricultural impact - Double recommended root damage limit, significant canopy reduction of an existing significant tree.</li> <li>Environmental impact - garage wall to become a solid, light and view restricting barrier to courtyard</li> <li>Current paved parking area is showing subsidence along the retaining wall with 86 West Esp and there is some cracking in the wall. Damage to the existing walls, foundations, stairs, services or fence during the project must be promptly assessed and promptly repaired with quality rectification works entirely paid for by the project owner.</li> <li>There are already numerous garages which face the street and all of these have cars either reversing in or out of the parking. We propose having no turntable and freeing up this space to move the stacker garage significantly closer to the</li> </ul>	<ul style="list-style-type: none"> <li>The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory.</li> <li>The proposed car stacker is entirely enclosed and is not likely to result in any unreasonable acoustic impacts in the locality. The Protection of Environment Operations Act 1997 also provides Council with enforcement powers to ensure reasonable acoustic amenity within the locality.</li> <li>Councils Landscape Officer has agreed with the Arboricultural report and recommended conditions to ensure the protection of the tree.</li> <li>The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory.</li> <li>The geotechnical report recommends a dilapidation survey be completed on all neighbouring buildings and structures that fall within 5m of the perimeter of the proposed car stacker. Any damage that occurs due to the development is a civil matter.</li> <li>The garage has been assessed in accordance with Clause 4.1.6 Parking Vehicular Access and Loading and was found to be</li> </ul>

	<p>street. Drivers leaving the stacker garage would simply reverse out like all other street front garages.</p> <ul style="list-style-type: none"> <li>This proposal appears to have a rooftop that is essentially a structural floor disguised as a roof, for a future level of apartments.</li> </ul>	<p>satisfactory.</p> <ul style="list-style-type: none"> <li>This application does not include any provision for a future level of apartments.</li> </ul>
7. Sider D. 4/87-88 West Esplanade	<ul style="list-style-type: none"> <li>It will block sunlight and light.</li> <li>Privacy.</li> <li>It will reduce car parking.</li> <li>A new building to house cars is overdevelopment of the site.</li> <li>Noise from car stacker.</li> <li>Bulk is excessive and will impact on the curtilage of Manly's heritage buildings</li> <li>New building not alterations and additions.</li> <li>Drainage.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory.</li> <li>The proposal will not result in any unreasonable viewing between the site and 4/87-88 West Esplanade.</li> <li>The car parking has been assessed in accordance with Clause 4.1.6 Parking Vehicular Access and Loading and was found to be satisfactory.</li> <li>The proposed car stacker is entirely enclosed and is not likely to result in any unreasonable acoustic impacts in the locality. The Protection of Environment Operations Act 1997 also provides Council with enforcement powers to ensure reasonable acoustic amenity within the locality.</li> <li>The bulk has been found to be satisfactory. Council's Heritage Officer has assessed the application and found it to be satisfactory.</li> <li>The proposal has been assessed in accordance with the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) and found to be most accurately classified as alterations and additions to the existing building. Furthermore Sepp 65 is not applicable as the building contains less than 4 dwellings.</li> <li>Council's engineer has recommended conditions to ensure stormwater is appropriately disposed.</li> </ul>



<p>8. Gamble D. 8/1 Tower Street</p>	<ul style="list-style-type: none"> <li>• Not notified and difficult in downloading documents from website.</li> <li>• Height and impact on views.</li> <li>• Glare problem – there is no identification of Roofing colour/material in the application.</li> <li>• Impact on streetscape.</li> <li>• No visitor parking, standard should be enforced.</li> <li>• Noise from car lift</li> </ul>	<ul style="list-style-type: none"> <li>• On review the documents were able to be accessed through the website and a notice was at the site during the inspection. The assessing officer emailed D. Gamble a link to the plans.</li> <li>• The height is compliant with Clause 4.3 Height of Buildings. The view loss has been assessed above in accordance with Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the Land and Environment Court. In summary the view loss was found to be acceptable.</li> <li>• The BASIX identifies the roof colour as Dark. The will ensure no glare nuisance.</li> <li>• The car parking has been assessed in accordance with Clause 4.1.6 Parking Vehicular Access and Loading and was found to be satisfactory.</li> <li>• The proposed car stacker is entirely enclosed and is not likely to result in any unreasonable acoustic impacts in the locality. The Protection of Environment Operations Act 1997 also provides Council with enforcement powers to ensure reasonable acoustic amenity within the locality.</li> </ul>
<p>9. Loftus P &amp; D 4/1 Tower Street Manly</p>	<ul style="list-style-type: none"> <li>• Not notified and no notice placed on-site. Difficulty in downloading documents from website.</li> <li>• Bulk height and size encroaching on front boundary and impacting on streetscape.</li> <li>• No visitor parking, the standard should be enforced.</li> <li>• View loss.</li> <li>• Our objection would be overcome if the existing footprint, height and roofline were maintained and appropriate parking was provided.</li> </ul>	<ul style="list-style-type: none"> <li>• On review the documents were able to be accessed through the website and a notice was at the site during the inspection. The assessing officer emailed P&amp;D Loftus a link to the plans.</li> <li>• All non-compliances have been assessed above in accordance with the relevant objectives and was found to be satisfactory.</li> <li>• The car parking has been assessed in accordance with Clause 4.1.6 Parking Vehicular Access and Loading and was found to be satisfactory.</li> <li>• The view loss has been assessed above in accordance with Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by</li> </ul>

		<p>the Land and Environment Court. In summary the view loss was found to be acceptable.</p> <ul style="list-style-type: none"> <li>The proposal is considered to be satisfactory in its current form.</li> </ul>
10. Massey M. 6 Upper Gilbert Street Manly.	<ul style="list-style-type: none"> <li>Acoustic and visual privacy</li> <li>Height poles to judge whether the finished height is below the walls of strathaven on West Esplanade.</li> <li>Glare due to roof.</li> <li>Building does not suit the streetscape.</li> <li>Maintenance of vertical gardens.</li> <li>Council has not displayed the notice of proposal on the building nor notified many neighbours who have shown interest in the first application.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal has been assessed above in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the proposal was found to achieve an adequate degree of privacy within the locality.</li> <li>The roof is identified as a dark colour. This is sufficient to ensure no unreasonable glare impacts.</li> <li>The proposal has been assessed above in accordance with clause 3.1 Streetscape of the Manly DCP 2013 and was found to be satisfactory.</li> <li>Council's landscape officer has recommended conditions to ensure the vertical gardens are appropriately installed and maintained.</li> <li>The proposal was notified in accordance with the Manly DCP 2013. The notice of the proposed development was on display during the site inspection.</li> </ul>
11. Edmond L. & S. 2/86 West Esplanade Manly	<ul style="list-style-type: none"> <li>Loss of solar access.</li> <li>Noise due to garage.</li> <li>Impact on tree due to garage.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory.</li> <li>The proposed car stacker is entirely enclosed and is not likely to result in any unreasonable acoustic impacts in the locality. The Protection of Environment Operations Act 1997 also provides Council with enforcement powers to ensure reasonable acoustic amenity within the locality.</li> <li>Councils Landscape Officer has agreed with the Arboricultural report and recommended conditions to ensure the protection of the tree.</li> </ul>

12. Przylucki T. 6/86 West Esplanade Manly.	<ul style="list-style-type: none"> <li>• Impact due to car stacker garage.</li> <li>• Proposal doesn't blend with existing close by buildings</li> <li>• Leads to loss of views, overshadowing and privacy.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed car stacker is entirely enclosed and is not likely to result in any unreasonable acoustic impacts in the locality. The Protection of Environment Operations Act 1997 also provides Council with enforcement powers to ensure reasonable acoustic amenity within the locality.</li> <li>• The proposal has been assessed above in accordance with clause 3.1 Streetscape of the Manly DCP 2013 and was found to be satisfactory.</li> <li>• The proposal was assessed above with regard to Clause 3.4.1 Sunlight Access and Overshadowing, Clause 3.4.2 Privacy and Security and 3.4.3 Maintenance of Views of the Manly DCP 2013. All assessments found the proposed development to be reasonable.</li> </ul>
13. Simper E. 4/86 West Esplanade Manly	<ul style="list-style-type: none"> <li>• Overshadowing</li> <li>• Privacy</li> <li>• Parking Noise</li> </ul>	<ul style="list-style-type: none"> <li>• The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal to be satisfactory.</li> <li>• The proposal has been assessed above in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the proposal was found to achieve and adequate degree of privacy within the locality.</li> <li>• The proposed car stacker is entirely enclosed and is not likely to result in any unreasonable acoustic impacts in the locality. The Protection of Environment Operations Act 1997 also provides Council with enforcement powers to ensure reasonable acoustic amenity within the locality.</li> </ul>

**79C(1) (e) - the public interest.**

The proposal is not contrary to the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

*'(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and*

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*public services within the area, the consent authority may grant the development consent subject to a condition requiring:*

- (a) the dedication of land free of cost, or*
- (b) the payment of a monetary contribution, or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

In this case, the proposal will result in a reduction of dwellings on the site. As such no S94 contributions are applicable.

**CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

**RECOMMENDATION**

That Development Application No. 240/2017 for alterations and additions to an existing residential flat building at 13a Upper Gilbert Street be **approved** subject to the following conditions:-

**GENERAL CONDITIONS**

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 240/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
A-DA-002 Site Plan	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-101 Level 00 Plan	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-102 Level 01 Plan	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-103 Level 02 Plan	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-104 Roof Plan	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-201 North Elevation	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-202 East Elevation	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-203 East Elevation (greater context)	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-204 South Elevation	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-205 West Elevation	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-301 Section A-A	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-301 Section B-B	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
A-DA-301 Driveway Section	Issue C, dated 3 October 2017	Chen Chow Little Pty Ltd
L100C Landscape Concept Plan	Issue C, dated 14 September 2017	Spirit Level Designs Pty Ltd



*Reference Documentation relating to Development Consent No. 240/2017:*

- RE:DA240/2017 – 13A Upper Gilbert Street – Alterations and additions to an existing residential flat building, prepared by Ausgrid and dated 7 November 2017
- Traffic Impact Assessment, prepared by Traffix traffic and transport planners and dated 22 September 2017.
- Access Report, prepared by Code Performance and dated September 2017.
- Arboricultural Impact Assessment Report, prepared by Earthscape Horticultural Services and dated 28 September 2017
- Geotechnical Investigation prepared by JK Geotechnics and dated 29 September 2017.
- BASIX Certificate Number 779485M\_03, prepared by Damian O'Toole Town Planning P/L and dated 13 October 2017.

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

*Reason: Legislative Requirement (DACPLB09)*

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

### ANS01 Stormwater Disposal

Stormwater shall be disposed of to an existing approved system or in accordance with Council's Manly Specification for on-site Stormwater Management.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

### ANS02 Vehicular Crossing/Driveway

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a vehicular crossing.

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the *Roads Act 1993*, before the issue of any Construction Certificate.

Approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

*Reason: To facilitate suitable vehicular access to private sites.*

### ANS03 Landscaping

The proposed *Tristania laurina* "Luscious (Water Gum)" is to be deleted from the plans. Amended plans detailing compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

*Reason: To ensure appropriate tree planting.*

## 3 (2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

## 4 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

## 5 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

## 6 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

## 7 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

#### 8 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

#### 9 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

#### 10 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

#### 11 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

### CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

#### 12 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.



13 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

14 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

15 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

16 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

17 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**ANS03 Vehicle Crossings**

The provision of a vehicle crossing 3.5 metres wide at kerb and 5.5 m wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property

18 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

19 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

20 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

#### 21 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

#### 22 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

#### 23 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

#### ANS04 Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

#### ANS05 Protection of Vegetation

As recommended within the Arboricultural Assessment Report, the existing Crepe Myrtle (T1) within the adjoining property shall be protected by retention of the common boundary masonry wall to act as a barrier to root impact by the proposed development.

Details are to be submitted to the Certifying Authority by an Arborist with minimum qualification equivalent to AQF Level 5, that this condition has been satisfied, prior to the issue of the Occupation certificate.

Reason: Protection of streetscape and landscape amenity

## 24 (5LD01)

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing L100 revision C, prepared by Spirit Level, and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately.

## 25 (5LD02)

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT****ANS06**

The lift, turntable and mechanical car stacker shall not produce noise levels of more than 5dBA above background noise measured at the nearest residential window/opening at any time.

Reason: To ensure the amenity of the neighbouring properties.

## 26 (6FC01)

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Department of Lands. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. More than 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1 800 990 777 or at <http://www.cjc.nsw.gov.au/>.

Reason: To ensure the applicant is aware the Dividing Fences Act 1991 may be used to resolve disputes about dividing fences.

## 27 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

## 28 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

## 29 (6MS02)

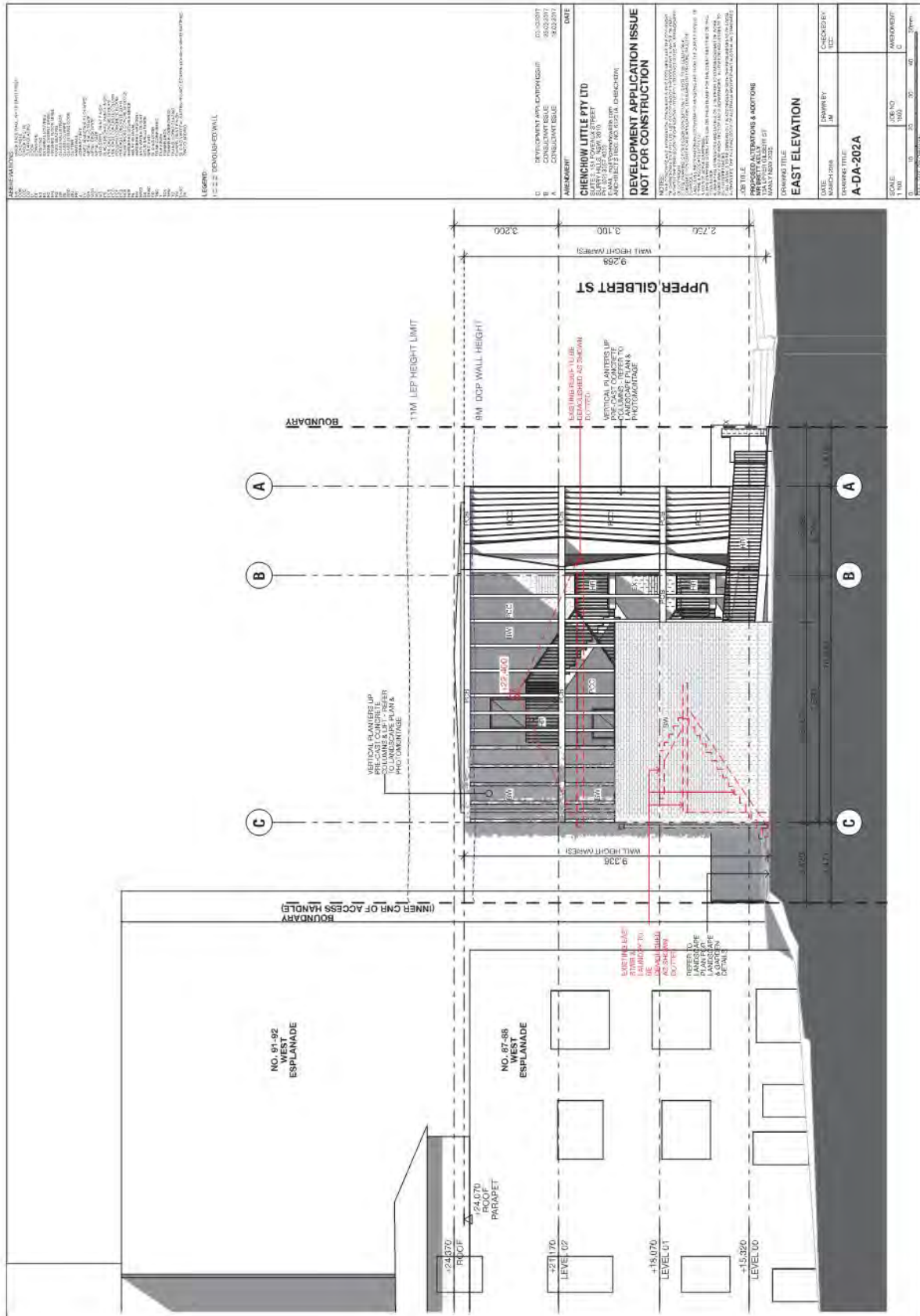
No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

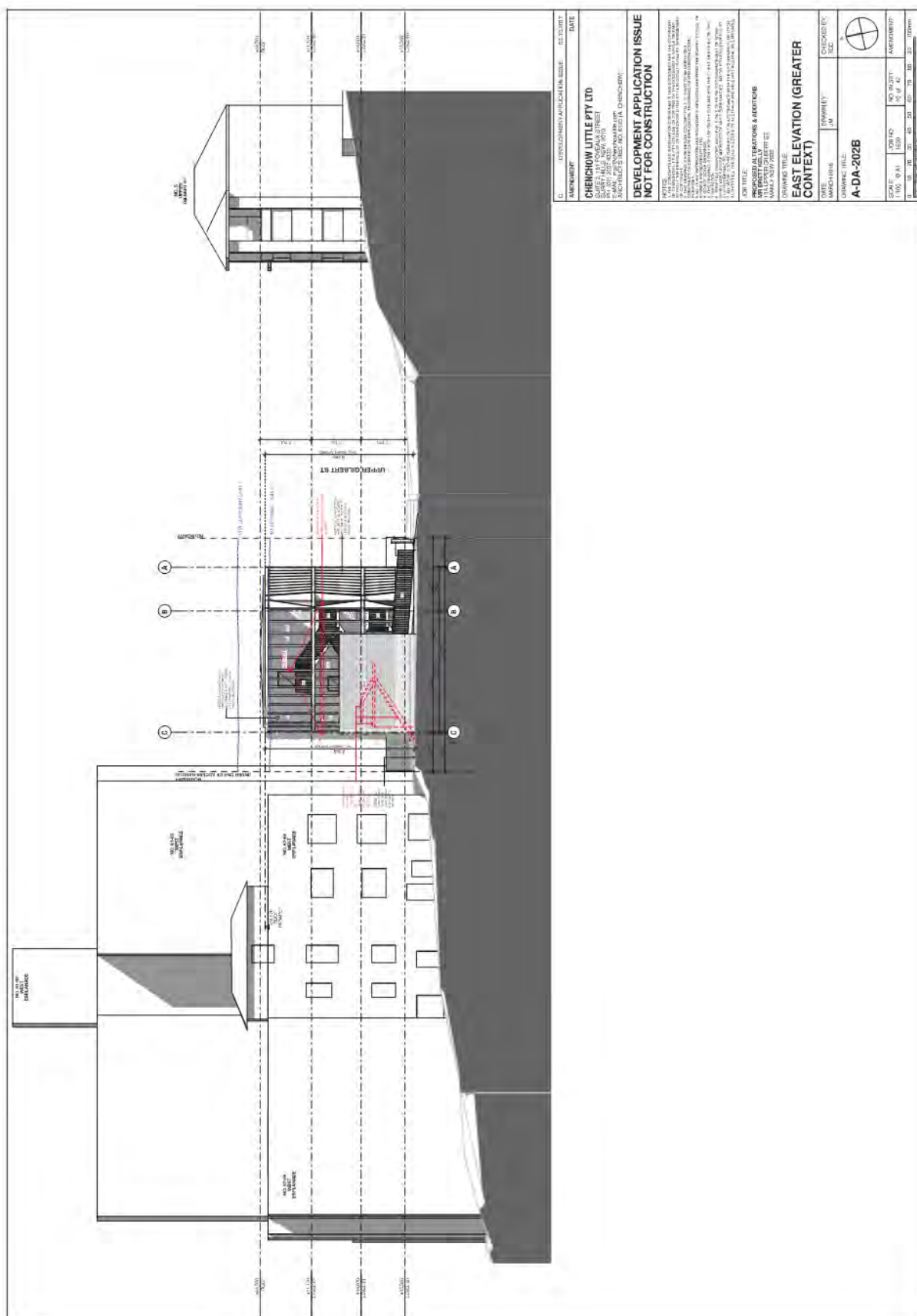






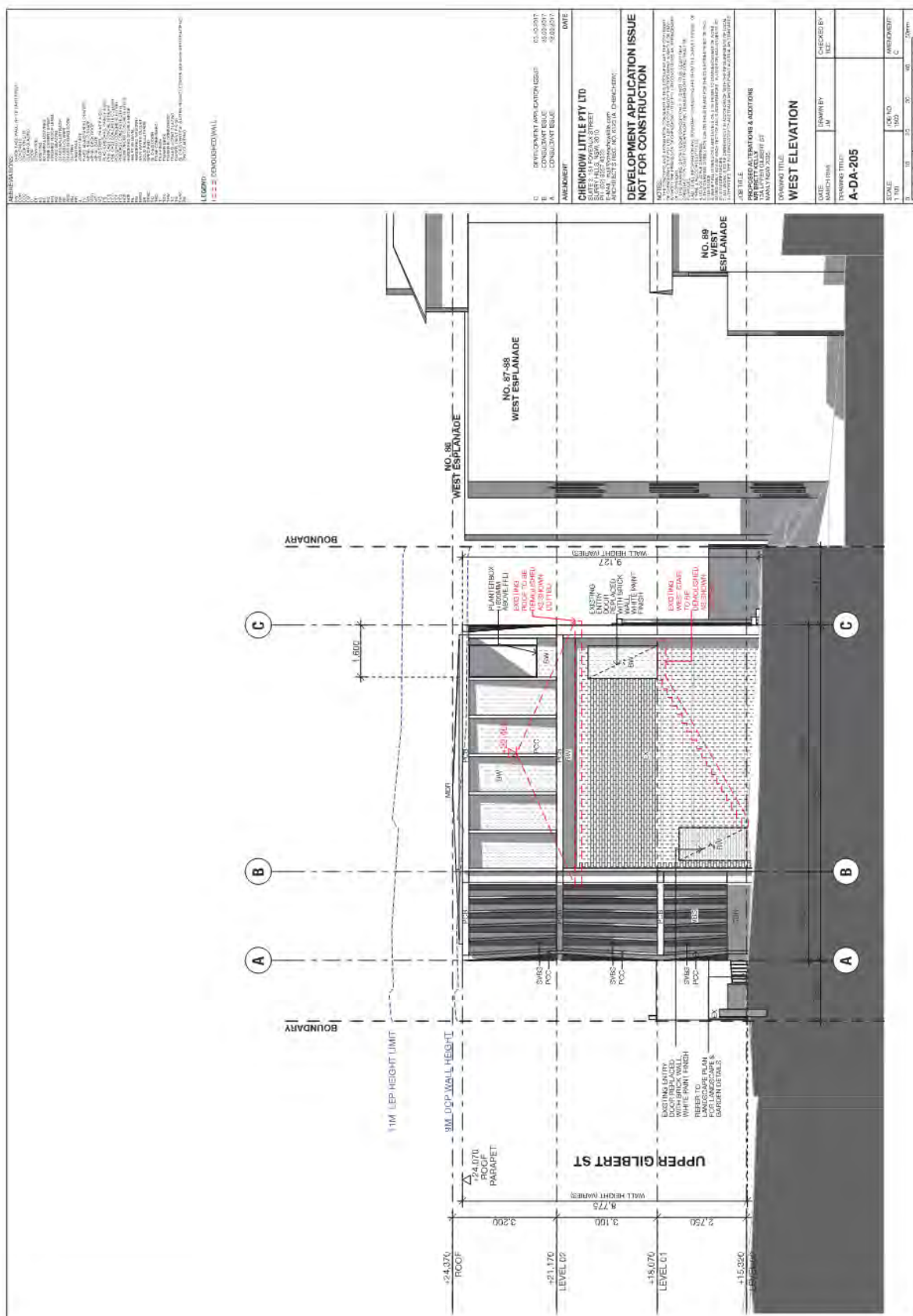












<b>ITEM 3.4</b>	<b>N0380/17 – 2B ALLEN AVENUE, BILGOLA BEACH – DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF A NEW TWO STOREY DWELLING WITH ASSOCIATED LANDSCAPING WORKS, DRIVEWAY AND FRONT FENCE</b>
<b>REPORTING OFFICER</b>	<b>TYSON EK-MOLLER</b>
<b>TRIM FILE REF</b>	<b>2018/088871</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a> Assessment Report</b> <b>2 <a href="#">↓</a> Site Plan and Elevations</b>

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. N0380/17 for Demolition of existing dwelling and construction of a new two storey dwelling with associated landscaping works, driveway and front fence at Lot B DP 410216, 2B Allen Avenue, Bilgola Beach for the reasons outlined in the Assessment Report.

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**SUBJECT: N0380/17 – 2B Allen Avenue, Bilgola Beach (Lot B DP 410216) - Demolition of existing dwelling and construction of a new two storey dwelling with associated landscaping works, driveway and front fence**

**Determination Level: Northern Beaches Independent Assessment Panel (NBIAP)**

**SUMMARY OF RECOMMENDATION:**

**SUBJECT TO CONDITIONS**

<b>REPORT PREPARED BY:</b>	Tyson Ek-Moller
<b>APPLICATION SUBMITTED ON:</b>	25 August 2017
<b>APPLICATION SUBMITTED BY:</b>	Danny Vise Cadence and Co Design 287 Mona Vale Road TERREY HILLS NSW 2084
<b>OWNER(S):</b>	Mr George Anthony Condell Mrs Jo-Anne Maree Condell
<b>COST OF WORKS:</b>	\$2,545,590

**1.0 ISSUES**

Pittwater 21 Development Control Plan

- Part A4.3 Bilgola Locality
- Part B3.11 Flood Prone Land
- Part B3.13 Flood Hazard - Flood Emergency Response planning
- Part B4.6 Wildlife Corridors
- Part B8.5 Construction and Demolition - Works in the Public Domain
- Part B8.6 Construction and Demolition - Traffic Management Plan
- Part C1.3 View Sharing
- Part C1.5 Visual Privacy
- Part D3.1 Character as viewed from a public place
- Part D3.6 Front building line
- Part D3.9 Building Envelope
- Part D3.11 Landscaped Area – Environmentally Sensitive Area

**2.0 SITE DETAILS**

The subject site is identified 2B Allen Avenue, Bilgola (Lot B DP 410216). The lot is located on a curved section of Allen Avenue and subsequently has two frontages to this road. The shorter of the two road frontages is oriented towards the east while the secondary frontage is oriented towards the south; the other two boundaries adjoin residential allotments. The subject site contains a detached two storey residential dwelling and swimming pool within the southeast part of the site. The subject site has an area of 989.9m<sup>2</sup> (based on submitted survey information), and contains a moderate west-to-east slope of approximately 5m.

The subject site is located within an E4 Environmental Living zone with all boundaries adjoining other E4-zoned areas. In addition to the above, there are a number of other zone boundaries within the surrounding area which are as follows:

- RE1 Public Recreation zones are located at varying distances to the east, south and west of the site, and are located approximately 30m and 300m southwest of the subject site at their nearest respective points.
- An SP2 Infrastructure (Classified Road; Barrenjoey Road) zone is located to the south, west and north of the subject site and is approximately 145m from the site at its closet point.



- E2 Environmental Conservation zones are located approximately 90m northeast, 355m west and 295m southwest from the subject site at their nearest respective points.
- A W2 Recreational Waterways zone is located approximately 160m northwest of the subject site at its nearest point.

Ocean areas approximately 115m east of the subject site are not zoned.



**Figure 1:** Aerial photograph of the subject site, outlined by the yellow border (Source: Nearmap)



**Figure 2:** A streetscape photograph of the subject site, taken from the south.

The site is bushfire prone and is subject to flooding hazards (H3 and H5 flood categories). It is also affected by Class 5 Acid Sulphate Soils and Biodiversity mapping (Wildlife Corridor (excluding Cat1/Cat2/Core Species)). The subject site does not contain a heritage item nor is it within a heritage conservation area; there are however heritage items with the immediate vicinity, including one opposite the site (Item No. 2270009; Drainage and Building Structures) at 15-21 Bilgola Avenue.

Except for non-residential zones outlined above and some notable exceptions (e.g. Bilgola Beach Surf Club), development within surrounding residential-zoned areas consists predominately of detached dwelling houses and associated.

A site inspection was undertaken by the assessing officer on 5 October 2017; further inspections of adjoining residential sites (see Part 7 of this report) were also undertaken; the layout of the site was consistent with the plans and no significant issues were identified.

### 3.0 PROPOSAL IN DETAIL

The subject development application proposes the demolition of structures on the site (including the swimming pool) and the construction of a detached two storey dwelling and landscaping works. The design of the dwelling would also change the orientation of the dwelling's primary frontage (including driveway access) from the south to the east of the site.

### 4.0 BACKGROUND

#### 4.1 Site background:

Date	Comments
25/08/2017	Subject development application lodged.

#### 4.2 Application history:

Date	Comments
25/08/2017	Subject development application lodged.
11/09/2017 18/09/2017 05/10/2017	Submission received.
05/10/2017	Site inspection undertaken.
14/11/2017	Height poles erected.
14/12/2017	Additional information request sent to the applicant.
16/01/2018	Amended information received.

### 5.0 NOTIFICATION

#### 5.1 Notification

In accordance with Council's Notification Policy, the subject application was notified for a 14 day period from 4 September 2017 until 18 September 2017; this process involved sending 12 letters to the owners and residents of twelve surrounding properties and the erection of a sign at the site.

In response, three (3) submissions containing seven (7) signatures were received in response. All submissions objected to the proposed development.

The subject application was not renotified following the submission of additional information in accordance with Council's notification policy. The assessing officer did however contact all objectors via email to make them aware of the amended information; an addendum to one of the original submissions was subsequently received.

#### 5.2 Addresses of submissions

The addresses from which submissions were received are as follows:



- 2 Allen Avenue,  
Newport
- 6 Bilgola Avenue,  
Newport
- 19 Bilgola Avenue,  
Newport



**Figure 3 (right):** Location of the subject site (outlined by yellow boundaries), in relation to the locations of sites from where submissions were received (outlined by green boundaries).

### 5.3 Issues raised by submissions

Issues raised by submissions are outlined as follows:

- Adverse impacts on visual privacy.
- Adverse impacts on views.
- The proposed development would reduce light to rooms on an adjoining property.
- Concerns regarding impacts on flora and fauna, particular concern is raised regarding palm trees (specifically the removal and/or protection of such trees).
- Impacts on the structural integrity of structures on adjoining sites due to the construction of retaining walls.
- Adverse impacts on the future development potential of adjoining sites.
- Adverse impacts on the value of surrounding properties.
- Impacts on the ability of surrounding residents to enjoy the use of their properties.
- Concerns that flooding may damage the proposed dwelling thereby increasing risk to adjoining sites.
- Noncomplying landscaped area.
- Impacts that the size of the development and dark colours would not be consistent with the character of the locality and would block cooling sea-breezes.

### 5.4 Response to submission issues

Some of the issues raised above are discussed in greater detail as part of the assessment of relevant standards/controls within Part 7 of this report. Some issues are however addressed within the following table:

Issue	Comments
Adverse impacts on visual privacy	Visual privacy considerations under Part C1.5 of Pittwater 21 DCP are assessed within Part 7 of this report.
Adverse impacts on views	Visual privacy considerations under Part C1.3 of Pittwater 21 DCP are assessed within Part 7 of this report.
The proposed development would reduce light to rooms on an adjoining property.	The proposed development would not overshadow any surrounding residential areas and would therefore comply with Part C1.4 of Pittwater 21 DCP. Aside from development controls and planning principles relating to direct solar access (i.e. overshadowing), there is no assessable criteria that relates to the reduction of natural light access to surrounding properties. It is therefore not possible to quantify what (if any) impact the proposed development would have on natural light access to surrounding properties.
Concerns regarding impacts on flora and fauna	The applicant proposes to remove five palm trees on the site. Comments from Council's Natural Environment officer indicate that all five trees are exotic/exempt species with limited biodiversity value; the removal of the trees is supported subject to their replacement with locally native species. Existing trees with significant biodiversity

	potential (i.e. a Norfolk Pine and a Cabbage Palm) are to be retained and protected during any demolition and/or construction works.
Impacts on the structural integrity of structures on adjoining sites	An assessment by Council's Development Engineer has not raised any concerns with the design of the development. Conditions are however recommended that would require pre-and-post construction dilapidation reports to be undertaken to identify if proposed works would adversely affect adjoining sites and public areas.
Adverse impacts on the future development potential of adjoining sites.	<p>This submission raised concern regarding the proposed development's impact on the property owner to redevelop their site; it was also suggested that appropriate privacy measures be incorporated into the development so that the design of future development on the adjoining site could be consistent with that site's existing dwelling.</p> <p>There is no information to suggest that construction of the proposed development would affect future development on surrounding sites. Visual privacy measures pursuant to Part C1.5 of the DCP are considered within Part 7 of this report.</p>
Adverse impacts on the value of surrounding properties.	Impacts on property values have not been assessed, as they are not a matter for consideration under S79C of the <i>Environmental Planning and Assessment Act 1979</i> .
Impacts on the ability of surrounding residents to enjoy the use of their properties	This submission indicates that enjoyment of the site would be linked to views and visual privacy. These matters are considered with regard to Parts C1.3 and 1.5 of the DCP within Part 7 of this report.
Concerns that flooding may damage the proposed structures thereby increasing risk to adjoining sites.	The subject site is affected by low to medium risk flooding categories, however it is not subject to coastal risk hazards identified by PLEP 2014. The proposal has been assessed by Council's Floodplain Engineer, who has indicated that the dwelling has been appropriately designed with regard to the flooding hazard on the site. Refer to Parts 6 and 7 of this report for the assessment of flood-related provisions.
Noncomplying landscaped area.	Landscape area considerations under Part D3.11 of Pittwater 21 DCP are assessed within Part 7 of this report.
Impacts that the size of the development and dark colours would not be consistent with the character of the locality and would block cooling sea-breezes.	<p>As assessed within Part 7 of this report, the proposed external materials and colours would be consistent with part D3.3 (Building Colours and Materials) of Pittwater 21 DCP. The materials and colours of the development would also be consistent with the desired character of the locality, in that the darker/more natural colours would be more consistent with the natural environment.</p> <p>While the issue regarding sea-breezes are noted, there are no applicable development controls which relate specifically to the blocking of breezes.</p>

## 6.0 REFERRALS

### 6.1 Internal referrals:

Officer	Comments
<b>Development Engineer</b>	<p><b>Recommendation:</b> Supported subject to conditions</p> <p><b>Comments:</b>  <i>"The proposed development does not require OSD due to flood affectation. As there are existing table drains which need to be reinstated as part of the reinstatement of the two old driveways, a condition for the lodgement of a roads act application has been included. This condition has been provided in word format and must be included in the consent by Planning.</i></p> <p><i>No objection to approval, subject to conditions as recommended."</i></p> <p>Also refer to additional comments within Part 7 of this report.</p>
<b>Natural Environment</b>	<p><b>Recommendation:</b> Supported subject to conditions</p> <p><b>Comments:</b></p>



	<p><i>"The property contains a modified landscape typical of a domestic garden with several exotic palm species, a locally native Cabbage Palm (Livistona australis), and a Norfolk Island Pine (Araucaria heterophylla). The proposed works involve demolition of the existing dwelling house, construction of a new dwelling and associated services/structures, and new landscaping. As works will occur within 5m of existing trees, an arboricultural assessment has been submitted with the DA. The report assesses eleven (11) trees, including three (3) palms on the Council road reserve and six (6) TPO-exempt Bangalow (Archontophoenix cunninghamiana) and Phoenix (Phoenix canariensis) palms on the property. Five (5) trees are proposed for removal, all of which are exempt species. As these palms are exotic species with limited biodiversity value, their removal is supported subject to replanting with locally native tree/palm to maintain landscape amenity values.</i></p> <p><i>The report outlines targeted tree protection measures for Trees 1 (Norfolk Island Pine) and 4 (Cabbage Palm), and general measures for exempt species proposed for retention. It is considered that, subject to recommended tree protection measures and conditions of consent, the development meets the outcomes of Natural Environment Control B4.6 and Landscaping Control C1.1."</i></p> <p>Also refer to additional comments within Part 7 of this report.</p>																				
<b>Flooding</b>	<p><b>Recommendation:</b> Supported subject to conditions</p> <p><b>Comments:</b> <i>"The proposed development generally complies with the DCP and LEP.</i></p> <p><i>Supported subject to conditions".</i></p> <p>Also refer to additional comments within Part 7 of this report.</p>																				
<b>Heritage</b>	<p><b>Recommendation:</b> Supported</p> <p><b>Comments:</b></p> <table border="1"> <tr> <td><b>Application no.</b></td><td>N0380/17</td></tr> <tr> <td><b>Address</b></td><td>2B Allen Avenue, Bilgola Beach</td></tr> <tr> <td><b>Planner</b></td><td>Tyson Ek-Moller</td></tr> <tr> <td><b>Applicant</b></td><td>Cadence &amp; Co Design</td></tr> <tr> <td><b>Details of proposal</b></td><td>New dwelling</td></tr> <tr> <td><b>Reason for referral</b></td><td>Referred to heritage due to proximity to the heritage items known as 'Street Trees – Norfolk Island Pines and Canary Island Date' (SHI 2270030).</td></tr> <tr> <td><b>Item(s) of significance</b></td><td>The trees are significant because: <i>The Street Trees - Norfolk Island Pines (Araucaria heterophylla) and Canary Island Date Palms (Phoenix canariensis) are a defining landscape element for Bilgola Beach, but also for many ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930's period. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value.</i></td></tr> <tr> <td><b>Statement of Effects</b></td><td>Read. Refers to the heritage items and indicates they are to be retained. The Arborist report also indicates their retention.</td></tr> <tr> <td><b>Site inspection</b></td><td>25/09/17</td></tr> <tr> <td><b>Conclusion</b></td><td> <p>The proposal seeks consent for a new two storey dwelling on the site with ancillary works such as new fencing. Sitting within the road reserve are three heritage trees. A number of trees are proposed to be removed from the property however they are not heritage items.</p> <p>The plans indicate that trees 1, 4, 7, 9, 10 and are 11 to be retained on the site. The attached Arborist report has also indicated tree protections measures for these trees. In this regards the recommendations of the Arborist are supported by Strategic Planning (Heritage). For trees that are not listed items, they are</p> </td></tr> </table>	<b>Application no.</b>	N0380/17	<b>Address</b>	2B Allen Avenue, Bilgola Beach	<b>Planner</b>	Tyson Ek-Moller	<b>Applicant</b>	Cadence & Co Design	<b>Details of proposal</b>	New dwelling	<b>Reason for referral</b>	Referred to heritage due to proximity to the heritage items known as 'Street Trees – Norfolk Island Pines and Canary Island Date' (SHI 2270030).	<b>Item(s) of significance</b>	The trees are significant because: <i>The Street Trees - Norfolk Island Pines (Araucaria heterophylla) and Canary Island Date Palms (Phoenix canariensis) are a defining landscape element for Bilgola Beach, but also for many ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930's period. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value.</i>	<b>Statement of Effects</b>	Read. Refers to the heritage items and indicates they are to be retained. The Arborist report also indicates their retention.	<b>Site inspection</b>	25/09/17	<b>Conclusion</b>	<p>The proposal seeks consent for a new two storey dwelling on the site with ancillary works such as new fencing. Sitting within the road reserve are three heritage trees. A number of trees are proposed to be removed from the property however they are not heritage items.</p> <p>The plans indicate that trees 1, 4, 7, 9, 10 and are 11 to be retained on the site. The attached Arborist report has also indicated tree protections measures for these trees. In this regards the recommendations of the Arborist are supported by Strategic Planning (Heritage). For trees that are not listed items, they are</p>
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		considered to be contributory, not only to the heritage item, but the broader Bilgola Beach locality. The proposal as is can be supported by Strategic Planning (Heritage).
	<b>Assessing Officer</b>	Brendan Gavin, Strategic Planner

## 6.2 External referrals:

None required.

## 7.0 STATUTORY AND POLICY CONSIDERATIONS

### 7.1 Applicable instruments and policies:

Where applicable, the following relevant state, regional and local instruments and policies apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Sustainable Building Index: BASIX) 2005
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)
- Pittwater Local Environment Plan 2014 (PLEP 2014)
- Pittwater 21 Development Control Plan (P21 DCP)

### Tables of Compliance:

T - Can the proposal satisfy the technical requirements of the control?

Y – Yes

O - Can the proposal achieve the control outcomes?

N – No

N - Is the control free from objection?

N/A or - – Not applicable

### 7.2 Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Act No. 203				
Clause	Assessment and Comment	T	O	N
147 Disclosure of political donations and gifts	None disclosed	Y	Y	Y

### 7.3 State Environmental Planning Policies

State Environmental Planning Policies (SEPPs)				
SEPP	Assessment and Comment	T	O	N
SEPP (Sustainable Building Index: BASIX) 2005		Y	Y	Y
SEPP (Infrastructure) 2007	Divisions 5 and 17 of the SEPP are not applicable to the subject development.	-	-	-
SEPP No. 55 – Remediation of Land	A review of the site history indicates that the subject site has been used for residential development purposes for an extended period of time; there is no evidence to indicate that the subject site has been exposed to activities that would result in land contamination. Further to the site review, the site inspection did not identify any signs of contamination. With regard to the above and provided that conditions relating to demolition are satisfied, the proposal is considered to satisfy the relevant provisions of SEPP No. 55.	Y	Y	Y
SEPP No. 71 – Coastal protection	Despite submissions raising issues regarding coastal issues (i.e. flooding), the subject site is not within the 'coastal zone' as defined in the <i>Coastal Protection Act 1979</i> .  The SEPP is therefore not applicable to the proposed development.	-	-	N

### 7.4 Pittwater Local Environment Plan 2014

#### 7.4A Permissibility:

The subject site is located within an E4 Environmental Living zone under Pittwater Local Environment Plan (PLEP) 2014.

The proposed development, as submitted by the applicant, would be most appropriately defined as "residential accommodation" and more specifically a "dwelling house".

Dwelling houses are a form of development that are permissible with consent within the E4 zone under PLEP 2014.

#### 7.4B Zone objectives

The objectives of the E4 zone are as follows:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values;
- To ensure that residential development does not have an adverse effect on those values;
- To provide for residential development of a low density and scale integrated with the landform and landscape;
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The proposed development would satisfy the objectives of the E4 zone as:

- It would provide for relatively low-impact residential development in an area of special ecological and aesthetic values.
- Would not adversely affect special values.
- Would feature a design that is of a relatively low density and scale that is integrated into the landform and landscape that is consistent with surrounding development.
- Would encourage development that enhances local vegetation.

#### 7.4C Assessment of Pittwater Local Environment Plan (PLEP) 2014

Refer to sections 3.0 and 3.1 of this report (above) for comments on permissibility and zone objectives. Refer below to a table of compliance for applicable controls under the LEP.

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			-	-	-
4.1 Minimum subdivision lot size			-	-	-
4.2 Rural subdivision			-	-	-
4.3 Building Height	Maximum height 8m	Maximum proposed height:6.85m	Y	Y	Y
4.6 Exceptions to development standards			-	-	-
5.4 Controls relating to miscellaneous permissible uses			-	-	-
5.5 Development within the coastal zone		Not applicable; the site is not located within the coastal zone.	-	-	-
5.6 Architectural roof features			-	-	-
5.7 Development below mean high water mark			-	-	-
5.8 Conversion of fire alarms			-	-	-
5.10 Heritage conservation			-	-	-
7.1 Acid Sulphate Soils		<b>Natural Environment</b> <b>Comments:</b> "Class 5 - no apparent issues."	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.3 Flood planning			Y	Y	N
7.4 Floodplain risk management			-	-	-
7.5 Coastal risk planning		Not applicable; the site is not affected by the coastal risk planning map.	-	-	N
7.6 Biodiversity			Y	Y	Y

Clause	Numerical Standard	Numerical Proposal	T	O	N
7.7 Geotechnical hazards			-	-	-
7.8 Limited development on foreshore area			-	-	-
7.9 Residual lots			-	-	-
7.10 Essential services			Y	Y	Y
7.11 Converting serviced apartments to residential flat buildings			-	-	-
7.12 Location of sex services premises			-	-	-

#### 7.5 Pittwater 21 Development Control Plan (P21 DCP)

##### **7.5A Assessment of Pittwater 21 DCP**

Refer below to a table of compliance for applicable controls under the DCP; more detailed assessments and elements of noncompliance are also assessed/discussed in depth below.

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Section A Shaping Development in Pittwater</b>					
<b>A1 Introduction</b>					
A1.7 Considerations before consent is granted			Y	Y	Y
<b>A4 Localities</b>					
A4.10 Bilgola Locality			Y	Y	Y
<b>Section B General Controls</b>					
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites		Refer to Strategic Planning officer comments within Part 6 of this report.	Y	Y	Y
B1.3 Heritage Conservation - General			-	-	-
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			-	-	-
B3.2 Bushfire Hazard			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land		Refer to SEPP 55 assessment with Part 7.3 of this report.	Y	Y	Y
B3.11 Flood Prone Land		Refer to Floodplain Engineer comments below.	Y	Y	N
B3.13 Flood Hazard - Flood Emergency Response planning		Refer to Floodplain Engineer comments below.	Y	Y	N
B4.6 Wildlife Corridor		Refer to natural environment comments below.	Y	Y	N
B5.3 Greywater reuse			-	-	-
B5.4 Stormwater Harvesting			Y	Y	Y
B5.7 Stormwater Management - On-Site Stormwater Detention		<b>Development engineer comments:</b> *As the site is affected by flooding, OSD is not required.	-	-	-
B5.8 Stormwater Management - Water Quality - Low Density Residential			Y	Y	Y
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas			-	-	-
B5.12 Stormwater Drainage Systems and Natural Watercourses			Y	Y	Y
B5.13 Development on Waterfront Land			-	-	-
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)			-	-	-
B6.1 Access driveways and Works on the Public Road Reserve			Y	Y	Y



Clause	Numerical Standard	Numerical Proposal	T	O	N
B6.2 Internal Driveways			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements	Minimum of two (2) off-street parking spaces required	Minimum three (3) spaces proposed	Y	Y	Y
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential (Amended 14/11/15 See B6.3)			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain		See Part 7.5B of this report for Development Engineer comments.	Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		See Part 7.5B of this report for Development Engineer comments.	Y	Y	Y
<b>Section C Development Type Controls</b>					
C1.1 Landscaping		<b>Natural Environment</b> comments: "See B4.6 for comments."	Y	Y	N
C1.2 Safety and Security			Y	Y	Y
C1.3 View sharing			Y	Y	N
C1.4 Solar Access		Refer to Part 5 of this report for a response to a submission.	Y	Y	N
C1.5 Visual Privacy			N	Y	N
C1.5 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space	Primary dwelling: Minimum 80m <sup>2</sup>	Proposed Private Open Space (POS): Approx. 130m <sup>2</sup> , including minimum dimensions  Proposed primary use area (i.e. the first floor terrace) would be approx. 67m <sup>2</sup>  A technical noncompliance is proposed as less than 75% of POS areas would be situated within the rear setback. The location of the proposed areas is considered to be satisfactory and supportable as the Primary POS area would form an extension of the first floor living areas.	N	Y	Y
C1.9 Adaptable Housing and Accessibility			-	-	-
C1.11 Secondary Dwellings and Rural Worker's Dwellings			-	-	-
C1.12 Waste and Recycling Facilities			-	-	-
C1.13 Pollution Control			Y	Y	Y
C1.14 Separately Accessible Structures			Y	Y	Y
C1.16 Development ancillary to residential accommodation - Tennis Courts			-	-	-
C1.17 Swimming Pool Safety			-	-	-
C1.19 Incline Passenger Lifts and Stairways			-	-	-

Clause	Numerical Standard	Numerical Proposal	T	O	N
C1.23 Eaves	Minimum 450mm eaves required.	The plans propose a flat roof and box gutters, therefore no eaves are proposed. The contemporary design of the dwelling would be consistent with development within the area and energy efficiency requirements are met without the eaves. The proposal would satisfy the control outcomes and the noncompliance is considered to be supportable.	N	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure			-	-	-
C1.25 Plant, Equipment Boxes and Lift Over-Run			Y	Y	Y
<b>Section D Locality Specific Development – D3 Bilgola Locality</b>					
D3.1 Character as viewed from a public place			Y	Y	Y
D3.3 Building colours and materials		A submission objects to proposed colours and materials. The proposed materials and colours are consistent with the development controls and outcomes; the proposed materials and colours and therefore satisfactory, subject to conditions.	Y	Y	N
D3.6 Front building line	<b>Primary street frontage:</b> • Minimum 6.5m or prevalent building setback pattern, whichever is greater. <b>Note:</b> Setback distance adopted) <b>Secondary street frontage:</b> • Minimum 3.25m, provided that outcomes of the control are satisfied	Proposed primary setback: Minimum 8.1m Proposed secondary setback: Minimum 2.6m <b>Note:</b> As the plans propose to orient the front of the dwelling towards the east, the front setback has been measured from the eastern boundary.	N	Y	Y
D3.7 Side and rear building line	<b>Side setbacks:</b> • 2.5m on one side • 1m on the other side <b>Rear setback</b> • 6.5m (other than where the foreshore building line applies)	<b>Side setbacks:</b> • North: Minimum 1.3m <b>Rear setback:</b> • Minimum 6.5m <b>Note:</b> Southern side setback not assessed as it is considered by Part D3.6 of P21 DCP; see above.	Y	Y	N
D3.9 Building Envelope			N	Y	N
D3.11 Landscaped Area –Environmentally Sensitive Area	Minimum 60% of the site (593.9m <sup>2</sup> based on a site area of 989.9m <sup>2</sup> ) is to be landscaped	Proposed landscaped area: Approx. 518m <sup>2</sup> Allowable variations: 51m <sup>2</sup>  Total landscaped area including permitted variations: Approx. 569m <sup>2</sup> , or 57.4% of the site area.	N	Y	N
D3.12 Fences – General	<b>Fencing requirements:</b> • Maximum 1.8m high • Open, see-through and dark coloured materials • Landscaping is to be incorporated into the fence	Complies, though a condition is recommended to ensure that fence design/appearance is in accordance with development controls.	Y	Y	Y
D3.14 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D3.15 Scenic Protection – General			Y	Y	Y

## 7.5B Discussion of DCP issues

### A4.3 Bilgola Locality, D3.1 Character as viewed from a public place and D3.15 Scenic Protection – Category One Areas

Despite concerns within submissions, the proposed development would (where applicable) satisfy the desired character requirements of the Bilgola locality (and more specifically the requirements of the Bilgola Beach area). The proposed development would have minimal impact on the natural environment. The dwelling would be a maximum of two storeys in any one place, and the height of the development also complies with the lower 8m height limit for the area. Visual protection requirements would not apply as the site is not within the "visual protection area" of the locality.

The proposed development broadly satisfies the requirements of Part D3.1 of the DCP by introducing articulation on all elevations and design features in accordance with the development controls. The garage would account for approximately 30.5% of the width of the garage in accordance with the controls and landscaping has been appropriately integrated into the development. The concealment of services would be subject to recommended conditions.

Where applicable, the proposed development would also comply with Part D3.15 of the DCP. Removal of the tree canopy is not proposed, and both the use of native vegetation and dark/non-reflective colours and materials would be subject to recommended conditions.

### B3.11 Flood Prone Land and B3.13 Flood Hazard - Flood Emergency Response planning

#### **Floodplain engineer comments to DCP Part B3.11:**

*"Since the time that Council provided flood information to the applicant for this property, the flood mapping has been updated to remove areas less than 150mm depth in a 1% AEP event. This has reduced the flood affectation on the property. The DCP has also been updated since then. The flood report was written just days before the DCP was updated, but is still adequate for the purpose .*

*The property is partially affected by the low and medium flood risk precincts, with about half of the property being flood free. The depth of flooding is <0.3m, so freeboard is 0.3m and the FPL varies from 5.7 to 5.9m AHD. This mostly affects the south-eastern corner of the property.*

*The proposed ground floor level is 6.32m AHD, and is above the FPL.*

*No flood related objection."*

#### **Floodplain engineer comments to DCP Part 3.13:**

*"There is a small area of Flood Category H3-H5 in the southern corner of the property. However no habitable part of the proposed development lies within this area. Also, the 2nd storey would provide suitable refuge to shelter in place during a flood.*

*No flood related objection."*

### B4.6 Wildlife Corridor

#### **Natural Environment officer comments:**

*"The property contains a modified landscape typical of a domestic garden with several exotic palm species, a locally native Cabbage Palm (Livistona australis), and a Norfolk Island Pine (Araucaria heterophylla). The proposed works involve demolition of the existing dwelling house, construction of a new dwelling and associated services/structures, and new landscaping. As works will occur within 5m of existing trees, an aboriginal assessment has been submitted with the DA. The report assesses eleven (11) trees, including three (3) palms on the Council road reserve and six (6) TPO-exempt Bangalow (Archontophoenix cunninghamiana) and Phoenix (Phoenix canariensis) palms on the property. Five (5) trees are proposed for removal, all of which are exempt species. As these palms are exotic species with limited biodiversity value, their removal is supported subject to replanting with locally native tree/palm to maintain landscape amenity values.*

*The report outlines targeted tree protection measures for Trees 1 (Norfolk Island Pine) and 4 (Cabbage Palm), and general measures for exempt species proposed for retention. It is considered that, subject to recommended tree protection measures and conditions of consent, the development meets the outcomes of Natural Environment Control B4.6 and Landscaping Control C1.1."*

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

##### **Development engineer comments:**

*"The application requires the reinstatement of 2 old driveway crossings which include the provision of a table drain and stormwater works in the road reserve. The following condition under the heading of 'Matters to be satisfied prior to the issue of the Construction Certificate' is to be included.*

*C: Application for Works to be Approved within Councils Roadway*

*An application for works to be approved within Councils roadway under Sections 138 & 139 of the Roads Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the driveway crossing, layback, and reinstatement of the two existing driveway crossings and existing drainage channel in Bilgola Avenue which are to be generally in accordance with the design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1.*

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

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

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

##### **Development engineer comments:**

*"The proposal will require excavation and road construction works which will require the submission of a traffic management plan with the construction certificate application."*

#### **C1.3 View Sharing**

**Note:** The proposed development would not affect views from public areas (i.e. surrounding public reserves and roadways), therefore views from these areas have not been considered further as part of this assessment.

As indicated within Part 2 of this report, both the subject site and surrounding area reside on a slope that falls in an west-to-east direction towards Bilgola Beach and the ocean. Following submissions that objected to the proposal, site visits were undertaken at both the subject site and surrounding sites from where submissions were received that related to view loss; an inspection was not undertaken at 19 Bilgola, as view-loss issues were not raised by this objector and it is extremely unlikely that the proposed development would affect the views from this site. It was considered likely that due to the topography of the area and the form of surrounding development, some dwellings on surrounding sites would have views of the beach, ocean and associated foreshore areas that may be affected by the proposed development.

Part C1.3 (View Sharing) of Pittwater 21 DCP requires that:

- *All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties;*
- *The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing;*
- *Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials; and*
- *Views are not to be obtained at the expense of native vegetation.*

The proposed tree removal is required to facilitate the construction of the dwelling and would not be the result of the applicant attempting to obtain more significant views; the proposal would satisfy the fourth view-sharing requirement of the DCP as outlined above.



Further to the DCP controls above, advisory notes stipulate that:

- Where potential for view loss to adjoining developments exists, an assessment of the view loss (supported by a clearly documented photographic analysis) shall be provided;
- Height poles should be erected to demonstrate the impact of the finished development on view lines with a statement to be provided by a Registered Surveyor certifying the height and location of the poles in relation to the proposed structures.



**Figure 4:** An extract from the submitted plans showing the locations of the erected height poles.

As reflected by submission, height poles were not initially erected by the applicant; it was arranged for height poles to be erected during the inspections of adjoining sites. While 3D modelling and photomontages of the proposed development were provided, this assessment utilises a photographic analysis undertaken by the assessing officer while the height poles were in place.

In determining the extent of potential view loss to adjoining and nearby properties, the four planning principles outlined within the NSW Land and Environment Court *Tenacity Consulting v Warringah Council* [2004] NSW LEC 140 have been considered.

#### 1. Nature of the view to be affected

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic view (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:

Due to residential development on the eastern side of Allen Avenue, significant views from 6 Bilgola Avenue and 2 Allen Avenue would be obtained between such development, and would broadly incorporate Bilgola Beach and the ocean and are detailed as follows:

- **6 Bilgola Avenue:** The most significant views from this site would be across the subject site towards the southeast, and currently incorporates views of Bilgola Beach, the ocean and the ocean swimming pool at the southern end of the beach. Such views are partially filtered by surrounding residential development and vegetation both on the subject site and surrounding sites. There are also filtered views of the ocean both above and between dwellings on the eastern side of Allen Avenue.
- **2 Allen Avenue:** The most significant views from this site would be across the subject site towards the southeast, and currently incorporates views of Bilgola Beach, the ocean, the ocean swimming pool, the headland at the southern end of the beach and associated foreshore areas. Due to the lower elevation of this site, views of the beach are more heavily filtered by surrounding residential development and vegetation both on the subject site and surrounding sites; the orientation of the site does however permit more significant views of the headland, ocean swimming pool and associated foreshore areas than from 6 Bilgola Avenue. Views of the ocean are generally not obtainable between dwellings on the eastern side of Allen Avenue.



**Figure 5:** A panoramic photo of the view from the rear of the dwelling at 6 Bilgola Avenue.



**Figure 6:** A panoramic photo of the view from the front of the dwelling at 2 Allen Avenue.

## **2. The part(s) of the property from which the views are 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:

#### **6 Bilgola Avenue:**

Views that would be affected would be obtained from a large number of areas on the southeast side of this dwelling number of areas within this property. Such areas include internal living areas on both floors and a large terrace area on the southeast side of the dwelling. Most views on the first floor are obtainable from both sitting and standing positions, though views further back from within the dwelling are mostly obtained from standing positions; views on the ground floor are mostly obtained from standing positions. As indicated above and as demonstrated by figure 5, some views from these areas are partially filtered by existing development and vegetation.

#### **2 Allen Avenue:**

Views that would be affected would be obtained from a number of areas within this property, which include a large first floor deck at the front of the dwelling and living areas throughout the first floor. The majority of views from internal first floor areas are obtained towards the front of this level through the front windows and across the aforementioned deck, while some views are obtainable from southern facing windows. As indicated above and as demonstrated by figure 6, notable views from these areas are partially filtered by existing development and vegetation.





**Figure 7:** A panoramic photo of the subject site and surrounding sites looking west from the Allen Avenue frontage. For reference, the southeast side of the dwelling at 6 Bilgola Avenue is outlined by the green box and the front and southern side of the dwelling at 2 Allen Avenue is outlined by the yellow. The subject site is in the foreground behind the large brick fence.



**Figure 8:** A photo from the front of 2 Allen Avenue, showing another perspective of the deck and adjoining living areas on the first floor.



**Figure 9:** A photo from the southeast corner of the subject site looking northwest towards 6 Bilgola Avenue (outlined by the green box), showing another perspective of southeast-facing windows on that site.

### 3. The extent of the 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:

**Note:** All height poles indicated within the images below are based off an original parapet height of RL12.7; revisions to the plans since the height poles were erected have reduced the height of the parapets by 200mm to RL12.5.

**Note:** For referencing purposes, the approximate locations of photos taken on adjoining sites are denoted on the adjacent image by the red dots. The subject site is identified by the yellow star.



## 6 Bilgola Avenue:

As indicated above, views are capable of being obtained from a number of areas on the southeast side of this dwelling. As this site is immediately west of the subject site, the most significant views from these areas are oriented towards the southeast across the subject site towards Bilgola Beach. As indicated by figures 10 to 12, there are two parts of the beach that are visible from this site. The southern-most of these two areas would be largely unaffected from most view points, with impacts largely limited to a small amount sand that is visible from some first-floor areas though the property at 19 Bilgola Avenue.

The northern most of the two major "view corridors" would be the most affected, as the front of the proposed southern pavilion would almost entirely block views of the sand and the interface between the sand and the ocean; views of the water would however be retained. As the first floor areas on this site would overlook the proposed dwelling, the front (i.e. southeast) most areas of the southern pavilion would have the greatest level of impact on views of the beach. The level of impact associated with the development would become less prominent however when the first floor viewline is progressively moved towards the south (i.e. front) of this site; remaining views of the land/water interface would however continue to be heavily filtered by existing vegetation on surrounding sites.

The ground floor area would be only slightly higher than the first floor level of the proposed dwelling. Views of the land/water interface on the ground floor are already mostly obscured by existing structures and vegetation on the subject site, though the proposed development would remove the views of oceans to the east of windows on this level.

It should be noted that a number of trees are proposed to be removed from the southern part of the subject site; the removal of these would likely result in slight improvements of views from this site towards the ocean.

With regard to above, both the first and second planning principles (i.e. those relating to the value of certain views and views across side boundaries) and the views that would be maintained from this site, the extent of impact would likely be categorised as moderate.





**Figure 10:** A photo taken from the east-most part of the deck on the southeast side of the dwelling; the photo was taken from a standing position. From this perspective there is an overlap of two of the poles; the locations of the two front-most height poles are highlighted by the red lines, while the rearmost pole is indicated by the green line; refer to figure 4 which indicates the locations of the respective poles.



**Figure 11:** A photo taken from the living room. For consistency with other images, the colours of the height poles are the same as those indicated within figure 10.



**Figure 12:** A photo taken from the top of a stairway at the front of the dwelling. Note: The room that is visible through the window on the left of the photo is the location from which figure 11 was taken.



**Figure 13:** A photo taken from a living room on the ground floor on the southeast side of the dwelling. For consistency with other images, the colours of the height poles are the same as those indicated within figure 10 and 11.

## **2 Allen Avenue:**

Due to the floor levels of this site and the current location of boundary fences, it is highly unlikely that views from the ground floor would be adversely affected, therefore this assessment relates to views obtained from the first floor. As indicated above, views are capable of being obtained from a number of areas at the front and on the southern side of this dwelling. As this site is immediately north of the subject site, the most significant views are



oriented towards the southeast across the subject site; the proposed dwelling (specifically the front of the northern pavilion) would account for the greatest loss of views from these areas.

As indicated by figures 14 to 17, the level of impact from the deck would become less pronounced as the viewpoint is progressively moved towards the north and/or east of this area. Within the southwest corner of the deck, the maximum level of impact would remove glimpses of the headland and foreshore areas, though water views would be largely maintained. When viewed from the northwest corner and the adjoining bedroom, the proposed development would have very little, if any impact on the headland and no impact on other areas.

As indicated by figures 18 to 20, the level of impact from within the dwelling is less pronounced when viewed from the southern part of the main living area, as a large proportion of the most significant views are already internally blocked by a variable height wall on the southern side of the deck. The impact of the proposed development from within the dwelling becomes more pronounced however as the viewpoint is moved towards the north of the living areas and the impacts of the deck's southern wall are reduced. The most significant impacts of the development when viewed from within the dwelling would block views of the ocean swimming pool and areas, in addition to glimpses of the top of the headland.

As indicated by figure 21, the level of impact from within southern-facing rooms would not be significant, as glimpses of the ocean can only be obtained when the viewpoint is directed to the far left of those windows; any views from these windows are mostly blocked by existing development on the subject site.

The assessment above addresses impacts associated with built development as proposed. It is noted that a submission from this property raised concern with the level of view impacts associated with new landscaping; with regard to this point, a condition is recommended that would require the height of vegetation to be maintained within certain parts of the site as follows:

- Vegetation long the northern boundary of the front setback is to be maintained at a maximum height of RL9.0 (i.e. at the height of the first floor Finished Floor Level); and
- Vegetation within planter boxes around the master bedroom balcony is to be maintained at a maximum height of 300mm above the height of the planters (i.e. equivalent to the height of the balcony's balustrades).

With regard to above, both the first and second planning principles (i.e. those relating to the value of certain views and views across side boundaries) and the views that would be maintained from this site, the extent of impact would likely be categorised as moderate.



**Figure 14:** A photo taken from the southwest corner of the front deck; the height pole denotes the location of the first floor building line. The photo was taken from a standing position.

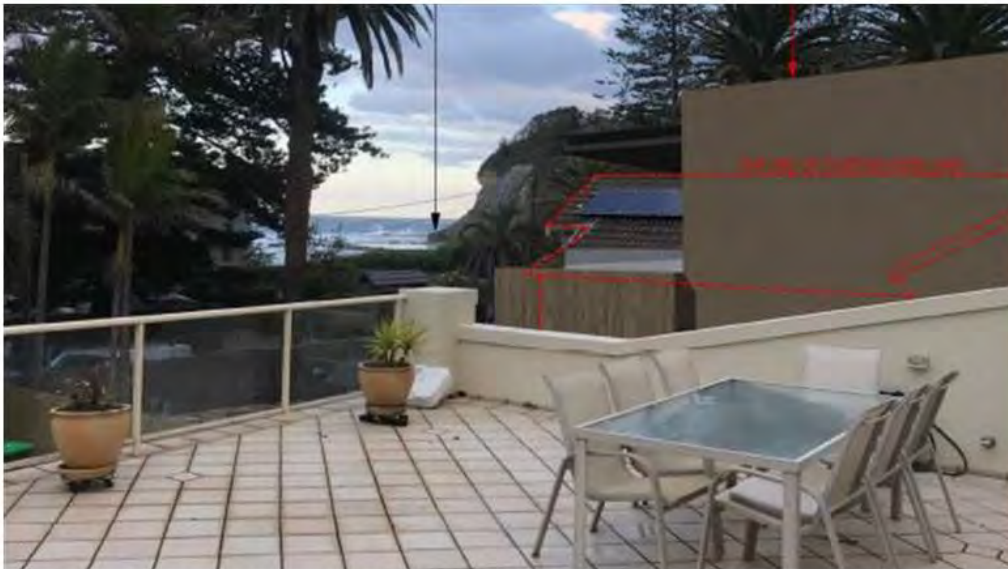


**Figure 15:** An extract of the applicant's photomontage using the assessing officer's photo in figure 14.





**Figure 16:** A photo taken from the northwest corner of the front deck; the height pole denotes the location of the first floor building line. The photo was taken from a standing position.



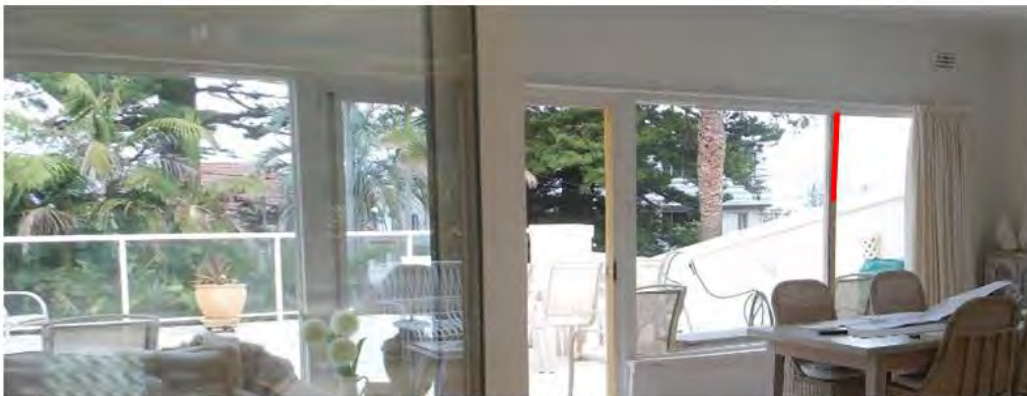
**Figure 17:** An extract of the applicant's photomontage using a photo provided by the applicant. Note: This photo was taken closer to the centre of the deck than the photo within figure 16.



**Figure 18:** A photo taken from an internal living area adjoining the deck; the photo was taken within the centre of the room and from a standing position. The height pole (indicated by the red line) denotes the location of the first floor building line.



**Figure 19:** A photo taken from an internal living area adjoining the deck; the photo was taken within the north of the room and from a standing position. The height pole (indicated by the red line) denotes the location of the first floor building line.



**Figure 20:** A photo taken from an internal living area behind where figure 19 was taken; the photo was taken within the north of the room and from a standing position. The height pole (indicated by the red line) denotes the location of the first floor building line.





**Figure 21:** A photo taken from the kitchen looking out of the south-facing window. The photo was taken within the north of the room and from a standing position. The height pole (indicated by the red line) denotes the location of the first floor building line.

#### **4. The 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:

Based on the above, a significant portion of the proposed development would not have significant and/or adverse impacts on views from surrounding sites. The parts of the proposed dwelling that would contribute most significantly to any impact on views would be the front of both pavilions; the upper sections of the southern pavilion would contribute most significantly to view loss impacts from 6 Bilgola Avenue, while the master bedroom balcony and front building line of the northern pavilion would contribute most significantly to view loss impacts from 2 Allen Avenue.

The proposed dwelling mostly complies with applicable development controls. While there is a proposed variation to the secondary front setback on the southern side of the site and a breach of the building envelope of the northern side of the site (refer to the discussions of DCP Part D controls below), both the size and locations of these noncompliances are unlikely to notably contribute to a loss of views from surrounding properties.

With regard to the impacts on 6 Bilgola Avenue, the proposed height of the dwelling is below the maximum 8m height limit. The height of the dwelling is also unable to be significantly reduced further by excavating into the site, as flooding hazards require all floor levels to conform with applicable flood planning levels.

With regard to the impacts on 2 Allen Avenue, the proposed primary setback would be greater than the minimum requirements. It is also noted that the front building line of the front floor of Allen Avenue is "stepped" back considerably further than the front building line of the ground floor; any requirement for the first floor of proposed dwelling to be set back to a similar distance (as is suggested by one of the submissions) would significantly constrain the applicant's ability to propose a two storey dwelling on the site without likely further noncompliances to applicable development controls and/or significant excavation into the



slope at the rear of the site, the latter of which would be inconsistent with the objectives of the E4 zone and applicable development standards.

Further, it is noted that significant views from adjoining sites are largely obtained by looking across the subject site from the side elevations of those adjoining sites. The second of the *Tenacity* planning principles recognises that *"the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries"*, and that *"(T)he expectation to retain side views and sitting views is often unrealistic"*.

While the proposed plans would affect the views from surrounding sites, with regard to:

- The constraints of the site (i.e. multiple frontages, the orientation of the site in relation to significant views, hazards, etc.);
- A relatively high degree of compliance with applicable development controls; and
- Recognition that the protection of side-facing views would be difficult to protect in the specific circumstances of this application,

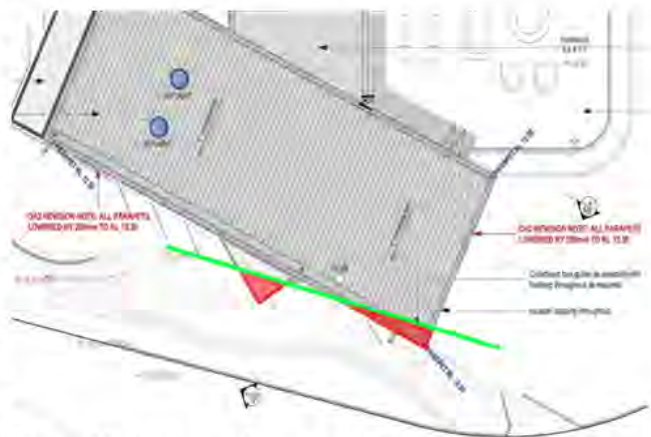
it is considered that the applicant has taken reasonable steps to minimise impacts on views. Further, it is considered unlikely that an alternative design would significantly reduce the level of impact that is currently proposed.

In summary, two submissions from adjoining sites expressed concerns regarding view loss. An assessment of potential view-sharing impacts from adjoining sites was undertaken in accordance with both the DCP and relevant Land and Environment Court Planning Principles. This assessment indicated that the proposed development would likely have a moderate level of impact on views from both adjoining sites, however in accordance with the *Tenacity* principles the levels of impact are considered to be reasonable.

#### D3.6 Front building line

As indicated within Part 2 of this report, the subject site has two road frontages (Allen Avenue to the east and Bilgola Avenue to the south). The subject application proposes to change the orientation of the front elevation from the south to the east.

The 8.1m front setback of the proposed development would satisfy front setback requirements, however plans propose two breaches of the 3.25m secondary setback. Most of the southern elevation would comply with the setback, and the breaches affect the far southern corner of the dwelling and part of a "bay window" along the southeast elevation. The size of the noncompliance varies due to the angle of the southern pavilion, however at its smallest point, the dwelling would be set back 2.6m from the secondary frontage, which is a variation of 650mm, or 18.6% to the 3.25m setback.



**Figure 22:** An extract from the roof plans showing the location of the 3.25m setback to the southern boundary (indicated by the green line) and the two proposed setback breaches along that elevation.

The applicant acknowledges the variation, associating it with a larger north side setback and to retain views from surrounding sites; the applicant's planner has also indicated that the scale of the building and the high level of articulation would also satisfy the outcomes of the control.

It is agreed that despite the noncomplying secondary setback, the proposed development would satisfy applicable outcomes of the control. The bulk and scale of the secondary dwelling would be minimised, and the highest element of the secondary frontage would



contain a high degree of articulation. Landscaping treatments and vegetation are also proposed that would assist in filtering and screening the proposed development from public areas. As indicated within the assessment of Part D3.1 of the DCP (see above), the proposal would also be consistent with the existing and desired character of the public area.

In summary, the plans propose two small breaches of the setback that would address the secondary street frontage. The applicable outcomes of the control would be satisfied, and the noncompliance is considered to be supportable on merit.

#### Part D10.11 Building Envelope

As acknowledged by the applicant's Statement of Environmental Effects, the plans propose breaches of the building envelope of the northern side of the dwelling. The first breach would affect approximately 600mm of the top-most section of the northern elevation. The second breach affects the top 1000mm of the master bedroom ensuite which would be projected from the first floor (refer to figure 23 below).



**Figure 23:** An extract of the proposed northern elevation of the dwelling; the breaches of the building envelope are indicated by the red boxes.

The breach overall is relatively minor, with the largest part of the breach being situated 7m behind the first floor building line. Despite the noncompliance, the outcomes of the control would be satisfied as follows:

- The design of the dwelling is generally consistent with applicable development controls and the character of the area. The larger breach would not be visible from the streetscape as it would be recessed well behind the building line. Proposed landscaping treatments (including the planting of trees) within the northeast corner of the site would assist in screening the development and reducing the prominence of any noncompliance that is visible from the streetscape.
- The proposed breaches would not be a significant noncompliance. Due to the height and articulated design of the dwelling, bulk and scale would be generally minimised.
- As the breaches of the envelope would only affect the top 600mm of the dwelling at the front building line, the noncompliance would have no effect on views or vistas from surrounding sites and/or public areas (refer to the assessment of DCP Part C1.3 above).
- As the noncompliance would occur on the proposed dwelling's northern elevation, there would be no solar access impacts associated with the envelope breach. Windows on the northern elevation would be screened (refer to figure 23 above) to mitigate potential adverse privacy impacts.
- The envelope breaches would not affect existing vegetation.

In summary, the plans propose two breaches of the building envelope along upper parts of its northern elevation. Despite the variation, the outcomes of the control would be satisfied. The proposed noncompliance is therefore considered to be satisfactory and supportable on merit.

#### Part D3.13 Landscaped Area – Environmentally Sensitive Area

As indicated above, including exemptions permitted by Pittwater 21 DCP, the plans propose a landscaped area of approximately 569m<sup>2</sup>, or 57.4% of the site area. The amended Statement of Environmental Effects indicates that the plans propose a landscaped area of

586.2m<sup>2</sup> (or 59.2% of the site area); the discrepancy likely arises as a result of the applicant's inclusion of landscaped areas that would be covered by overhanging structures which is contrary to the LEP's definition of landscaped areas. The plans therefore propose a variation of approximately 4.3%.

With regard to the relatively small size of the noncompliance, the proposed development would be capable of satisfying applicable outcomes of the development control as follows:

- Notwithstanding the noncompliance, the areas and dimensions of the proposed landscaped areas would be of sufficient size (particularly within the front and rear setbacks) to accommodate a range of vegetation and landscaped treatments, including large vegetation/trees that would assist in filtering the dwelling from public areas and reducing impacts associated with built form.
- The proposed landscaping layouts would be consistent with the desired character of the area, with no issues raised by Council's Natural Environment officers.
- Amenity and solar access to surrounding sites would be maintained.
- While "landscaped area" (as defined by the LEP) would account for approximately 569m<sup>2</sup> of the site area, an approximate 30m<sup>2</sup> of the site would consist of pervious/semi-pervious area (e.g. stepping stone pathways, planter boxes, etc.). In addition to the proposed landscaped area, the total pervious area of the site would be approximately 599m<sup>2</sup>, or 60.5% of the total site area. The pervious area on the site would therefore be in accordance with outcomes which seek to minimise impervious area and subsequent stormwater runoff.

Aside from the landscaped area, the submissions do not clearly indicate what concerns would be associated with a variation to the landscaped area controls; as submissions refer to flooding it is assumed that the concerns relate to the amount of impervious area on the site. As indicated above, the proposed development would provide a pervious area of approximately 60.5% which satisfies the applicable outcomes of the control. Further, no concerns were raised by Council's Development and Catchment Engineers with regard to drainage and runoff.

In summary, the plans propose a small noncompliance to the 60% landscaped area controls. Despite the variation, the outcomes of the control and the concerns within a submission would be satisfied. The proposed noncompliance is therefore considered to be satisfactory and supportable on merit.

## 9.0 CONCLUSION

The subject development application seeks consent for the demolition of existing structure and the construction of a new two-storey dwelling house. Three submissions were received which objected to the proposed development on a range of issues, and are both outlined and addressed within Part 5 of this report.

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed within Part 7 of this report.

The proposal is mostly consistent with the relevant statutory and policy controls and outcomes (refer to relevant assessments within Part 7 of this report). Assuming that recommended conditions (attached to this report) are satisfied, the impacts associated with the proposed dwelling are considered to be reasonable and acceptable. It is therefore recommended that the application be approved.

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## RECOMMENDATION OF PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application No. N0380/17 for the demolition of existing dwelling and construction of a new two storey dwelling with associated



landscaping works, driveway and front fence at 2B Allen Avenue, Bilgola Beach (Lot B DP 410216), subject to the attached conditions of consent.

#### **Report prepared by**

Tyson Ek-Moller  
**PRINCIPAL PLANNER**  
**DEVELOPMENT ASSESSMENT**

#### **Conditions of Approval**

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

**Note:** Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

#### **A. Prescribed Conditions:**

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
  - A. the name, address and telephone number of the Principal Certifying Authority for the work, and
  - B. the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - C. that unauthorised entry to the work site is prohibited.The sign must 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.
4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - A. in the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor, and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
  - B. in the case of work to be done by an owner-builder:
    - i. The name of the owner-builder, and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
  - C. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying

Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
6. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
7. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

**B. Matters to be incorporated into the development and maintained over the life of the development:**

1. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.
2. No part of the site is to be used as a "secondary dwelling" and/or a "dual occupancy" (as defined by the dictionary within Pittwater Local Environment Plan 2014) without consent.
3. Any outdoor and/or security lighting shall be located, designed and shielded in a manner that does not cause disturbance to surrounding premises.
4. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
5. Vegetation outlined in this condition shall be maintained as follows:
  - Vegetation along the northern boundary within the front setback (i.e. the area between the front building line and the Allen Avenue frontage) shall be maintained so that its height does not exceed RL9.0 (i.e. greater than the finished floor level of the first floor).
  - Vegetation within planters around the master bedroom balcony shall be maintained so that its height does not exceed 300mm or the height of the balcony balustrades, whichever is lower.
6. To satisfy the off-street parking requirements for development, a minimum of two (2) vehicle parking spaces shall be provided. These spaces are to be provided and retained over the life of the development.
7. The internal driveway finish is:
  - A. To be a stable surface for all weather conditions
  - B. To be constructed of materials that blend with the environment.
8. All sanitary drainage must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.
9. All external glazing is to have a maximum reflectivity index of 25%.
10. New electrical connections are to be carried out using underground cabling.
11. Any retaining wall that is visible from a public place shall be constructed of sandstone and/or sandstone-like materials.



12. If/where not specified by the approved External Finishes Schedule, any external materials and colours shall be in accordance with Part D10.4 (Building Colours and Materials) of Pittwater 21 Development Control Plan.
13. Except for solid boundary walls that are indicated on the approved plans listed above, any boundary fence that adjoin a public area (i.e. the adjoining public road reserve) are to be of an open appearance that are constructed using dark and/or earthy coloured materials and finishes. No boundary fence is to exceed a height of 1.8m metres.
14. Any new fencing (with the exception of any swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide X 100mm high at ground level spaced at 6 metre intervals.
15. No gate is to open out onto the adjoining public road reserve.
16. It must be demonstrated that goods, materials and other products, that may be potentially hazardous and/or pollute floodwaters, including pool chemicals, will be stored above the Flood Planning Level of 5.9m AHD within the area mapped as medium flood risk precinct.
17. All new structural elements, new external finishes and new internal finishes located below the Flood Planning Level of 5.9m AHD must be constructed using flood-compatible techniques and materials. Refer to Council's Flood Compatible Building Guidelines for more information at [http://www.pittwater.nsw.gov.au/\\_data/assets/pdf\\_file/0003/131466/Flood-Compatible\\_Building\\_Guidelines\\_-\\_FINAL\\_-\\_25\\_July\\_2013.pdf](http://www.pittwater.nsw.gov.au/_data/assets/pdf_file/0003/131466/Flood-Compatible_Building_Guidelines_-_FINAL_-_25_July_2013.pdf).
18. All new electrical services, fixtures and fittings must be located above the Flood Planning Level of 5.9m AHD. No electrical equipment or electrical motors are to be located below Flood Planning Level.
19. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
20. Asset Protection Zone's shall be provided and maintained on 2B Allen Avenue, Bilgola Beach (Lot B DP 410216). The Asset Protection Zone should comply with the approved Bushfire Management Plan prepared by Building Code & Bushfire Hazard Solutions Pty Ltd, Ref. 170774 dated 31 July 2017.
21. No environmental weeds are to be planted on the site. Refer to the Sydney Weeds Committees website for environmental weed lists.
22. As part of the integrated stormwater management plan, suitably positioned stormwater quality improvement devices shall be installed and operated in accordance with Manufacturer's Specifications and associated operational guidelines.
23. As part of an integrated on-site stormwater management system, stormwater overflow from the rainwater tank is to discharge by direct connection into the adjacent street pit in accordance with the drainage plans by Northern Beaches Consulting Engineers.
24. A planting schedule in support of the submitted Landscape Plans (prepared by The GardenMakers, dated 14 August 2017 and 20 December 2017) shall be prepared in accordance with the following control of Part C1.1 (Landscaping) of Pittwater 21 Development Control Plan.

All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species.

Specifically, new palms planted in the north-eastern corner of the lot to replace Tree/s 8 shall be the locally native Cabbage Palm (*Livistona australis*). Landscaping is to be implemented in accordance with the approved Landscape Plan (prepared by The GardenMakers, dated 14 August 2017 and 20 December 2017) and the associated planting schedule. New landscaping is to be approved as completed by the accredited Certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. Landscaping is to then be maintained for the life of the development.

25. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
26. A minimum of 200mm clearance is to always be maintained to the tree trunk from proposed bearers, joists and decking.
27. Any fireplace within the property shall consist of a gas-burning system.
28. Any external plant/air-conditioning system must not exceed a noise level of 5dBA above the background noise level when measured at the boundaries of the property.
29. Noise from the operation of any plant or equipment at the premises shall comply with the noise provisions of the Protection of the Environment Operations Act, 1997.
30. No odour nuisance to the public or any adjoining premises, shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
31. No emissions causing air pollution shall be created by the operation of any plant or equipment or any procedure carried out at the premise.
32. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
33. No water pollution shall result from the operation of any plant or equipment or activity carried out.

**C. Matters to be satisfied prior to the issue of the Construction Certificate:**

**Note:** All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
  - A. after excavation for, and prior to the placement of, any footings, and
  - B. prior to pouring any in-situ reinforced concrete building element, and
  - C. prior to covering of the framework for any floor, wall, roof or other building element, and
  - D. prior to covering waterproofing in any wet areas, and

- E. prior to covering any stormwater drainage connections, and
- F. after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

- 4. Construction works approved by this consent must not commence until:
  - A. Construction Certificate has been issued by a Principal Certifying Authority
  - B. a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
  - C. at least 2 days notice, in writing has been given to Council of the intention to commence work.
- 5. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
- 6. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate plans and specifications are fulfilled.
- 7. Applicants will be required to obtain prior to the issue of a Construction Certificate, a Section 139 Consent for Works on a Public Road Reserve issued by the Council under the provisions of Section 138 of the *Roads Act 1993* for the design and construction of any works located on the road reserve including Access Driveways.
- 8. An application for driveway levels and formwork inspections shall be made with Council subject to the payment of the fee applicable which includes all Council inspections relating to the crossing construction.

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

- 9. The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc.). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.
- 10. Dwellings in bushfire prone areas are to be designed and constructed in accordance with AS 3959 Construction of Buildings in Bush Fire Prone Areas. Construction specifications to achieve this are to be provided to Principal Certifying Authority with the Construction Certificate application.
- 11. Details in the Construction Certificate are to reflect the recommendations/requirements of the Bushfire Management Plan prepared by Building Code & Bushfire Hazard Solutions Pty Ltd, Ref. 170774 dated 31 July 2017.
- 12. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
- 13. Detailed landscape working drawings and specification, which comply in all respects with the conditions of development consent, are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to

be certified by a qualified landscape architect, landscape designer/environmental designer or horticulturist, confirming that the plans/details for the works to be carried out will achieve the relevant conditions of the development consent.

In particular, the landscape working drawing is to provide full details of the following:

- The usage of the dominant native tree species growing in the area or locally indigenous species;
- All existing trees and vegetation to be retained, removed and/or proposed, including canopy spread, trunk location and condition. This should incorporate the findings and recommendation's of the associated arborist report if applicable;
- A planting schedule including stratum, species/common names, species quantities, pot sizes (particularly for trees) and staking details;
- A schedule of materials (including such elements as turfing, edging, walling paving and fencing);
- Plans for weed control prior to commencement of landscaping works where applicable.
- The proposed finished treatment of garden areas, including soil depth and mulching details;
- The location of underground/overhead services;
- At least two (2) locally indigenous canopy trees within the front yard and one (1) locally indigenous canopy tree in the rear yard of the residential allotment, which at maturity will achieve a canopy height greater than 8.5 metres to visually reduce the height, bulk and scale of the development;
- Understorey planting of locally indigenous species which after three years will in conjunction with the canopy planting, screen 50% of the built form when viewed from the street.

14. An application for works to be approved within Council's roadway under Sections 138 & 139 of the Roads Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the driveway crossing, layback, and reinstatement of the two existing driveway crossings and existing drainage channel in Bilgola Avenue which are to be generally in accordance with the design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1.

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

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

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

**Note:** It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

**Note:** This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.



Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- A. Protection of site workers and the general public.
- B. Erection of hoardings where appropriate.
- C. Asbestos handling and disposal where applicable.
- D. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

- 3. A stamped copy of the approved plans is to be kept on the site at all times, during construction
- 4. The following facilities must be provided on the site:
  - A. toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - B. a garbage receptacle for food scrapes and papers, with a tight fitting lid.

Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

- 5. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
- 6. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
- 7. Waste materials generated through any demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

- 8. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 9. Where site fill material is necessary, any fill materials must:
  - A. Be Virgin Excavated Natural Material (VENM) only, as approved under the Department of Climate Change "General Resource Recovery Exemption ;and
  - B. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
- 10. Protection fencing measures (including sedimentation fences) are to be installed in accordance with all approved plans. Protection measures are to be maintained for the duration of the works. Protection fencing that is no longer required is to be removed once all works are completed.
- 11. A layback 3.5 metres wide (excluding the wings) is to be constructed in accordance with Northern Beaches Council Drawing No A4-2276 and specifications.

12. The provision of one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.
13. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
14. To minimise soil erosion and sediment movement during construction, the following measures shall be implemented.
  - Removal and/or disturbance of vegetation shall be confined to the basal area of the approved building, the site(s) of access ways, land extending a maximum of two metres beyond the outermost projection of the approved building and within a total of two metres of service trenches (that is the sum of the two sides to be a maximum of two metres).
  - Topsoil stripped from the construction site shall be stockpiled and protected from erosion until re-use during landscaping. Soil is to be retained within the property.
  - Stockpiles of construction and landscaping materials, and of site debris, shall be located clear of drainage lines and in such a position that they are protected from erosion and do not encroach upon any footpath, nature strip or roadway.
  - Final site spoil shall be disposed of to conform to the specifications and standards quoted and to any conditions of approval of those measures.
  - Trenches shall be backfilled, capped with topsoil and compacted to a level at least 75 mm above adjoining ground level.
  - Stormwater from roof areas shall be linked to a council approved stormwater disposal system immediately before placement of any roofing materials.
  - Vehicular access shall be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on adjoining roadways the same shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner that will prevent its mobilisation.
  - Vehicular access paths shall be stabilised.
  - All disturbed areas shall be progressively stabilised and/or revegetated so that no areas remain exposed to potential erosion damage for more than 14 days or other such period as may be approved after earthworks cease. All driveways and parking areas shall be stabilised with compacted sub-grade as soon as possible after their formation.
15. The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
16. No works are to be carried out in Council's Road Reserve without the written approval of the Council.

**Note:** Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.
17. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
18. No skip bins or materials are to be stored on Council's Road Reserve.

19. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
  - The builder's name, builder's telephone contact number both during work hours and after hours.
  - That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
  - That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
  - That no skip bins or materials are to be stored on Council's Road Reserve.
  - That the contact number for Northern Beaches Council for permits is 9970 1111.
20. All construction in the public road reserve must be undertaken by a Council authorised contractor.
21. A construction traffic management plan (CTMP) prepared by a suitably qualified traffic consultant is required to be submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
  - Quantity of material to be transported
  - Proposed truck movements per day
  - Proposed hours of operation
  - Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the former Pittwater Council Local Government Area
  - Location of on/off site parking for construction workers during the construction period.
22. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Rain Tree Consulting (8 August 2017) are required to be complied with before and throughout the development period, particularly with regard to the following:
  - Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
  - Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
  - All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
  - Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
  - Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.
23. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report (Raintree Consulting, 8 August 2017) are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate.



24. Demolition works must be carried out in compliance with WorkCovers *Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 The Demolition of Structures. The site must be provided with a sign containing the words *DANGER ASBESTOS REMOVAL IN PROGRESS* measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility. All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

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

**E. Matters to be satisfied prior to the issue of Occupation Certificate:**

**Note:** Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

**Note:** It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. The following documents must be submitted:
  - A. A certificate from a suitably Qualified Engineer, certifying:
    - i. the stormwater drainage system
    - ii. the car parking arrangement and area
    - iii. any related footpath crossing works
    - iv. the proposed driveway and layback, and/or
    - v. other civil works, have been constructed in accordance with the approved plans and conditions of consent.
  - B. A "Works-as-executed" plan of the engineering and/or drainage works.

Where Council is not the Principal Certifying Authority, two copies of the above documents are to be provided to Council prior to issue of any Occupation Certificate.

3. The approved dwelling is to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
4. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.
5. Prior to the issue of an Occupation Certificate, a suitably qualified professional is to certify that the as-built development is consistent with the recommendations/requirements of the Bushfire Management Plan prepared by Building Code & Bushfire Hazard Solutions Pty Ltd, Ref. 170774 dated 31 July 2017.



6. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

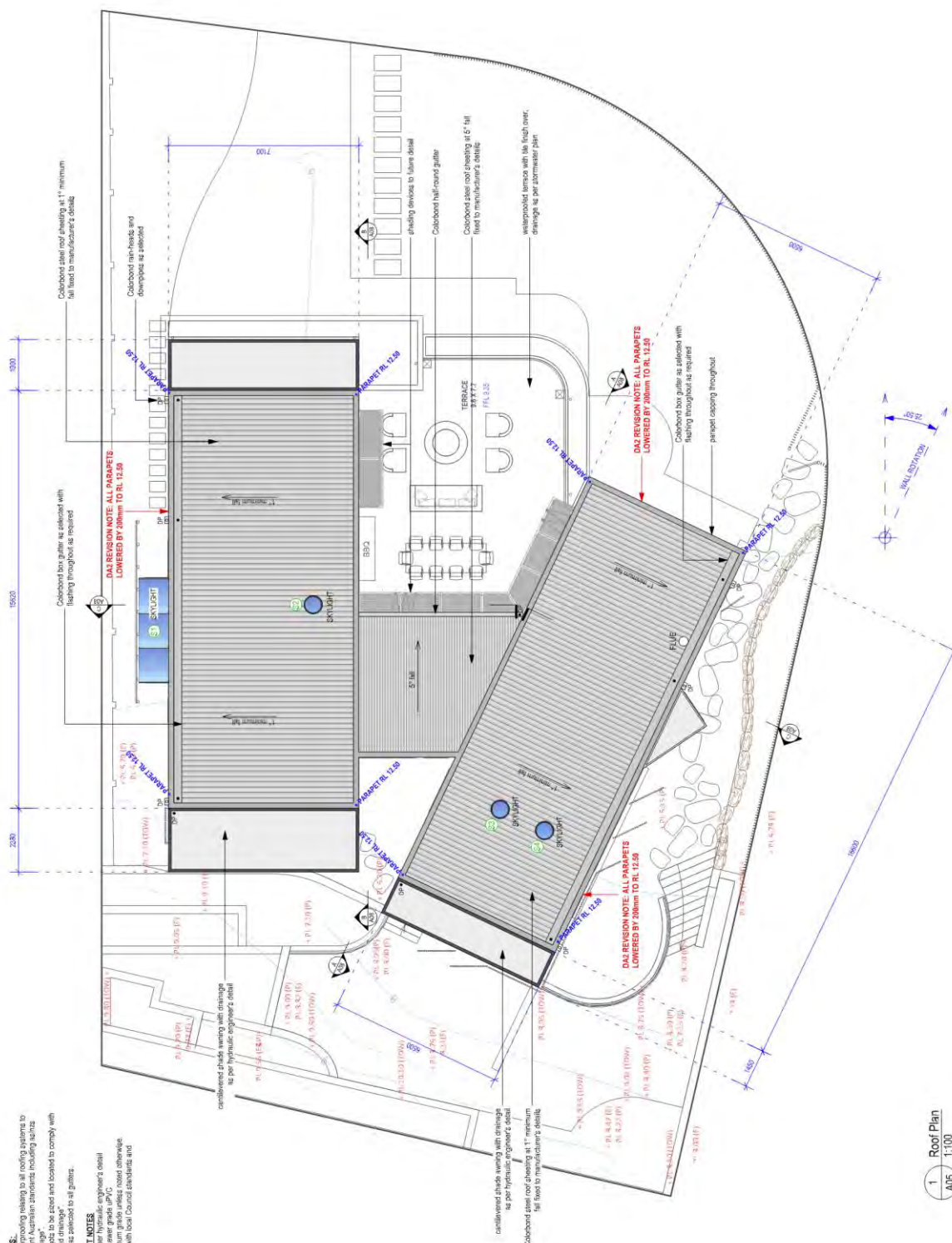
A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

7. The applicant must obtain written confirmation from Council that all works in the road reserve have been completed in accordance with the conditions of the Roadworks Approval.
8. A certificate submitted by a Chartered Professional Engineer confirming to the satisfaction of the Principal Certifying Authority that the works in the public road reserve comply with Council requirements is to be provided with the Occupation Certificate application.
9. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.
10. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing and guards as specified in the approved Arborist Report (Rain Tree Consulting, 8 August 2017) are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate. Documented evidence of a qualified arborist having supervised the works in proximity to trees being retained and ensuring that all tree protection measures are adopted as specified in the approved arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.
11. The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

**G. Advice:**

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or [www.1100.com.au](http://www.1100.com.au).
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.

4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
9. Gravel used onsite must be inert material such as quartz or sandstone. No blue metal or granite or other igneous material should be used as these release nutrients that can pollute waterways and contribute to weed plumes.
10. Council will not be involved in approving or refusing removal/damage to trees on neighbouring properties, and any future decisions made in relation to them is a civil matter between the neighbouring parties.



GENERAL ROOF PLAN NOTES:

- GENERAL ROOF PLAN NOTES:**
- All gutters, flashing and waterproofing relating to all roofing systems to comply with the BCA and relevant Australian standards including as/nzs 5500: 2000 "plumbing and drainage".
  - All downpipes and overflow spouts to be sized and located to comply with as/nzs 3500: 2000 "plumbing and drainage".
  - Provide proprietary leaf guard as selected to all gutters.

## STORMWATER MANAGEMENT NOTES

- STORMWATER MANAGEMENT NOTES**  
 All new stormwater details as per hydraulic engineer's detail  
 All pipes to be 100mm -diam, sewer grade uPVC  
 All pipes to be laid at 1% minimum grade unless noted otherwise.  
 All works to be in accordance with local Council standards and  
 specification.  
 All levels shown to AH

CADENCE & CO DESIGN



REVISÉ DA DRAWINGS AS NOTED RED - 8/1/18



REVISION	DATE

REVISION NOTE  
All parapets lowered by 200mm to RL 12.50

Mr G. & Mrs J. CONDELL

PROJECT: B Allen Avenue, Bilgola Beach  
Leaving LOT B in D.P. 410216

Roof Plan

PROJECT NO. CON 0916

DRAWN:	SHEET NO
DV	<b>A05</b>

1:100	REVISION:
	3/1/18

Chairman & CEO: NEIL K. COO, CHIEF FIN. OFFICER

being 20' 0" x 10' 0" x 10' 0"	9/1/18
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GENERAL NOTE: ALL REVISIONS ARE FURNISHED LEVELS. BUILDER TO PROVIDE SET DOWN & ALLOWANCES AS REQUIRED. ALL OPENING DIMENSIONS ARE NOMINAL. BUILDER TO CHECK SIZE ON SITE BEFORE ORDERING WINDOW AND DOOR UNITS.





 <b>CADENCE &amp; CO DESIGN</b> <small>INC. LTD.</small> 287 Main Unit RL Terry Hill, NSW, 2044 E: info@cadenceandco.com.au P: 6163 714 752 <small>ABN: 12 663 714 752</small> <small>REGISTERED OFFICE &amp; CO. DESIGN P/L 11/2</small>	REVISED DA DRAWINGS AS NOTED RED - 8/1/18		REVISION DATE <b>A</b> 8/1/18		REVISION NOTE All drawings oversized by 200mm to RL 12.50 Northern Driveway box adjusted from Major Road terrace	CLIENT <b>Mr G. &amp; Mrs J. CONDELL</b>	DRAWINGS <b>North &amp; East Elevations</b>	DRAWN: <b>DV</b>	SHEET NO <b>A06</b>
			PROJECT NO <b>CON 0916</b>	SCALE TYPE <b>DA2</b>	SCALE DATE <b>8/1/18</b>	PROJECT NO <b>CON 0916</b>	SCALE TYPE <b>DA2</b>	SCALE DATE <b>8/1/18</b>	SHEET NO <b>A</b>





**GENERAL NOTES:**  
1. ELEVATION LEVELS NOT SHOWN DUE TO UNVARYING HEIGHTS. REFER OVERFLOW FLOW FLOOD PROTECTION PREPARED BY NB CONSULTING, JOB NO. 161745  
2. SOIL WATER REQUIREMENTS AND SPECIFICATION PREPARED BY NB CONSULTING ENGINEERS.  
3. THE HIGHEST BUFSHIRE ATTACK LEVEL TO THE PROPOSED DWELLING WAS DETERMINED FROM THE HIGHEST BUFSHIRE ATTACK LEVEL TO THE PROPOSED DWELLING WAS REQUIRED TO COMPLY WITH SECTION 3 AND BAL 1.2.2 UNDER P 5 OF AS 3650 - 2009 AND AS 2 UNDER P 60 OF GEOTECHNICAL REQUIREMENTS IN ACCORDANCE WITH THE SPECIFICATION PREPARED BY WHITE GEOTECHNICAL GROUP.  
4. TREE PROTECTION MEASURES IN ACCORDANCE WITH CONSULTING SERVICE TRENCH CONNECTED TO SITE POSITIONS AS REQUIRED.

<div>CADENCE &amp; CO DESIGN</div> <div>INC. LTD.</div> <div>2875 Mainville Rd.</div> <div>Brossy Hill, NSW 2084</div> <div>Australia</div> <div>E: <a href="mailto:info@cadenceandco.com.au">info@cadenceandco.com.au</a></div> <div>A/NZ: 12 163 714 752</div> <div>REGISTERED ARCHITECT &amp; CIVIL DESIGNER P11112</div>	<div>REVISION DA DRAWINGS AS NOTED RED - 8/1/18</div>			<div>REVISION</div> <div>DATE</div> <div>8/1/18</div>	<div>REVISION NOTE</div> <div>All parapets lowered by 200mm to RL 12.50</div> <div>All parapets to be finished 300 mm from, privacy screen</div> <div>added opposite Study room</div>	<div>CLIENT</div> <div>Mr G. &amp; Mrs J. CONDELL</div> <div>PROJECT:</div> <div>25 Allan Avenue, Bilgola Beach</div> <div>Being LOT 'B' in D.P. 410216</div>	<div>DESIGNERS</div> <div>South &amp; West Elevations</div> <div>PROJECT NO.</div> <div>CON 0916</div> <div>SCALE TYPE:</div> <div>DA2</div>	<div>DRAWING:</div> <div>A07</div> <div>SCALE:</div> <div>9/32</div> <div>1:100</div> <div>DATE:</div> <div>8/1/18</div>	<div>SHEET NO.</div> <div>A</div>
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**ITEM 3.5**                      **DA0337/2016 – 9 NORTH HARBOUR STREET, BALGOWLAH – SECTION 96(1A) APPLICATION TO MODIFY APPROVED ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE – PART 3**

**REPORTING OFFICER**      **BENJAMIN PRICE**

**TRIM FILE REF**              **2018/095085**

**ATTACHMENTS**            1 [↓](#) **Assessment Report**  
                                     2 [↓](#) **Site Plan and Elevations**

### **PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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### **RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. DA0337/2016 for Section 96(1A) application to modify approved alterations and additions to the existing dwelling house - Part 3 at Lot 1 DP 723910, 9 North Harbour Street, Balgowlah for the reasons outlined in the Assessment Report.

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## Northern Beaches Independent Assessment Panel Report

2017/292228

<b>DA No.</b>	337/2016
<b>Site Address</b>	9 North Harbour Street, Balgowlah; Lot 1 DP 723910
<b>Proposal</b>	Section 96(1A) application to modify approved alterations and additions to the existing dwelling house - Part 3
<b>Officer</b>	Ben Price

### **SUMMARY:**

<b>Application Lodged:</b>	15 November 2017
<b>Applicant:</b>	Antony Adare
<b>Owner:</b>	Liliane Benti
<b>Estimated Cost:</b>	\$563,200
<b>Zoning:</b>	MLEP, 2013 – E3 Environmental Management
<b>Heritage:</b>	I1 Harbour Foreshores
<b>NSW LEC:</b>	Not applicable
<b>Notification:</b>	17 November 2017 – 4 December 2017
<b>Submissions received:</b>	One
<b>Site Inspected:</b>	13 September 2017
<b>LEP (4.6) Variations proposed:</b>	Nil
<b>DCP Variations proposed:</b>	4.1.4 Setbacks (front, side and rear) and Building Separation
<b>Recommendation:</b>	Approval

### **Subject Property and surrounding area**



The subject property is commonly known as 9 North Harbour Street, Balgowlah and legally known as Lot 1 in DP 723910. The site is located on the eastern side of North Harbour Street. The property is rectangular in shape and has a frontage of 15.5 m to North Harbour Street, an average depth of 30.9m and an overall site area of 474.2m<sup>2</sup>. The property currently contains a 3 storey dwelling with vehicular access via an existing driveway from North Harbour Street to an existing garage to the front of the existing dwelling. The property slopes from west to east and includes a crossfall of 11.5m.

The surrounding area includes 1 and 2 storey dwelling houses.

R1, R2, R3, E3 & E4 Zones – S96

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### **Property Burdens and Constraints**

The original application was appropriately conditioned to ensure no impacts to the sewer line.

### **Site History/Background**

The original development application 337/2016 included:

#### **Lower Ground Level**

- Internal alterations
- Reposition existing timber stair adjacent southern boundary
- Enclose balcony on north east edge and extend rumpus
- Balcony off east side
- Living, dining with deck off to the north
- Create bay window on north side

#### **Ground Level**

- Convert existing tiled patio in to bathroom (west side)
- Door changes onto balcony from lounge room (west side)
- Internal wall and room configuration changes (as shown); create open plan living space
- Construct new balcony on eastern side with BBQ, benchtop, obscure balustrade, and privacy screen along southern side

#### **First Floor**

- Internal alterations (as shown)
- Enclose balcony on south east edge and extend bedroom 3
- Ensuite bathroom and walk in robe to main bedroom
- Juliet style balcony off proposed Bedroom 3

The original application was determined by the Northern Beaches Independent Assessment Panel (NBIAP). The NBIAP determined to approve the development as modified by the following condition:

#### **ANS02A**

*The applicant is to submit amended plans with respect to the proposed Ground Floor balcony. This balcony, which measures 4.0 x 7.1 metres, as shown on drawing 04, shall be reduced in depth to 3 metres. The proposed clad wall and louvered privacy screen on the southern edge of this balcony shall be deleted.*

*Reason: To provide adequate view sharing as provided by the Manly DCP.*

A section 96(1A) application was submitted on the 26 June 2017. The application proposed the following.

- Deletion of condition ANS02A:

#### **“ANS02A**

*The applicant is to submit amended plans with respect to the proposed Ground Floor balcony. This balcony, which measures 4.0 x 7.1 metres, as shown on drawing 04, shall be reduced in depth to 3 metres. The proposed clad wall and louvered privacy screen on the southern edge of this balcony shall be deleted.*

*Reason: To provide adequate view sharing as provided by the Manly DCP.”*

- Extension of the ground floor balcony to 4.0 x 7.1 metres
- Provision of a privacy screen to the southern elevation for the first 2.665 metres of the balcony.

This application was approved subject to the following condition:

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**"ANS02A**

*Amended plans shall be submitted in relation to the proposed ground floor balcony to reduce the depth of the balcony to a maximum depth of 3 metres which shall also be provided with a louvered privacy screen along the southern edge to a maximum height of 1.8 metres.*

*Reason: To provide adequate view sharing as provided by the Manly DCP."*

**Description of proposed development**

The proposal was lodged as a S96AB Review where modification application refused or conditions imposed. This application was submitted with plans proposing the extension of the ground floor balcony to 4.0 x 7.1 metres with a full length privacy screen on the southern elevation. However, the application was submitted after 28 days of the determination and therefore could not be assessed under S96AB. The applicant requested to amend the application to a S96(1A) proposing the following:

- Amendment of condition ANS02A to the following:

**"ANS02A**

*Amended plans shall be submitted in relation to the proposed ground floor balcony to increase the depth of the balcony to a maximum depth of 4 metres which shall also be provided with a louvered privacy screen along the southern edge to a maximum height of 1.8 metres and a maximum length of 3m."*

The proposed amendments were deemed to only differ in minor respects and will not result in a greater environmental impact. As such it was not considered necessary to re-notify the application.

**Internal Referrals****Coastal Management Comments**

Council's Coastal Management Officer offered no objections to the proposal.

**External Referrals****Ausgrid**

The proposal was referred to Ausgrid. Ausgrid did not respond to the referral within 21 days. As such concurrence is assumed.

**Planning Comments****Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*  
(i) *any environmental planning instrument, and*

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The proposal will not alter the original BASIX Certificate.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

#### **Manly Local Environmental Plan 2013**

The subject site is located in Zone E3 Environmental Management under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone E3 Environmental Management**

##### **Objectives of zone**

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

The proposed development compliments the existing built form on the site and ensures the maintenance of the areas special ecological, scientific, cultural and aesthetic values.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

The proposed modification is appropriately designed to ensure it does not adversely affect the areas special ecological, scientific, cultural or aesthetic values

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposal does not include the removal of significant vegetation and is below the existing ridge level of the dwelling. The proposal will not dominate the natural scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby, foreshores, significant geological features and bushland, including loss of natural vegetation.*

The proposed modifications are located within the foreshore building line area. There is a precedent within the locality of encroachment on the foreshore building line. The proposal is appropriately designed to ensure it is consistent with the locality and does not result in any impacts on nearby foreshores, significant geological features and bushland.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate and minimise the impact of hard surfaces and associated pollutants in storm water run-off on the ecological characteristics of the locality, including water quality.*

The proposal includes adequate landscaping on the site to minimise stormwater run-off.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal is appropriately designed to ensure it is consistent with the existing built form on the site and has appropriate regard to the topography and surrounding land uses. The proposal does not require the removal of significant vegetation and includes adequate landscaping.

#### **Part 4 Principal development standards**

There are no relevant development standards within part 4 of the Manly LEP 2013 to consider as part of the assessment.

### Part 5 Miscellaneous Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comments
5.10	Heritage Conservation	Yes	Yes	The proposal complies with this clause.

### Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulfate Soils	Yes	Yes	The proposal complies with this clause.
6.2	Earthworks	Yes	Yes	The proposal complies with this clause.
6.5	Terrestrial Biodiversity	Yes	Yes	The proposal complies with this clause.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal complies with this clause.
6.10	Limited development on foreshore area	Yes	Yes	The proposal complies with this clause. See assessment below.

#### Limited development on foreshore area

The proposal lies within the foreshore building line. An assessment with regards to the objectives of the control has been conducted below.

- (1) *The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.*

The proposed development and the recommended conditions of consent are suitable to ensure the development does not impact on the natural foreshore processes. The proposed modifications are adequately setback and include privacy screening to ensure no unreasonable impacts to the privacy of the neighbouring properties and will not result in any unreasonable overshadowing. The proposal has been assessed in accordance with the Views Planning Principle established by the NSW Land and Environment Court in *Tenacity Consulting V Warringah Council* [2004] NSWLEC 140 at 25-29. This assessment found the development to be reasonable and provide adequate view sharing. The proposal will not result in any unreasonable impacts to the amenity of the area. The neighbouring properties significantly encroach within the foreshore areas with structures such as pools and decking. The proposal is consistent with the neighbouring properties and the approved landscape plan will augment the landscaping closer to the foreshore area. The proposal will be consistent with the surrounding development and will maintain the significance of the area.

- (2) *Development consent must not be granted to 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,*
- the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposal includes the extension of an approved deck within the foreshore area. The proposed works are consistent with the existing development on the site and in the surrounding area. The following figure is taken from Councils mapping system and indicates the foreshore building line in relation to the existing building.



Figure 1 Foreshore Building Line at 9 North Harbour Street

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

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and

The proposal was assessed above with regard to the objectives of the zone and was found to be satisfactory.

- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

The proposal complements the existing built form on the site and will not result in an appearance that is incompatible with the surrounding area.

- (c) the development will not cause environmental harm such as:

- (i) pollution or siltation of the waterway, or  
(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or  
(iii) an adverse effect on drainage patterns, and

The proposal has been assessed by Councils Coastal Management Officer and found to be satisfactory. The proposal is designed appropriately and conditions of consent will ensure that the proposal will not cause environmental harm.

- (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

The proposed development will not cause congestion or generate conflict between people using open space areas or the waterway.

- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

The proposal will not result in the obstruction of public access.



- (f) *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*

The proposal has been assessed by Coastal Management Officer and was found to be satisfactory. Due to the existing development on the site the proposal is not likely to result in any unreasonable impacts on any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out on or the surrounding land.

- (g) *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*

The proposed modifications are adequately setback and include privacy screening to ensure no unreasonable impacts to the privacy of the neighbouring properties and will not result in any unreasonable overshadowing. The proposal has been assessed below in accordance with the Views Planning Principle established by the NSW Land and Environment Court in *Tenacity Consulting V Warringah Council* [2004] NSWLEC 140 at 25-29. This assessment found the development to be reasonable and provide adequate view sharing. The proposal will not result in any unreasonable impacts to the amenity of the area. The neighbouring properties significantly encroach within the foreshore areas with structures such as pools and decking. The proposal is consistent with the neighbouring properties and the approved landscape plan will augment the landscaping closer to the foreshore area. The proposal is consistent with the surrounding development and will not result in any unreasonable impacts on the aesthetic appearance of the locality.

- (h) *sea level rise or change of flooding patterns as a result of climate change has been considered.*

The proposed modifications are reasonable when considering sea level rise or change of flooding patterns as a result of climate change.

- (4) In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following:

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

The proposal will not result in the obstruction of public access nor will it result in the degradation of the foreshore character or environmental conditions.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

**Manly Development Control Plan 2013:**

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

### Part 3 General Principles of Development

Issues	Consistent with controls	Inconsistent with controls
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

#### Comment:

##### 3.4.1 Sunlight Access and Overshadowing

*Objective 1) To provide equitable access to light and sunshine.*

The proposed modification will result in a minor increase in overshadowing of the private open space of the neighbouring property. The increase to overshadowing will not result in any unreasonable impacts and will maintain an equitable access to light and sunshine within the locality.

*Objective 2) To allow adequate sunlight to penetrate:*

- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

The proposed modification will result in a minor increase in overshadowing of the private open space of the neighbouring property. The proposal will not eliminate more than one third of the existing sunlight accessing the neighbouring properties private open space. The proposal will allow adequate sunlight to penetrate the development site and the neighbouring properties windows and private open spaces.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*

- encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and
- maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

The proposed development will not result in any unreasonable overshadowing of windows to living rooms and principal outdoor areas.

##### 3.4.2 Privacy and Security

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

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

The proposed modification increases the size of the deck by 1m and maintains the approved size of the privacy screen on the southern elevation of 3m. This will leave a length of deck with no privacy screen of 1m. The proposed deck is setback 1.5m from the side boundary and will result in a limited viewing angle of the neighbouring property. The proposal is adequately designed to ensure no unreasonable impacts to the privacy of the neighbouring properties.

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

The proposal is of an appropriate design to ensure privacy without compromising access to light and air. The proposal will maintain a balanced outlook from the private open space and habitable rooms.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposal will maintain the sites passive surveillance of the street and the public land within the vicinity.

#### 3.4.3 Maintenance of Views

The proposed modification will result in a loss of views from 7 North Harbour Street Balgowlah. A view loss assessment has been conducted below in accordance with the Views Planning Principle established by the NSW Land and Environment Court.

*"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example 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, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."*

The view loss will be of the water and the interface between land and water and does not include any icons.

*"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."*

The views lost are obtained from the deck and lounge room of 7 North Harbour Street. The views are obtained from overlooking the side boundary of 9 North Harbour Street. The views from the lounge room are obtained from a standing position while the views from the deck are obtained from both a sitting and standing position.

*"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 percent 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."*

The views lost make up a small portion of the total views obtained from 7 North Harbour Street. The lounge room of 7 North Harbour Street will maintain access to water views to the north-east and the east. Furthermore the proposed 1.8m privacy screen is located 1.1m below the ground floor level of 7 North Harbour Street. The proposed privacy screen and deck will not be visually prominent from the lounge room of 7 North Harbour Street and will result in a negligible impact to views. The deck of 7 North Harbour Street will also retain access to water views and the interface between land and water to the north east and the east. The proposed privacy screen will result in the loss of some of these views however the impact is most appropriately characterised as negligible. Figure 2 shows the area of concern from the lounge room and deck of 7 North Harbour Street.



*Figure 2 Views obtained from the lounge room of 7 North Harbour Street looking towards 9 North Harbour Street*



*Figure 3 Views obtained from the Deck of 7 North Harbour Street looking towards 9 North Harbour Street*

The following figure was submitted by the applicant and provides a visualization of the proposal as viewed from the Deck of 7 North Harbour Street.





Figure 4 Visualisation of proposal as viewed from 7 North Harbour Street - Prepared by Digital Line

*"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."*

The proposal is not compliant with Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly DCP 2013. All areas of non-compliance have been found to meet the objectives of the control. Furthermore a more skilful design is not likely to be able to achieve this development potential while minimising the view loss. The proposal will result in a negligible impact to the views of the neighbouring properties. For these reasons the development is considered to be reasonable and the view sharing acceptable.

An assessment of the proposed modifications in accordance with the objectives of Clause 3.4.3 Maintenance of Views has been conducted below.

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

The proposed development maintains adequate view sharing for both existing and proposed development and existing and future Manly Residents. The view loss assessment conducted in accordance the Views Planning Principle established by the NSW Land and Environment Court found the development to be reasonable and the view sharing acceptable.

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

The development is designed to minimise the disruption of views, an assessment of the Views planning principle found the development to be reasonable and the view sharing acceptable.

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

The proposal will not result in any unreasonable impact to views or view loss creep.

**Part 4 - Development Controls**

Site Area:	474.2m <sup>2</sup>	<b>Permitted/ Required</b>	<b>DA Approved</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Wall height South side		6.5	4.1m	4.9m	Yes
South setback side		1.63m	1.5m	1.5m	No
Setback Rear		8.0m	9.2m	8.2m	Yes
Open space OS3		55%	50.2%	51%	No further non- compliance
Open space - total		260.8m <sup>2</sup>	238m <sup>2</sup>	245m <sup>2</sup>	No further non- compliance
Open space - soft		35% of total open space (85.75m <sup>2</sup> )	52.8% (125.7m <sup>2</sup> )	51.3% (125.7m <sup>2</sup> )	No proposed change
Open space - above ground		25% of total open space (61.25m <sup>2</sup> )	12% (29.1m <sup>2</sup> )	14.7% (36.1m <sup>2</sup> )	Yes

**Comment:**

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

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

The proposed modifications are located to the rear of the property. The proposed setbacks are in line with the side setbacks of the existing dwelling and will maintain the existing spatial proportions of the street, street edge and landscape character of the street.

*Objective 2) To ensure and enhance local amenity by:*

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

The proposed development is designed to maintain the local amenity.

The proposal has been assessed above in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the proposal was found to be satisfactory.

The proposal will result in a minor increase to overshadowing of 7 North Harbour Street however, this property will maintain adequate access to light and sunshine.

The proposal has been assessed above with regard to the Views Planning Principle established by the NSW Land and Environment Court in Tenacity Consulting V Warringah Council [2004] NSWLEC 140 at 25-29. The assessment found the development to be reasonable and the view sharing acceptable. The proposal facilitates view sharing and maintains adequate spacing between buildings to limit impacts on views, vistas and will not cause any unreasonable impacts on the rhythm or pattern of spaces within the locality.

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

The proposed modifications are setback in line with the existing southern side setback. The proposed works will not significantly alter the siting of the building. In this circumstance the flexibility requested is appropriate as the area of non-compliance is minor and it does not result in any unreasonable impacts to the locality.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The proposed development incorporates adequate landscaped area to accommodate planting and deep soil zones. The proposal is appropriately designed to ensure it does not unduly detract from the context of the site. The proposal will not impact any bushland in urban areas.

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

The proposal is consistent with this clause.

#### **Part 5 - Special Character Areas and Sites**

<b>Special Character Areas and Sites</b>	<b>Applicable</b>	<b>Not Applicable</b>
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

#### **Comment:**

The proposal complies with the additional matters for consideration identified in Clause 5.4.1 Foreshore Scenic Protection Area of the Manly DCP 2013.

#### **Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshores & Waterways Areas:**

Councils Coastal Management officers conducted an assessment of the application in accordance with the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores & Waterways Area DCP 2005 and found the development to be satisfactory subject to the recommended conditions of consent.

**79C(1)(a)(iia) - any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**

No applicable planning agreements.

**79C(1)(a) (iv) - the regulations**

The proposal is consistent with the applicable regulations.

**79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no applicable Coastal Zone Management Plan.

**79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposal will not result in any unreasonable impacts on the natural or built environments. The proposal will not result in any unreasonable social or economic impacts within the locality.

**79C(1) (c) - the suitability of the site for the development,**

The proposal is suitable for the site.

**79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Council's Development Control Plan 2013 Section 2 with 1 submission received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Confidential	<ul style="list-style-type: none"> <li>• Loss of privacy</li> <li>• Loss of views</li> <li>• Plans</li> <li>• Loss of sunlight access</li> <li>• Condition ANS02A is reasonable and appropriate</li> <li>• FSR</li> <li>• Non-compliance with the Manly LEP 2013 and the Manly DCP 2013</li> </ul>	<ul style="list-style-type: none"> <li>• The proposal has been assessed above in accordance with the objectives of Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the modifications were found to be consistent with the objectives and will result in an increase to the privacy to the neighbouring property.</li> <li>• The proposal has been assessed above with regard to the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the proposed modifications were found to be satisfactory. The photos and modelling submitted with this objection were considered in this assessment. The Photo-Montage prepared by BBF Town Planners was not relied upon to complete this assessment.</li> <li>• Amended plans were submitted that clearly notated the proposed development. A condition is recommended to ensure the development complies with this clause. Condition</li> </ul>



		<p>ANS03 pertaining to the deletion of the two trees on the southern side will remain as a condition of consent.</p> <ul style="list-style-type: none"> <li>• The proposal has been assessed above in accordance with the objectives of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the modifications were found to be consistent with the objectives</li> <li>• The assessment above has found the proposed modifications to be satisfactory.</li> <li>• The proposed deck does not add to the FSR and does not create any further non-compliance with Clause 4.4 Floor Space Ratio of the Manly LEP 2013.</li> <li>• The proposed non-compliances have been assessed above with regards to the objectives and have been found to be satisfactory.</li> </ul>
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**79C(1) (e) - the public interest.**

The proposal is consistent with the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*
  - (b) the payment of a monetary contribution,*
  - or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

In this case, no S94 contributions are applicable.

**Section 96(1A) of the Environmental Planning and Assessment Act 1979****(1A) Modifications involving minimal environmental impact**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with 1 submission received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

**CONCLUSION:**

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

**RECOMMENDATION**

That pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 337/2016 for alterations and additions to the existing dwelling house at 9 North Harbour Street, Balgowlah be **approved** subject to:

**GENERAL CONDITIONS**

*The following Condition No.1 is to be amended as per Section 96(1A) Application – Part 2 – determined on 13 September 2017:*

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 337/2016:

	Issue/ Revision & Date	Date Received by Council
Drwg01 Site Plan	Issue A, dated November 2016	7 December 2016
Drwg04 Proposed Plans	Issue A, dated November 2016	7 December 2016
Drwg05 Proposed Floor Plans	Issue A, dated November 2016	7 December 2016
Drwg06 Proposed Elevations	Issue A, dated November 2016	7 December 2016
Drwg07 Proposed Elevations	Issue A, dated November 2016	7 December 2016
Drwg08 Proposed Elevations	Issue A, dated November 2016	7 December 2016
DrwgL/01 Proposed Landscape Plan	Revision A, dated 26 July 2016	7 December 2016

Reference Documentation affixed with Council's stamp relating to Development Consent No. 337/2016:

- Statement of Environmental Effects prepared by BBF Town Planners dated December 2016 and received by Council on 7 December 2016.
- BASIX Certificate No. A244275, dated 6 December 2016 and submitted to Council
- Bushfire Risk Assessment, prepared by Bushfire Planning and Design, dated 22 December 2016 and received by Council on 28 December 2016.
- Terrestrial Biodiversity Report and Ecological Assessment at 9 North Harbour St Balgowlah, NSW, dated 1 February 2017 and received by Council on 3 February 2017

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

Except as amended by:

Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 2:

Plan No. / Title	Issue/ Revision & Date	Prepared By
Drwg04 Proposed Plans	Issue B, dated June 2017	Red Rock Design
Drwg06 Proposed Elevations	Issue B, dated June 2017	Red Rock Design

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 3:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
Drwg01 Site Plan	Issue A, Dated November 2016	Red Rock Design
Drwg04 Proposed Plans	Issue A, dated November 2016 notated January 2018	Red Rock Design
Drwg06 Proposed Elevations	Issue A, dated November 2016 notated January 2018	Red Rock Design

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

2. Prescribed conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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



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

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

Reason: Legislative Requirement (DACPLB09)

#### **ANS01**

The recommendations within the Terrestrial Biodiversity Report and Ecological Assessment at 9 North Harbour St Balgowlah, NSW, dated 1 February 2017 and received by Council on 3 February 2017 are to be complied with.

Reason: To ensure compliance with the Terrestrial Biodiversity Report and Ecological Assessment at 9 North Harbour St Balgowlah, NSW, dated 1 February 2017 and received by Council on 3 February 2017.

#### **ANS02**

The recommendations outlined within the Bushfire Risk Assessment, prepared by Bushfire Planning and Design, dated 22 December 2016 and received by Council on 28 December 2016 are to be complied with.

Reason: To ensure compliance with the Bushfire Risk Assessment, prepared by Bushfire Planning and Design, dated 22 December 2016 and received by Council on 28 December 2016.

#### **1A (1AP04)**

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

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

The following Condition No. ANS02A is to be amended as per Section 96(1A) Application – Part 3:

#### **ANS02A**

Amended plans shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate consistent with the following:

- A louvered privacy screen is to be provided along the southern edge of the ground floor balcony to a maximum height of 1.8 metres and a maximum length of 3m measured from the wall of the dwelling.
- The bench area on the southern edge of the deck is to be a maximum length of 3m measured from the wall of the dwelling.

Reason: To ensure plans consistent with this consent are submitted prior to the issue of the Construction Certificate.

#### ANS03

The two proposed *Syzygium paniculatum* identified on the drawing 'L/01 Proposed Landscape Plan' as 2-SP on the southern boundary are to be deleted. The plans are to be amended to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

*Reason: To minimise the disruption of views and provide for view sharing.*

#### ANS04

The proposed alterations are to be built from materials with non-reflective qualities, be of a medium to dark colour that blends with the prevailing natural environment in the locality and that will not impact the visual qualities of the site and Sydney Harbour. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

*Reason: To protect the visual aesthetic amenity and views both to and from Sydney Harbour of land within the designated Foreshore Scenic Protection Area.*

#### ANS05

The approved plans must be submitted to Sydney Water and approved. Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

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

#### 3 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**Note:** Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

*Reason: To ensure security against possible damage to Council property.*

#### 4 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

*Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.*

#### 5 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

*Reason: The existing building must be able to support proposed additional loading.*

6 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

7 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m<sup>2</sup>)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

8 (3LD03)

Where trees greater than 5 metres in height which are not within the proposed footprint (i.e. not directly affected by the development) and are proposed for removal, a tree permit is required subject to the Tree Preservation Order 2001 criteria.

Reason: Retain the number of existing trees on site which are protected by the Tree Preservation Order and not directly in the way of development.

9 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

#### 10 (2NL02)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997. Domestic air conditioners must not be audible in nearby dwellings between 10:00pm to 7:00am on Monday to Saturday and 10:00pm to 8:00am on Sundays and Public Holidays.

Details of the acoustic measures to be employed to achieve compliance with this condition must be prior to the issue of the Construction Certificate.

Reason: To ensure compliance with legislation and to protect public health and safety.

#### 11 (2NL04)

Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliance with the relevant legislation and Australian Standards. The report that itemises equipment to be used for excavation works. The Plan shall address, but not limited to, the following matters:

- Identification of activities carried out and associated noise sources
- Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- Determination of appropriate noise and vibration objectives for each identified sensitive receiver
- Noise and vibration monitoring, reporting and response procedures
- Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles
- Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction
- Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.

Reason: To protect acoustic amenity of surrounding properties and the public.

#### 12 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable.

It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.



## CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

### ANS06

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. Fencing is to be maintained for the duration of works. The fencing is to be designed to be minimise the possibility of ground-dwelling native fauna accessing the works areas and sheltering in cavities or voids.

Reason: To prevent direct impacts to ground-dwelling native fauna which may access the construction site and attempt to shelter in/under cavities, stockpiles or machinery.

### 13 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.

### 14 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

### 15 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

### 16 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

The following Condition No. ANS06A (3MS01) is to be added as per Section 96(1A) Application – Part 2 – determined on 13 September 2017:

### ANS06A (3MS01)

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### ANS07

During construction, the foreshore area is to be kept clean and any building debris removed as a minimum daily or as frequently as required to ensure no debris enters the harbour/wetland protected area.

Reason: To mitigate environmental impact resulting from site disturbance

**ANS08**

During construction, soil erosion and siltation controls must be adequately established along seawall/foreshore area to ensure sediment does not enter Wetland Protected Area under Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005 (Harbour REP).

*Reason: To prevent sediment and silt entering wetland protected areas and retain aquatic habitats and biota within North Harbour.*

**ANS09**

If an injured native animal enters the work site, one or both of the following registered wildlife rescue and rehabilitation organisations must be contacted for advice and/or assistance:

- Sydney Wildlife Services (9413 4300); or
- WIRES Rescue Office (1300 094 737).

*Reason: To ensure that any native fauna utilising the worksite are safely relocated by an appropriately trained person, and that injured fauna receive expert care so that they can be returned to the wild where possible.*

**ANS10**

Before any vegetation/material/debris stockpiles are removed, a pre-clearance survey for native fauna presence is required. All clearing must initially be carried out with hand tools to identify whether any native fauna are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no native fauna are sheltering within the area to be cleared.

*Reason: To avoid injury or death of native fauna which may be sheltering within stockpiles of vegetation, materials or debris.*

**17 (4AP02)**

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

*Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.*

**18 (4BM01)**

All materials and finishes of the proposed additions are to match, as closely as possible the material and finish of the existing building.

*Reason: To enhance the visual quality of the development and the streetscape.*

**19 (4CD01)**

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.

- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

#### 20 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

#### 21 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

#### 22 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

#### 23 (4CD10)

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To ensure compliance with legislation and to prevent disturbance to the surrounding community.

#### 24 (4CD11)

The activity of rock-breaking associated with the development of the site, must only occur between the hours of:

- 9.00 AM – 5.00 PM on weekdays (Monday – Friday) only.

Rock-breaking activities must not occur on weekends or public holidays.

Adjoining properties must be notified in writing of the times and days in which rock-breaking activities will be carried out. Notices must be distributed at least seven (7) days before the activity is to occur.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

#### 25 (4DS01)

A suitable sub-surface drainage system is to be provided adjacent to all excavated areas and such drains being connected to an approved disposal system. The details of this drainage system should be shown in a plan and submitted to Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To prevent uncontrolled seepage entering excavated areas.

#### 26 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

#### 27 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.



28 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

29 (4LD07)

Where development/construction necessitates the pruning of more than 10% of existing tree canopy, a permit application must be lodged with the Council's Civic Services Division, subject to the Tree Preservation Order 2001.

Reason: To ensure those trees are maintained appropriately and compliance with Australian Standard AS 4373:2007 – Pruning of Amenity Trees.

30 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

31 (4NL01)

Noise arising from demolition and construction works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To prevent disturbance to the surrounding community during construction.

32 (4TS01)

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:30am and 4:30pm.

Reason: Noise and vibration may disturb local native fauna (including species and populations listed as threatened under State or Federal legislation) and discourage their use of adjoining areas.

33 (4WM01)

The only waste derived material which may be received at the development site is:

- 1) Virgin excavated material (within the meaning of the Protection of the Environment Operations Act 1997), and
- 2) Any other waste-derived material the subject of a resource recovery exemption under cl.51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

Any (b)-type material received at the development site must be accompanied by documentation certifying the materials compliance with the exemption conditions; and this documentation must be provided to the Principal Certifying Authority on request.

Reason: To ensure imported fill is of an acceptable standard for environmental protection purposes.

34 (4WM02)

Removal of trackable wastes from the site must comply with the Protection of the Environment Operations (Waste) Regulation 2005 for the transportation, treatment and disposal of waste materials. Waste materials must not be disposed on land without permission of the land owner and compliance with the provisions of the Protection of the Environment and Operations Act 1997.

Reason: To ensure compliance with legislation.

## 35 (4WM03)

Hazardous waste must be contained, managed and disposed of in a responsible manner in accordance with the Protection of Environment and Operations Act 1997.

Reason: Compliance with the provisions of the Protection of the Environment and Operations Act 1997.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

## 36 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

## 37 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

## 38 (6AQ01)

The use of the premises must not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and must be controlled in accordance with the requirements of this Act.

Reason: To ensure compliance with legislation and to protect public health and amenity.

## 39 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

## 40 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

## 41 (6NL02)

All lights used to illuminate the exterior of the buildings or site must be positioned and/or fitted with cut off luminaires (baffles) so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

## 42 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

## 43 (6NL06)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997. Domestic air-conditioners must not be audible in nearby dwellings between 10:00PM to 7:00AM Monday to Friday, and 10:00PM to 8:00AM on Saturdays, Sundays and public holidays.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

## 45 (6NL10)

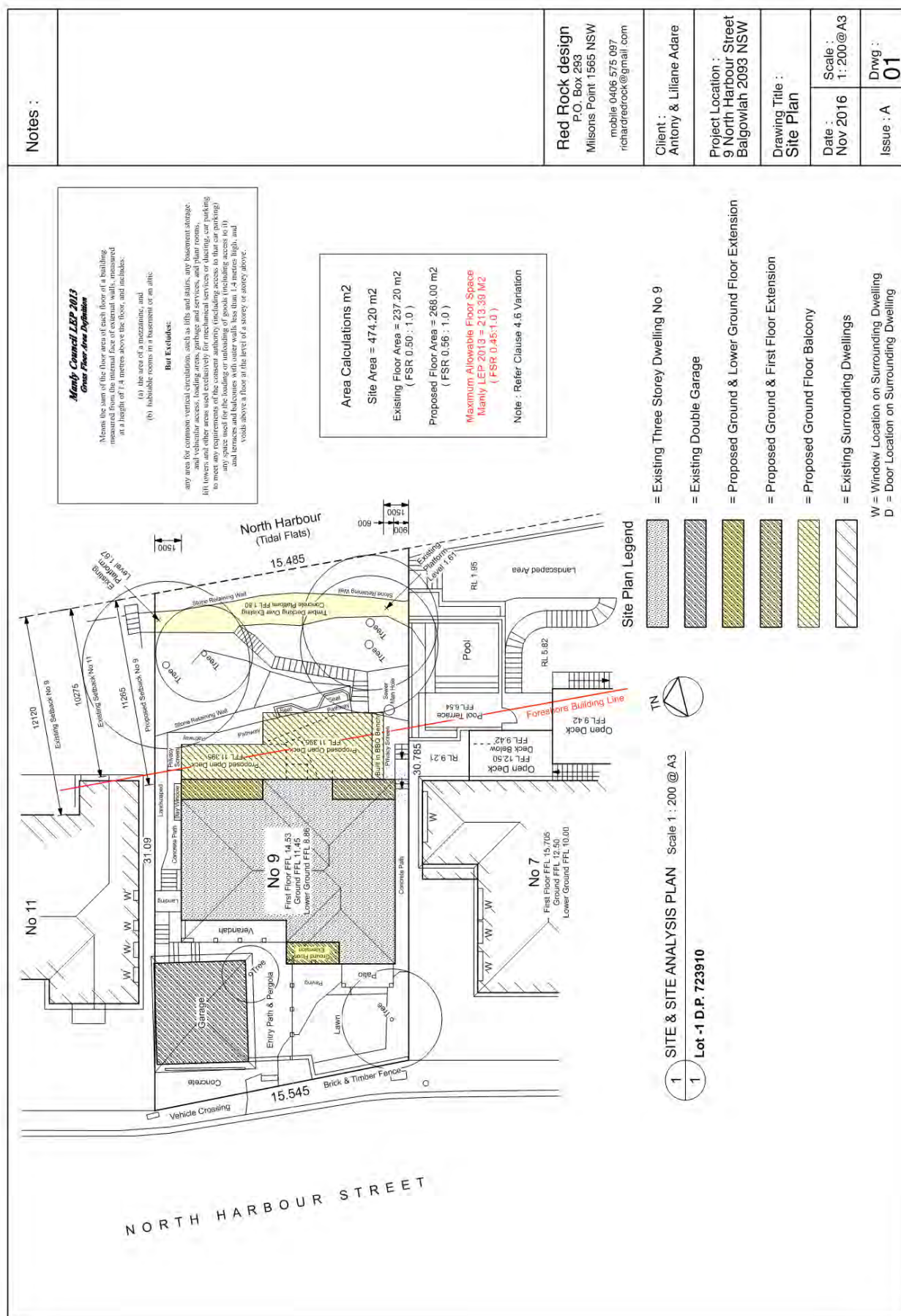
The construction and ongoing use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to air pollution. All works shall ensure air quality controls are in place and all activity is in accordance with the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2002.

Reason: To ensure compliance with legislation and to protect public health and amenity.

## 46 (6WM10)

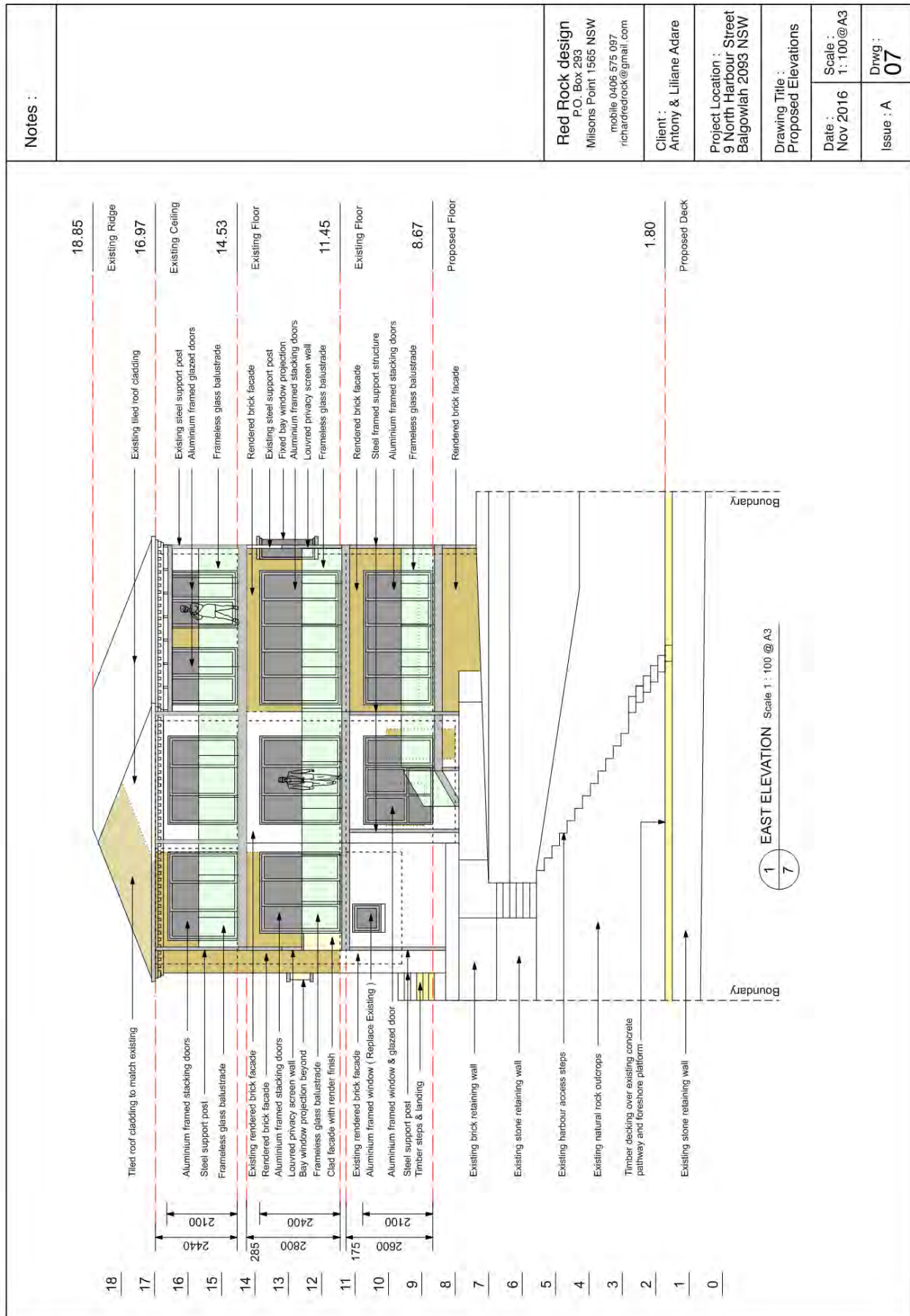
The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

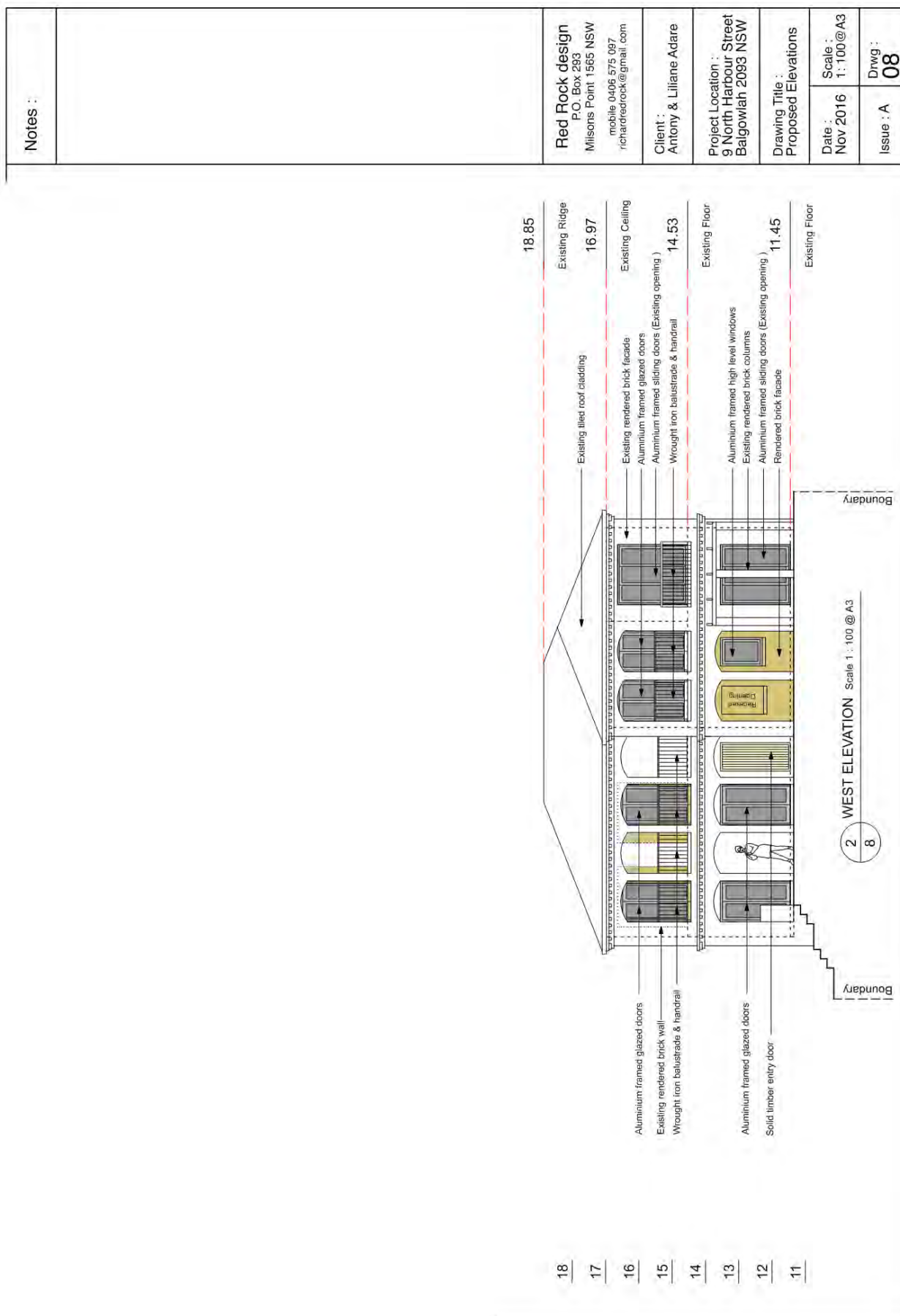
Reason: To ensure compliance with legislation and to protect public health and amenity.













<b>ITEM 3.6</b>	<b>DA0294/2016 – 1-3 AMIENS ROAD, CLONTARF – SECTION 96(2) TO MODIFY ALTERATIONS AND ADDITIONS AN EXISTING DWELLING HOUSE – PART 2</b>
<b>REPORTING OFFICER</b>	<b>CLAIRE RYAN</b>
<b>TRIM FILE REF</b>	<b>2018/088852</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a> Assessment Report</b> <b>2 <a href="#">↓</a> Site Plan and Elevations</b>

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. DA0294/2016 for Section 96(2) to modify alterations and additions to an existing dwelling house – Part 2 at Lots 2, 3 and 4 DP 859611, 1-3 Amiens Road, Clontarf for the reasons outlined in the Assessment Report.

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## Northern Beaches Independent Assessment Panel Report

2017/058149

<b>DA No.</b>	294/2016
<b>Site Address</b>	1-3 Amiens Road, Clontarf (Lots 2, 3 and 4 DP 859611)
<b>Proposal</b>	Section 96(2) to modify alterations and additions an existing dwelling house – Part 2
<b>Officer</b>	Claire Ryan

### **SUMMARY:**

<b>Application Lodged:</b>	18 October 2017
<b>Applicant:</b>	Upper Hunter Architects
<b>Owner:</b>	Madina Tao and Mongkol Phara
<b>Estimated Cost:</b>	\$304,250
<b>Zoning:</b>	MLEP, 2013 – E3 Environmental Management
<b>Heritage:</b>	Near Item 1 Harbour Foreshores
<b>NSW LEC:</b>	Not applicable
<b>Notification:</b>	19 October – 6 November 2017
<b>Submissions received:</b>	Nil
<b>Site Inspected:</b>	21 November 2017
<b>LEP (4.6) Variations proposed:</b>	Height of Building
<b>DGP Variations proposed:</b>	Nil
<b>Recommendation:</b>	Approval

### **Subject Property and surrounding area**



R1, R2, R3, E3 & E4 Zones – S96

1 of 25

The subject property is commonly known as 1-3 Amiens Road, Clontarf and legally known as Lots 2, 3 and 4 in DP 859611. The site is located on the southern side of Amiens Road. The property is irregular in shape, has a frontage of 42.42m to Amiens Road, an average depth of 70m and an overall site area of 3,014.8m<sup>2</sup>. The property currently contains a two-storey dwelling with vehicular access via an existing driveway from Amiens Road to an existing carport to the front of the existing dwelling. The property slopes approximately 34m from north to south.

The adjacent property to the west, at 5 Amiens Road, is developed with a two-storey detached dwelling. The land to the east is an unmade road reserve (Beatrice Street). Development in this area consists of two- and three-storey detached dwellings.

#### **Property Burdens and Constraints**

An easement for batter exists along the northern third of the property. However, this easement does not preclude the proposed modifications.

#### **Site History/Background**

Recent relevant applications on site include:

CDC159/2016: Internal alterations of upper ground floor. Approved by Private Certifier on 24 October 2016.

DA294/2016: Alterations and additions to the existing dwelling including upper ground floor extensions, new basketball court, windows, tree removal, changes to side fences, new front fence, enclosed lift and stair access to roof. Approved by Northern Beaches Independent Assessment Panel (NBIAP) on 16 February 2017.

#### **Description of proposed development**

The proposal seeks consent for the following modifications to the approved development:

- Construction of a basketball court (and subsequent deletion of Condition No. ANS01A);
- Increase lift overrun;
- Rear lower ground extension; and
- Internal reconfiguration.

The original application sought the construction of a basketball court in the rear yard. The NBIAP moved to delete the basketball court via Condition No. ANS01A due to insufficient information. The subsequent modification application provides greater detail in relation to the basketball court (with the inclusion of a basketball court plan and section) and provides greater landscaping and screening to the court, in order to better respond to the foreshore location of the site.

#### **Internal Referrals**

##### **Engineering Comments**

Council's Engineer has commented on the proposal as follows:

*"Development Engineering has no objection to the application. No additional condition is required."*

##### **Assessing Officer's Comment:**

An updated hydraulic plan was submitted by the applicant in relation to the proposed modifications. The applicant later wished to rely on the previously approved stormwater plan. The approved stormwater plan was referred to Council's Development Engineer to determine whether the plan would be sufficient including the proposed modifications. Council's Development Engineer noted the proposed modifications did not require an updated stormwater plan and that the originally approved plan would suffice.

**Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Landscaping Comments**

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Waste Comments**

Council's Waste Officer offered no objections to the proposal, subject to the imposition of original recommended conditions of consent.

**Natural Resources Comments**

Council's Natural Resources Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Coastal Management Comments**

Council's Senior Coastal Management Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**External Referrals****Aboriginal Heritage**

The proposal was referred to the Aboriginal Heritage Office. The following comments have been received:

*"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. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted."*

**AUSGRID**

The proposal was referred to Ausgrid. No comments had been received by Council at the time of writing this report.

**Planning Comments****Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) ***the provisions of:***
  - (i) ***any environmental planning instrument, and***

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.



### Manly Local Environmental Plan 2013

The subject site is located in Zone E3 Environmental Management under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

### Zone E3 Environmental Management

#### Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

The proposed modifications do not impede the protection, management or restoration of the subject site or the surrounding area.

- To provide for a limited range of development that does not have an adverse effect on those values.*

The proposed modifications do not unreasonably impact upon the ecological, scientific, cultural or aesthetic values of the site.

- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposed modifications do not unreasonably impact upon tree canopies and retains the low impact residential use of the site in a manner that does not dominate the natural scenic qualities of the foreshore.

- To ensure that development does not negatively impact on nearby, foreshores, significant geological features and bushland, including loss of natural vegetation.*

The proposed modifications are not considered to unreasonably impact upon the nearby foreshores, geological features or bushland.

- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate and minimise the impact of hard surfaces and associated pollutants in storm water run-off on the ecological characteristics of the locality, including water quality.*

The proposed modifications do not impede the revegetation and rehabilitation of the foreshore, nor include unreasonable hard surfaces, and is not anticipated to affect water run off or quality.

- To ensure that the height of bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The height and bulk of the proposed modifications are appropriate on the subject site having regard to the existing vegetation, topography and surrounding land uses.

### Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Approved	Proposed	Complies	Comments
4.3	Height of buildings	8.5m	9.96m	10.85m	No	See comment below.
4.4	Floor Space Ratio	0.4:1 1,205.92m <sup>2</sup>	0.23:1 694.5m <sup>2</sup>	0.29:1 893m <sup>2</sup> (See note)	Yes	-

**Note:** The applicant has calculated 225sqm of additional floor space at the lower ground floor. The Assessing Officer has calculated 198.5sqm of additional floor space at the lower ground floor. The above relies on the Assessing Officer's calculations.



#### 4.6 Exceptions to development standards

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications. Nevertheless, an assessment of the variation is as follows:

##### Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	8.5
Proposed	10.85m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	27.6% to standard 8.9% to existing height

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

##### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

##### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment: The proposed additional height is to the lift shaft only. No change is proposed to the overall building height or the roof form. The proposed additional height to the lift shaft is not visible from the street level, so will not impact upon the streetscape character of the locality.

- (b) *to control the bulk and scale of buildings,*

Comment: The development is compliant with the floor space ratio development standard within Clause 4.4 of the MLEP 2013, which controls bulk and scale.

- (c) *to minimise disruption to the following:*

- (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) *views between public spaces (including the harbour and foreshores),*

Comment: The proposed modifications to the approved development do not unreasonably impact upon views to, from, or between public spaces.

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

Comment: The proposed modifications to the approved development result in a minor increase to overshadowing due to the additional lift shaft height. However, given the centralised location of the lift shaft on site, the increase in height will not result in any additional overshadowing to adjacent sites, and no unreasonable overshadowing impact on the subject site.

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

Comment: The proposed modifications to the approved development are consistent with and sympathetic to the existing vegetation and topography of the subject site and surrounds.

### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of Zone E3 Environmental Management are addressed as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

The proposed modifications do not impede the protection, management or restoration of the subject site or the surrounding area.

- To provide for a limited range of development that does not have an adverse effect on those values.*

The proposed modifications do not unreasonably impact upon the ecological, scientific, cultural or aesthetic values of the site.

- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposed modifications do not unreasonably impact upon tree canopies and retains the low impact residential use of the site in a manner that does not dominate the natural scenic qualities of the foreshore.

- To ensure that development does not negatively impact on nearby, foreshores, significant geological features and bushland, including loss of natural vegetation.*

The proposed modifications are not considered to unreasonably impact upon the nearby foreshores, geological features or bushland.

- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate and minimise the impact of hard surfaces and associated pollutants in storm water run-off on the ecological characteristics of the locality, including water quality.*

The proposed modifications do not impede the revegetation and rehabilitation of the foreshore, nor include unreasonable hard surfaces, and is not anticipated to affect water run off or quality.

- To ensure that the height of bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The height and bulk of the proposed modifications are appropriate on the subject site having regard to the existing vegetation, topography and surrounding land uses.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

(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.*

Comment: The proposed modifications provide for an appropriate level of flexibility in applying the height of building development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed modifications result in a better outcome by providing a useable lift without resulting in unreasonable amenity impacts to the subject site or adjacent sites.

(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.

(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.*

Comment: As detailed, a written request is not required in this case.

(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*

Comment: As detailed, a written request is not required in this case.

- (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: For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

- (b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. As above, while the application proposes a variation to the Height of Building Development Standard of greater than 10%, Clause 4.6 does not apply, as this application is modification to a development consent. 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 Building Development Standard is assumed.

### Part 5 Miscellaneous Provisions

There are no relevant miscellaneous provisions under Part 5 of the Manly LEP 2013 to consider as part of this assessment.

### Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulphate Soils	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.1 of the Manly LEP 2013.
6.2	Earthworks	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.2 of the Manly LEP 2013.
6.4	Stormwater Management	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.
6.5	Terrestrial Biodiversity	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.5 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.9 of the Manly LEP 2013.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

### Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

### Part 3 General Principles of Development

Issues	Consistent with controls	Inconsistent with controls
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	



**Comment:**

The Streetscape, Heritage, Sunlight Access and Overshadowing, Privacy and Security, and Maintenance of Views objectives of the Manly DCP 2013 are not required to be addressed in this case, as they proposed modifications do not alter the approved development's consistency with these objectives, given the topography of the site. The subject site is not visible from the street level, and the proposed modifications do not result in any additional privacy, solar access or view loss impacts beyond that of the approved development.

**3.3.1 Landscaping Design**

*Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*

As modified by conditions of consent, the proposed modifications allow for appropriate tree planting and maintenance of existing vegetation.

*Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

The proposed modifications do not unreasonably alter important landscape features and vegetation.

**3.3.2 Landscape/Tree Preservation**

*Objective 1) To ensure that development protects and conserves the natural environment.*

The proposed modifications satisfactorily protect and conserve significant vegetation on the subject site.

*Objective 2) To protect and preserve urban bushland areas in recognition of their:*

- *value as part of the natural heritage;*
- *aesthetic value; and*
- *value as a recreational, educational and scientific resource.*

The subject site does not contain any urban bushland.

*Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.*

The subject site does not contain any riparian land.

**3.4.1 Sunlight Access and Overshadowing**

*Objective 1) To provide equitable access to light and sunshine.*

The proposed modifications are minor in relation to additional height and bulk. Given the centralised location of the development on the site, the proposed modifications retain equitable access to light and sunshine.

*Objective 2) To allow adequate sunlight to penetrate:*

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

As above, the proposed modifications are minor in relation to height and bulk and are centralised on site. As such, the proposed development retains adequate sunlight penetration to private open spaces and windows of the subject site and adjacent sites.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed modifications retain a generous rear (southern) setback, and retain the approved level of building modulation, to allow for the maximisation of sunlight penetration.

**Part 4 - Development Controls**

Site Area:	3,014.8m <sup>2</sup>	<b>Permitted/ Required</b>	<b>DA Approved</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Wall height	East side	8m	7.74m	No change proposed	Yes
	West side	8m	7.23m	No change proposed	Yes
Number of Storeys		2	2 plus roof terrace	No change proposed	Yes
Roof height		2.5m	Flat roof	No change proposed	Yes
Setback Front		6.0m or streetscape	18m	No change proposed	Yes
East setback side		2.58m	640mm	No change proposed	Yes
West setback side		2.41m	3.6m	No change proposed	Yes
Setback Rear		8.0m	8.2m	No change proposed	Yes
Setback to RE1, RE2, E1 and E2		6.0 / 8.0m	8.2m	No change proposed	Yes
Open space - total		Min. 60% of total site area (1,808.88m <sup>2</sup> )	89% (2,695.93m <sup>2</sup> )	87% (2,651.93m <sup>2</sup> )	Yes
Open space - soft		Min. 40% of total open space (1,078.372m <sup>2</sup> )	61% (1,647.13m <sup>2</sup> )	No change proposed	Yes
Open space - above ground		Max. 25% of total open space (673.98m <sup>2</sup> )	3.8% (102.74m <sup>2</sup> )	No change proposed	Yes
Number of Endemic Trees		4	1 (as modified by condition)	2 (as modified by condition)	Yes – Improvement on existing
Private Open Space		18m <sup>2</sup>	39.82m <sup>2</sup>	No change proposed	Yes

**Part 5 - Special Character Areas and Sites**

<b>Special Character Areas and Sites</b>	<b>Applicable</b>	<b>Not Applicable</b>
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

**Comment:**

The proposed modifications are consistent with the Special Character Areas and Sites objectives and provisions in relation to the Foreshore Scenic Protection Area. The proposed modifications shall have minimal impact on the visual aesthetic amenity of the area.

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed modifications to the approved development.

**79C(1)(a) (iv) - the regulations**

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

**79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

**79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed modifications to the approved development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

**79C(1) (c) - the suitability of the site for the development,**

The proposed modifications to the approved development are suitable for the site.

**79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Council's Development Control Plan 2013 Section 2.3 with no submissions received.

**79C(1) (e) - the public interest.**

The proposed modifications to the approved development are in the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
  - (a) the dedication of land free of cost, or
  - (b) the payment of a monetary contribution,
  - or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

**Comments:**

In this case, the proposed modifications to the approved development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

## Section 96(2) of the Environmental Planning and Assessment Act 1979

### (2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

### (5) Threatened species

Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

- (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
- (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).



With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with no submissions received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are satisfactory for approval, subject to conditions.

#### CONCLUSION:

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **Approval**, subject to conditions.

#### RECOMMENDATION

That pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 294/2016 for alterations and additions an existing dwelling house – Part 2 at 1-3 Amiens Road, Clontarf be **Approved** subject to:

#### GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(2) Application – Part 2:

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 294/2016:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA02 Site Analysis Plan	Rev. A 24 October 2016	26 October 2016
DA07 Proposed Floor Plan – Lower Ground Floor	Rev. A 24 October 2016	26 October 2016
DA08 Proposed Floor Plan – Upper Ground Floor	Rev. A 24 October 2016	26 October 2016
DA08 Proposed Floor Plan – Roof Plan	Rev. A 24 October 2016	26 October 2016
DA10 North & South Elevation	Rev. A 24 October 2016	26 October 2016
DA11 East & West Elevation	Rev. A 24 October 2016	26 October 2016
DA12 Section	Rev. A 24 October 2016	26 October 2016
DA16 – Boundary Fence	Rev. A 24 October 2016	26 October 2016

*Reference Documentation affixed with Council's stamp relating to Development Consent No. 294/2016:*

- Statement of Environmental Effects prepared by Vaughan Milligan Development Consulting Pty Ltd dated October 2016 and received by Council on 26 October 2016
- BASIX Certificate No. A262233 dated 18 October 2016 and received by Council on 26 October 2016
- Geotechnical Investigation prepared by White Geotechnical Group dated 25 October 2016 and received by Council on 26 October 2016
- Bushfire Risk Assessment prepared by Ronald Coffey dated 20 September 2016 and received by Council on 26 October 2016
- Terrestrial Biodiversity Report prepared by Total Earth Care dated October 2016 and received by Council on 26 October 2016
- Assessment of Significant Trees prepared by Malcolm Bruce dated 27 September 2016 and received by Council on 26 October 2016

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(2) Application – Part 2:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA02 Proposed Site Plan	Rev. B Sept 2017	Upper Hunter Architects
DA07 Proposed Lower Ground Floor Plan	Rev. B Sept 2017	Upper Hunter Architects
DA09 Proposed Roof Plan Floor Plan	Rev. B Sept 2017	Upper Hunter Architects
DA10 Proposed North & South Elevation	Rev. B Sept 2017	Upper Hunter Architects
DA11 Proposed East & West Elevation	Rev. B Sept 2017	Upper Hunter Architects
DA12 Proposed Section A-A	Rev. B Sept 2017	Upper Hunter Architects
DA17 Proposed Basketball Court	Rev. B Sept 2017	Upper Hunter Architects
DA20 Proposed Landscape Plan	Rev. B Sept 2017	Upper Hunter Architects

*Reference Documentation relating to this Section 96(2) Application – Part 2:*

- Bushfire Risk Assessment prepared by Ronald Coffey dated 31 July 2017
- Addendum to Assessment of Significant Trees prepared by Malcolm Bruce dated 1 August 2017

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

#### GENERAL CONDITIONS RELATING TO APPROVAL

##### 1 (1AP04)

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

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

##### 2 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

##### 3 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

#### 4 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

#### 5 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

#### 6 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

#### 7 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m<sup>2</sup>)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.



The following Condition No. 8 (2LD02) is to be amended as per Section 96(2) Application – Part 2:

**8 (2LD02)**

A landscaped buffer being provided along the north-western and southern fences of the new basketball court and along the western and eastern site boundaries, as documented on the Landscape Plan DA20/S96, adjacent to the new building works so as to screen/reduce the visual impact of the development. The proposed Grevillea sup. Documented shall be deleted and replaced with either a dwarf Melaleuca species or a dwarf Banksia species.

Documentary evidence shall be provided to the Certifying Authority that the screen planting has been installed to meet these requirements as documented on the Landscape Plan DA20/S96 and as amended within this Condition, prior to the issue of Occupation Certificate.

Reason: To ensure an effective buffer zone/screen planting is provided.

**9 (2MS01)**

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

**10 (2TS07)**

A site Construction Management Plan (CMP) is to be prepared and is to include a section for Environmental Management. This section, as a minimum, is to outline all measures for the protection of native fauna during the construction phase (including, but not necessarily limited to, those requirements of the conditions of this consent and those measures identified in the ecological report submitted as part of the Development Application). The CMP is to be provided to the certifying authority prior to the issue of the Construction certificate.

Reason: To ensure that all conditions of consent relating to the protection of native fauna are documented and complied with for the duration of works.

**11 (2WM02)**

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.



**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

## 12 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

## 13 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

## 14 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

## 15 (3LD01)

All healthy trees and shrubs identified for retention on the submitted landscape drawing are to be suitably marked for protection before any construction works start.

Reason: To ensure the trees conditioned to stay on the site are suitably protected during any construction works.

## 16 (3LD02)

All trees on the site clear of the building are to be retained, and those trees within 7.5m of the building are to be provided with a tree guard and a notice on each guard reading: 'This tree is the subject of a Tree Preservation Order by Manly Council'. This notice is to be in position prior to any work being commenced on the site. This does not include trees which have Council approval to be removed.

Reason: To ensure trees clear of the building are retained and those within 7.5m of the building are protected.

## 17 (3LD03)

Where trees greater than 5 metres in height which are not within the proposed footprint (i.e. not directly affected by the development) and are proposed for removal, a tree permit is required subject to the Tree Preservation Order 2001 criteria.

Reason: Retain the number of existing trees on site which are protected by the Tree Preservation Order and not directly in the way of development.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

## 18 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

## 19 (4BM01)

All materials and finishes of the proposed additions are to match, as closely as possible the material and finish of the existing building.

Reason: To enhance the visual quality of the development and the streetscape.

20 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

21 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

22 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

23 (4LD02)

All healthy trees and shrubs identified for retention on the drawing are to be:

- (a) suitably protected from damage during the construction process, and
- (b) retained unless their removal has been approved by Council.

Reason: This is to ensure that the trees on the site which do not have approval to be removed on the site are suitably protected during any construction works.

Internal Note: This condition is to be imposed with 3LD01.

24 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

25 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

26 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

27 (4LD07)

Where development/construction necessitates the pruning of more than 10% of existing tree canopy, a permit application must be lodged with the Council's Civic Services Division, subject to the Tree Preservation Order 2001.

Reason: To ensure those trees are maintained appropriately and compliance with Australian Standard AS 4373:2007 – Pruning of Amenity Trees.

28 (4LD08)

Retain and protect trees and planting on council's Road Reserve during construction.

Reason: To maintain the number of street trees and preserve the amenity of the local area.

29 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 8, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

30 (4TS05)

Construction is to be undertaken in accordance with the Construction Management Plan (CMP). All workers are to be made aware of the content of the CMP.

Reason: To ensure that all conditions of consent relating to the protection of native fauna are documented and complied with for the duration of works.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

31 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

32 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

33 (6LP01)

No existing street trees can be removed without Council approval. Where such approval is granted, the trees must be replaced at full cost by the applicant with an advanced tree of a species nominated by Council's relevant officer.

Reason: To encourage the retention of street trees.

34 (6LP02)

No tree other than on land identified for the construction of buildings and works as shown on the building drawing can be felled, lopped, topped, ringbarked or otherwise wilfully destroyed or removed without the approval of Council.

Reason: To prevent the destruction of trees on other properties adjoining the development site.

35 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.



36 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

*Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.*

#### **PRESCRIBED CONDITIONS**

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

*Reason: Legislative Requirement (DACPLB09)*

**ANS01**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier.

The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005. The Plan must incorporate and disclose:

- all details of drainage to protect and drain the site during the construction processes,
- all sediment control devices, barriers and the like,
- sedimentation tanks, ponds or the like,
- covering materials and methods, and
- a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

*Reason: To protect the environment from the effects of sedimentation and erosion from development sites.*

The following Condition No. ANS01A is to be deleted as per Section 96(2) Application – Part 2:

**ANS01A  
DELETED****ANS02**

All works shall comply with AS 4970-2009 Australian Standard for Protection of Trees on Development Sites and all subsequent amendments. These requirements shall be implemented prior to the issue of any Construction Certificate.

*Reason: to implement correct protection measures to ensure no damage occurs to existing trees to be retained on the site, street or on neighbouring properties, throughout the demolition and construction works of this development.*

**ANS03**

All existing trees located on the site, on neighbouring properties and on Council's road reserve shall be retained in accordance with the DCP's requirements for tree removal and suitably protected from damage during the demolition and construction process, except for as stated in this consent and unless separate written approval is issued by Council.

*Reason: to ensure that existing trees, which do not have approval to be removed are suitably protected during the development works, and that their health, structure, environmental and amenity value is maintained.*

**ANS04**

That a suitably qualified arborist, minimum Level 5 AQF (Australian Qualification Framework), shall ensure that prior to any demolition or construction works commencing on site, the tree protection measures have been installed in accordance with AS 4970-2009 (Australian Standard for Protection of Trees on Development Sites).

This project arborist shall then monitor and supervise the works on site, providing direction on any specific construction methodologies required within the Tree Protection Zones and Structural Root Zones to ensure no damage occurs to existing trees.

The project arborist shall then compile a report confirming the actions taken to ensure the health, structure, amenity or environmental value of these existing trees has been maintained, for submission to the Accredited Certifier prior to the issue of any Occupation Certificate.

*Reason: to retain the existing trees' environmental, amenity and canopy contribution to the site and to ensure their protection against damage from construction works.*

#### ANS05

If any of the existing trees on site are damaged during demolition or construction works on the site, to an extent deemed by Council or a suitably qualified arborist (minimum Level 5 AQF) as beyond recovery, then replacement trees shall be planted on site in compensation. These replacement trees shall be selected from the species listed Council's DCP Schedule 4 – Part B – Native Tree Selection, installed at a minimum 100Litre pot size in a location on site to suit their dimensions at maturity. Documentary evidence shall be provided to the Accredited Certifier that these specimens have been installed to meet these requirements, prior to the issue of any Occupation Certificate.

*Reason: to encourage the retention of the existing trees on the site and make provision for replacement if specimens are damaged on the site through development works.*

#### ANS06

That in compensation for the one (1) *Ulmus parvifolia* Chinese Elm tree proposed to be removed due to this development, one (1) replacement specimen shall be planted, with species to be in accordance with Council's DCP Schedule 4 – Part B – Native Tree Selection, installed at a minimum 200Litre pot size in a location on site to suit their dimensions at maturity. Documentary evidence shall be provided to the Accredited Certifier that these replacement trees have been installed to meet these requirements, prior to the issue of Occupation Certificate.

*Reason: to replace the environmental, amenity and canopy contribution of the site caused from removal of existing trees on the site, through the planting of new specimens.*

#### ANS07

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. Fencing is to be maintained for the duration of the works. The fencing is to be designed to minimise the possibility of ground-dwelling mammals accessing the works areas and sheltering in cavities or voids. A surrounding barrier of minimum 300mm in height is considered sufficient.

*Reason: To prevent direct impacts to ground-dwelling mammals which may access the construction site and attempt to shelter in/under cavities, stockpiles or machinery.*

#### ANS08

On the day of removal of the Chinese Elm (*Ulmus parviflorus*), the tree is to be inspected by a suitably qualified ecologist or wildlife carer prior to its removal to check for the presence of arboreal mammals. If such mammals are present, they must be removed by the ecologist or carer and safely transported into care by a suitably qualified wildlife carer.

*Reason: To prevent death or injury to arboreal mammals which may be nesting in or utilising the Chinese Elm. This condition is also in accordance with recommendations of the submitted Terrestrial Biodiversity Report (Total Earth Care, October 2016). To ensure that any native fauna utilising the worksite are safely relocated by an appropriately trained officer, and that injured fauna receive expert care so that they can be returned to the wild where possible. It is also important that any dead individuals are reported so that causes of mortality can be identified.*



**ANS09**

An artificial nest box suitable for Brush-tailed Possums (*Trichosurus vulpecula*) must be installed and maintained in an appropriate area on site prior to removal of the Chinese Elm (*Ulmus parviflorus*). The construction and design of the nest must be in accordance with the guidelines for nest box construction developed by the Office of Environment and Heritage (e.g. <http://www.environment.nsw.gov.au/animals/GuideToMakingAPossumHouse.htm>).

*Reason: To partially mitigate the loss of Brush-tailed Possum nesting habitat associated with removal of the Chinese Elm tree.*

**ANS10**

The recommendations outlined within the Geotechnical Investigation Report No. J0993 prepared by White Geotechnical Group dated 25 October 2016 are to be implemented during construction and ongoing operation of the proposed development.

*Reason: To ensure compliance with the Geotechnical Investigation Report No. J0993 prepared for 1-3 Amiens Road, Clontarf by White Geotechnical Group dated 25 October 2016 and to ensure excavation is undertaken in an appropriate manner.*

**ANS11**

The recommendations outlined within the Bushfire Risk Assessment Report No. 1126 prepared by Ronald Coffey dated 20 September 2016 are to be implemented during construction and ongoing operation of the proposed development.

*Reason: To ensure compliance with the Bushfire Risk Assessment Report No. 1126 prepared for 1-3 Amiens Road, Clontarf by Ronald Coffey dated 20 September 2016.*

**ANS12**

The recommendations outlined within the Terrestrial Biodiversity Report No. C10297.1 prepared by Total Earth Care dated October 2016 are to be implemented during construction and ongoing operation of the proposed development.

*Reason: To ensure compliance with the Terrestrial Biodiversity Report No. C10297.1 prepared for 1-3 Amiens Road, Clontarf by Total Earth Care dated October 2016.*

**ANS13**

The recommendations outlined within the Assessment of Significant Trees Report prepared by Malcolm Bruce dated 27 September 2016 are to be implemented during construction and ongoing operation of the proposed development.

*Reason: To ensure compliance with the Assessment of Significant Trees Report prepared for 1-3 Amiens Road, Clontarf by Malcolm Bruce dated 27 September 2016.*

**ANS14**

DELETED

**ANS15**

Following construction activities, the applicant is to provide Council/Accredited Certifier with an updated geotechnical report that investigates the stability of the site and provides an assessment of any new landslip hazards prior to the issue of an Occupancy Certificate.

*Reason: To ensure excavation has been undertaken in an appropriate manner.*

**ANS16**

The three (3) lots comprising the development site are to be consolidated as a single land parcel and the Plan of Consolidation is to be registered with the Land and Property Information NSW within three (3) months of the issue of the Final Occupation Certificate.

*Reason: To ensure the subdivision pattern and allotment size are consistent with the development.*



The following Condition No. ANS17 is to be added as per Section 96(2) Application – Part 2:

**ANS17**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

The following Condition No. ANS18 (3MS01) is to be added as per Section 96(2) Application – Part 2:

**ANS18 (3MS01)**

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

The following Condition No. ANS18 is to be added as per Section 96(2) Application – Part 2:

**ANS18**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisations must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

The following Condition No. ANS20 is to be added as per Section 96(2) Application – Part 2:

**ANS20**

In compensation for the two (2) *Olea europaea* (European Olive) proposed to be removed due to this development, two (2) replacement native trees shall be planted, as indicated on the Landscape Plan DA20/S96, installed at a minimum 75 litre pot size in a similar location to the proposed removed *Olea*, and not as indicated on the Landscape Plan DA20/S96. Documentary evidence shall be provided to the Certifying Authority that these replacement trees have been installed to meet these requirements, prior to the issue of Occupation Certificate.

Reason: To ensure adequate landscaping.



<p><b>UPPER HUNTER ARCHITECTS</b>          1/27 THE ARCADE, SUITE 101/102, 1/27 THE ARCADE, SUITE 101/102, 1/27 THE ARCADE, SUITE 101/102          1/27 THE ARCADE, SUITE 101/102, 1/27 THE ARCADE, SUITE 101/102, 1/27 THE ARCADE, SUITE 101/102          1/27 THE ARCADE, SUITE 101/102, 1/27 THE ARCADE, SUITE 101/102, 1/27 THE ARCADE, SUITE 101/102</p>		<p><b>DA02</b> <b>S96</b></p>	
<p><b>FOR THIS CASE, THE PLAN NUMBER</b>  <b>ALL DIMENSIONS TO BE CHECKED ON SITE</b>  <b>ANY DISCREPANCIES TO BE RESOLVED WITH UPPER HUNTER ARCHITECTS BEFORE PROCEEDING</b>  <b>THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION</b>  <b>THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION</b>  <b>THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION</b></p>		<p><b>PROPOSED SITE PLAN</b>          scale: 1:200 @ A1, 1:400 @ A3          date: August 2017          drawn by: KB          checked by: KB</p>	
<p><b>DATE:</b> 2017-18  <b>LOCATION:</b> 1/27 The Arcade, Suite 101/102  <b>CLIENT:</b> Mr &amp; Mrs Phare  <b>DESIGNER:</b> UPPER HUNTER ARCHITECTS  <b>DATE:</b> August 2017  <b>REVISION:</b> B  <b>DRAWN BY:</b> KB  <b>CHECKED BY:</b> KB</p>		<p><b>DA02</b> <b>S96</b></p>	
<p><b>DATE:</b> 2017-18  <b>LOCATION:</b> 1/27 The Arcade, Suite 101/102  <b>CLIENT:</b> Mr &amp; Mrs Phare  <b>DESIGNER:</b> UPPER HUNTER ARCHITECTS  <b>DATE:</b> August 2017  <b>REVISION:</b> B  <b>DRAWN BY:</b> KB  <b>CHECKED BY:</b> KB</p>		<p><b>DA02</b> <b>S96</b></p>	



UPPER HUNTER ARCHITECTS						
DO NOT SCALE OFF THIS DRAWING						
ALL DIMENSIONS TO BE CHECKED ON SITE						
ANY DISCREPANCIES TO BE RESOLVED WITH UPPER HUNTER ARCHITECTS BEFORE PROCEEDING						
SUBJECT TO : DEVELOPMENT APPROVAL AND INSPECTION CERTIFICATE STRUCTURAL & SERVICES ENGINEERS DESIGN AND DETAIL.						
107 598 6506 - 10/4/24/24		www.upperhunterarchitects.com.au				
taganrog - Bourke/Cook/Melville		Melb 03 934 6542				
				project 2017-18		
				location 1-3 Arnhem Road, Clontarf NSW 2092		
				client IM & Wye Pharma		
				showing this PROPOSED NORTH & SOUTH ELEVATION		
				scale 1:500		
				date 1:100 @A1, 1:200 @A3		
				done August 2017		
				revision B		
				S96		



[illegible]



## 6.0 CATEGORY 3 APPLICATIONS

**ITEM 6.1**                      **DA2017/0087 – 198 FOREST WAY, BELROSE – DEMOLITION, BOUNDARY ADJUSTMENT, CONSTRUCTION OF CHILD CARE CENTRE AND A DWELLING HOUSE**

**REPORTING OFFICER**      **ALEX KELLER**

**TRIM FILE REF**              **2018/097789**

**ATTACHMENTS**            1 [↓](#) **Assessment Report**  
                                     2 [↓](#) **Site Plan and Elevations**

### **PURPOSE**

To present the attached application for a public hearing and Panel recommendation to then be referred to the General Manager for determination.

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### **RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel recommends **approval** for Application No. DA2017/0087 for Demolition, Boundary Adjustment, Construction of Child Care Centre and a Dwelling house at Lot 2069 DP 752038 & Lot 2 DP 1205253, 198 Forest Way, Belrose for the reasons outlined in the Assessment Report.

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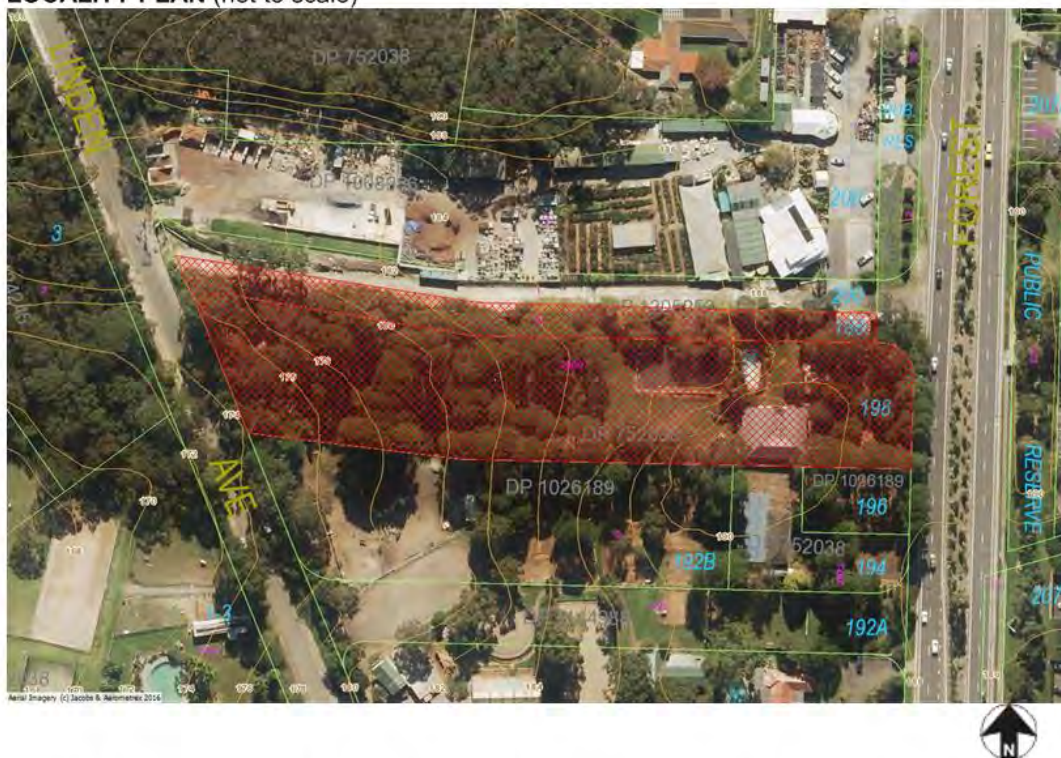


## DEVELOPMENT ASSESSMENT REPORT

<b>Assessment Officer:</b>	Alex Keller
<b>Address / Property:</b>	Lot 2069 DP752038 & Lot1205253, No. 198 Forest Way, Belrose
<b>Description:</b>	Demolition of existing structures and construction of a 90 place child care centre and a dwelling house
<b>Development Application No:</b>	DA2017/0087
<b>Application Lodged:</b>	6/2/2017
<b>Plans Reference:</b>	A00 to A16 Dated 21/12/ 2017 drawn by <i>Kaunitz Yeung Architecture</i> .
<b>Amended Plans:</b>	Section 34 NSW LEC Conference Plans (as above)
<b>Applicant:</b>	David Maggs and Sammy Lee
<b>Owner:</b>	G & I Jones
<b>Locality:</b>	C8 Belrose North
<b>Category:</b>	Category 2 - Housing Category 3 - Child Care Centre
<b>Variations to Controls (CI.20/CI.18(3)):</b>	Nil (Housing Density maintained - 1 dwelling)
<b>Referred to DDP:</b>	Not Applicable
<b>Referred to NBIAP:</b>	Yes – Category 3 Development Public Hearing
<b>Land and Environment Court Action:</b>	Yes – Appeal Lodged 29/9/2017 (Deemed Refusal). NSW LEC Section 34 Agreement Pending.
<b>SUMMARY</b>	
<b>Submissions:</b>	Two (2) (1 objection, 1 support)
<b>Submission Issues:</b>	Traffic, Noise, Stormwater
<b>Assessment Issues:</b>	Desired Future Character, Traffic, Access and Safety, Stormwater, Built Form Controls, Subdivision, Public submissions
<b>Recommendation:</b>	APPROVAL - Subject to conditions
<b>Attachments:</b>	Notification Plans



**LOCALITY PLAN** (not to scale)



**Subject Site:**

Lot 2069 DP752038 & Lot1205253 No. 198 Forest Way, Belrose

**Public Exhibition:**

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan.

As a result, the application was notified to 16 adjoining land owners and occupiers (including Belrose Rural Community Association) commencing on 23/2/2017 to 14/3/2017.

The application was also advertised within the *Manly Daily* newspaper on 25/2/2017 and a notice was placed upon the site.





## SITE DESCRIPTION

The site is identified as Lot 2069 in DP 752038 and Lot 2 in DP1205253 and contains a dwelling house, outbuilding, tennis court, swimming pool and scattered trees with some remnant bushland. The site has an elongated shape with an irregular frontage to Forest Way and a secondary road frontage to Linden Avenue.

The site has a total site area of 11,347.8 square metres (sqm). Lot 2069 is 9098.5sqm and Lot 2 is 2,249.3sqm.

The site has the following maximum dimensions:

<u>Direction</u>	<u>Length / Depth</u>
East – West	227 metres (m)
North – South	50 metres

The site is not heritage listed and may contain potential aboriginal relics or threatened species within the undisturbed bushland areas and is located in a designated bushfire prone area.

Land uses surrounding the site comprise of:

- To the north of the site is a retail plant nursery / landscape supplies (pre-dates WLEP 2000) with a cafe at No.200 Forest Way. This business acquired part of the closed road reserve that once separated the nursery from the subject site.
- To the south of the site is a horse riding business ("Palomino") at No.192 Forest Way and a vacant business premises ("Wright Pools") at No.194 Forest Way.
- To the east of the site is "Glenaeon" retirement village for aged and disabled persons at No.207 Forest Way that pre-dates WLEP 2000.
- To the west of the site are two rural residential properties addressed as No.13 and No.5 Linden Avenue.

## SITE HISTORY

Development Application No.DA1999/2386 for a dwelling house was approved by Council on 28 March 2000.

A road closure, including Crown subdivision was completed in 2016 for the unnamed Crown road reserve along the northern boundary of the site, creating Lot 2 DP1205253. Consolidation of proposed Lot 2 with Lot 2069 DP752036 was recommended.

## PROPOSED DEVELOPMENT

The application seeks Development Consent for the demolition of existing buildings and construction of a 90 place child care centre, new dwelling house and boundary adjustment.

The application includes the following works in detail:

- Demolition of existing dwelling house and associated outbuildings.
- Tree clearing and site preparation and excavation works.





- Construction of a 90 place child care centre with a carpark for 39 cars and driveway entry/exit from Forest Way.
- Proposed hours of operation of the child care are 7am to 6pm, Monday to Friday.
- Staff of 20 persons is proposed for the child care centre.
- Construction of a two level dwelling house with driveway access from Linden Avenue.
- Subdivision via boundary adjustment to create two new Lots utilizing a closed road reserve Lot and an existing holding. Proposed Lot 1: 4,954.4sqm and proposed Lot 2: 6,393.4 sqm.
- Stormwater drainage works, including on-site detention.

### AMENDMENTS TO THE SUBJECT APPLICATION

Following the Section 34 conference amended plans were received from the applicant to address issues raised in the Statement of Facts and Contentions filed with the NSW LEC on 19/9/2017.

The Section 34 plans have been supplied on a "without prejudice" basis to enable Council to further consider the application with a view to resolving the Contentions raised in the Section 34 proceedings. The applicant has been granted permission for the plans to be used for the purpose of assisting the Panel in considering the proposal and determining the application as a "Category 2" and "Category 3" use pursuant to WLEP 2000.

**NOTE:** The NSW LEC Rules permit an applicant to reserve the right to be able to rely on either the amended plans or original plans if the proposal proceeds to a full hearing in the NSW LEC.

The amended plans received have not been re-advertised or exhibited, as the detail is not considered to substantially alter the application as previously exhibited. It is considered that the amended application differs only in minor respects from the original application and would have no greater environmental impact. The building locations remain unchanged and the driveway remains along the former road reserve lot with the principal entry / exit only from Linden Avenue (not Forest Way).

### STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) State Environmental Planning Policy No. 55 – Remediation of Land
- d) State Environmental Planning Policy (Infrastructure) 2007
- e) Warringah Local Environment Plan 2000
- f) Warringah Development Control Plan
- g) Warringah Section 94A Contributions Plan

### PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 16 adjoining land owners and occupiers (including Belrose Rural Community Association) commencing on 23/2/2017 to 14/3/2017. The application was also advertised within the *Manly Daily* newspaper on 25/2/2017 and a notice was placed upon the site.



As a result of the public exhibition process one (1) submission of objection and one (1) submission of support have been received:

Name	Address
Details withheld	BELROSE

The matters raised within the submissions are addressed hereunder:

Concern	Comment
<p><b>Children Numbers</b></p> <ul style="list-style-type: none"> <li>Concern that there is conflicting information in the application as to whether the intensity of the child care centre is for 90 children or 124 children.</li> </ul>	<p>The plans show the proposal is for a 90 place child care centre in the following age groups:</p> <p>0 to 2 years – 20 children 2 to 3 years – 40 children 3 to 5 years – 30 children</p> <p>This is consistent with other child care centres in the C8 Belrose North Locality and B2 Oxford Falls Valley Localities where child care centres are Category 3.</p> <p>See discussion under Warringah Local Environmental Plan 2000 later in this report regarding low intensity, low impact land uses.</p> <p>This issue does not warrant refusal of the application and is addressed by conditions to restrict the maximum number of children 90.</p>
<p><b>Traffic</b></p> <ul style="list-style-type: none"> <li>Concern for increased traffic along Linden Avenue.</li> <li>Concern for traffic safety conflict resulting from existing traffic from trucks, school buses and other vehicles from nearby land uses.</li> <li>Concern that all traffic should enter and leave from Forest Way and not Linden Avenue.</li> </ul>	<p>The Roads and Maritime Service prefer all traffic to enter and leave site via Linden Avenue. Crozier Road and Linden Avenue are constructed to an adequate standard to accommodate the proposed traffic generation from the child care centre.</p> <p>Any site access from Forest Way will not be permitted by the RMS without a deceleration lane. However, the site the site does not have adequate frontage to comply with the recommended safe distance for a deceleration lane.</p> <p>Alternatively vehicles entering and leaving from Linden Avenue ensures traffic must use the traffic lights at Crozier Road, enabling safer travel to and from the site for north and southbound vehicles from the site. This is the preferred option for the RMS as it allows the major flow of traffic along Forest Way has priority. Safe entry / exit to the site will be ensured by conditions to ensure sight distances and driveway access off Linden Avenue complies with Australian Standards and Council's minor engineering works policy.</p> <p>All traffic access from Linden Avenue, with and emergency (bushfire) access to Forest Way is preferred. The applicant has proposed this arrangement as part of the Section 34 proceedings. Council's Traffic Engineer, Development Engineer and the RMS raise no objection to the amended driveway plans. The driveway remains within the former road reserve and will enable the house and child care centre to use the same driveway.</p>





	<p>See discussion under Warringah Local Environmental Plan 2000 later in this report regarding traffic access.</p> <p>This issue does not warrant refusal of the application and is addressed by conditions to ensure acceptable traffic access to the site.</p>
<p><b>Noise Amenity</b></p> <ul style="list-style-type: none"> <li>Concern for increased noise and decreased residential amenity.</li> </ul>	<p>See discussion in relation to Clause 43 – Noise in the General Principles of Development Control later in this report. In summary, the child care centre is sufficiently separated from nearby residences to ensure no unreasonable noise impact above existing background noise of adjacent land uses and traffic on Forest Way.</p> <p>See discussion under Warringah Local Environmental Plan 2000 later in this report regarding noise.</p> <p>This issue does not warrant refusal of the application and is addressed by conditions to ensure acceptable noise abatement measures including acoustic fencing and child care operational management.</p>
<p><b>Stormwater and Sediment Pollution</b></p> <ul style="list-style-type: none"> <li>Concern that stormwater runoff and sediment will drain to Linden Avenue and enter Bare Creek catchment.</li> </ul>	<p>The proposal includes a new effluent disposal system and sediment control dam to maintain water quality and minimise any risk of runoff toward Linden Avenue and Bare Creek.</p> <p>See discussion under Warringah Local Environmental Plan 2000 later in this report regarding management of stormwater.</p> <p>This issue does not warrant refusal of the application and is addressed by conditions to ensure acceptable traffic access to the site.</p>
<p><b>Bushfire Prone Land</b></p> <ul style="list-style-type: none"> <li>Concern that the site is subject to bushfire risk</li> </ul>	<p>The proposal was referred to the NSW RFS seeking General Terms of Approval under Section 100B of the <i>Rural Fire Act 1997</i>.</p> <p>The NSW RFS issued a "Bush fire Safety Authority" for the development, subject to several conditions which include requirements for the site to be managed as an inner protection area, evacuation and emergency management measures, provision of adequate services and level of design and construction all to be provided in accordance with 'Planning for Bush Fire Protection 2006'.</p>

## MEDIATION

Has mediation been requested by the objectors?

No

## LAND AND ENVIRONMENT COURT ACTION

A "deemed refusal" was lodged by the applicant in the NSW Land & Environment Court (LEC) on 29/9/2017 and "Section 34" conference proceedings commenced on 6/12/2017.

Following the Section 34 conference, amended plans were received from the applicant to address issues raised in the Statement of Facts and Contentions filed with the NSW LEC on 19/9/2017. The Section 34 plans have been supplied on a "without prejudice" basis to enable



Council to further consider the application with a view to resolving the Contentions raised in the Section 34 proceedings.

Since the Section 34 is not a full Hearing, the LEC sought advice on the Warringah LEP 2000 in dealing with "Category 3" matters, whereby an Independent Public Hearing (IPH) "must" be held prior to determination. To avoid any procedural fairness issues, Council's Legal Counsel recommends the DA be the subject of an IPH before Council enters into any final Section 34 Agreement. The NSW LEC has allowed time for Council to present the DA proposal (as amended) to the IPH.

Draft conditions (as recommended with this report) have been prepared with a view to concluding the matter by-way-of a "Section 34 Agreement" currently pending between the parties. Council may issue its own determination prior to the conclusion of the Section 34 which the applicant can then carry forward to the current appeal.

## REFERRALS

### *External Referrals*

#### **NSW Roads and Maritime Service**

The proposal was referred to the NSW Roads and Maritime Service (RMS) due to the proposed access to Forest Way. Initially, the RMS declined to grant concurrence (dated 14/3/2017) for any access to Forest Way with preference for all traffic to enter and leave via Linden Avenue.

The applicant sought to resolve this issue by proposing a deceleration lane for vehicles entering from Forest Way. As part of the NSW LEC Section 34 proceedings Council raised concerns regarding the site frontage constraints and traffic circulation issues. The applicant subsequently amended the plans (dated 21/12/2017) to have only an emergency (bushfire) exit to Forest Way and permit all access to the dwelling and child care centre via a driveway along the former road reserve (Lot 2 DP1205253).

On the 16 January 2018, the Roads and Maritime Service issued its concurrence under Section 138 the *Roads Act 1993* to the emergency exit on Forest Way, in support of the revised plans for normal access being only from Linden Avenue. Therefore, the RMS raises no further objection to the proposal, subject to conditions.

#### **NSW Rural Fire Service**

The proposal was referred to the NSW Rural Fire Service seeking General Terms of Approval (GTA) pursuant to Section 100B of the *Rural Fires Act 1997*. GTA's were provided on 9/3/2017 and as such the proposal is acceptable in this regard. The NSW RFS require that the driveway is of sufficient width to enable a water tanker to pass another vehicle and that emergency exit be provided to Forest Way.

#### **Ausgrid**

The application was referred to Ausgrid no referral response was received within the 21 day statutory period, therefore no Ausgrid conditions are recommended.



**Aboriginal Heritage Office**

The proposal was referred to the Aboriginal Heritage Office (AHO) for comment. On the 21 February 2017, the AHO have advised that if the development may disturb any in situ sandstone outcrop then a preliminary inspection by a qualified Aboriginal heritage professional is recommended. If there are no sandstone outcrops to be impacted by the development, then no further assessment is required.

The site has no significant sandstone outcrops that would be affected by the proposal and therefore no further assessment of Aboriginal Heritage issues is required.

**Internal Referrals****Waste**

The application was referred to Council's Waste Services Officer for comment. No objection is raised to the proposal, subject to conditions. The residential dwelling will be provided with a Council residential waste service. The child care facility will be required to acquire specific commercial waste service. The child care will be required to use its own independent commercial waste collection service.

**Development Engineering**

Council's Development Engineer raised issues of concern with respect to the proposed driveway arrangements and stormwater management. These matters were discussed with the applicant as part of the NSW LEC Section 34 Proceedings. The applicant has subsequently amended the plans (21/12/2017) and resolved those engineering issues.

Therefore, development engineering (including Road Assets) raises no further objection to the proposal, subject to conditions.

**Natural Environment Unit**

Council's Natural Environment Unit (NEU) raised issues of concern with respect to the water quality control design. These matters were discussed with the applicant as part of the NSW LEC Section 34 Proceedings. The applicant has subsequently amended the plans (dated 21/12/2017) to provide a satisfactory water quality control dam, drainage and erosion control devices. Therefore, NEU raise no further objection to the proposal, subject to conditions.

**Landscape**

Council's Landscape Officer raised issues of concern with respect to the landscaping requirements under Warringah LEP 2000. These matters were discussed with the applicant as part of the NSW LEC Section 34 Proceedings. The applicant has subsequently amended the plans (dated 21/12/2017) to improve the landscape setting to Forest Way, provide landscaping screening for the car park and maintain compliance with the Warringah LEP 2000. Therefore, Council's Landscape Officer raises no further objection to the proposal, subject to conditions.



## Traffic

Council's Traffic Engineer raised issues of concern with respect to the traffic access arrangements off Forest Way. These matters were discussed with the applicant as part of the NSW LEC Section 34 Proceedings.

The applicant has subsequently amended the plans (21/12/2017) to ensure all traffic access is from Linden Avenue for vehicles entering and leaving the site. The road network and traffic volumes along Linden Avenue/Crozier Road are adequate to safely accommodate the development with no significant works required. Therefore, Traffic Engineering raises no further objection to the proposal, subject to conditions.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on "Draft Environmental Planning Instruments" in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal. The application was notified in accordance with the Warringah Development Control Plan.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been addressed via a condition of consent.
Section 79C (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>The environmental impacts of the proposed development on the natural environment are considered acceptable. The proposal is consistent with the General Principles of Development Control.</p> <p>The proposed development will have a positive social and economic impact on the locality by offering child care services and jobs in a low impact low, intensity use.</p> <p>Accordingly, the proposal is supported, as it will not create unacceptable impacts on the subject site or surrounding properties, subject to conditions.</p>
Section 79C (1) (c) – the suitability of the site for the development	<p>The site is considered suitable for the proposed development in that the area of the proposed child care centre will be located where the land has been previously developed for a dwelling, tennis court and parking area.</p> <p>A number of mature pine trees and some native trees will be removed to provide Asset Protection Zones for bushfire safety purposes. However the proposal</p>





Section 79C 'Matters for Consideration'	Comments
	<p>includes replacement tree planting, landscaping and retention of many existing mature eucalypt trees. A number of smaller trees and shrubs will be planted to ensure the dwelling and child care centre is screened the bushland setting is maintained.</p> <p>While the proposal is a "Category 3" landuse, compliance is maintained with the built form controls. In summary, the use proposed would not cause unreasonable impacts on adjoining land uses and is considered to be consistent with "low intensity, low impact", for the long term character of the area.</p>
<b>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b>	See discussion on "Public Exhibition" in this report.
<b>Section 79C (1) (e) – the public interest</b>	<p>In this regard, the proposal provides for additional child care services within the Northern Beaches Local Government Area, which will benefit the wider community.</p> <p>The proposal is consistent with the General Principles of Development Control and maintains compliance with the numerical built form controls.</p> <p>When viewing the proposed development from the sectionalised public interest viewpoint, the concerns raised by the residents generally pertain to potential loss of noise amenity, traffic generation and stormwater quality.</p> <p>In balancing the wider public interest against the sectionalised public interest, it is considered that the site is suitable, as it would result in the provision of an in-demand service with minimal long-term impact on the environment.</p> <p>Accordingly, the proposal has is considered to be consistent with the greater public interest.</p>

#### **ENVIRONMENTAL PLANNING INSTRUMENTS:**

##### **Warringah Local Environmental Plan 2011 ("Deferred Matter")**

The subject site falls within the land area of 'deferred matter' subject to future zoning considerations by the *NSW Department of Planning*. Previous advice from the Department remains consistent and Council has not been informed of any zoning change that has become recently "imminent" for the future incorporation of the subject land into Warringah LEP 2011.

Therefore, for the purposes of assessment, no further consideration of the provisions of WLEP 2011 is required.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)**

##### **State Environmental Planning Policies (SEPPs)**

**SEPP No. 55 – Remediation of Land**

Clause 7(1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with some light agricultural land uses. It is noted that some fill has been placed on the site in the past for the purposes historical development however no significant risk of site contamination is evident. The site will be cleared of all built structures and subject to extensive landscaping works.

As such it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the land use.

**SEPP (Infrastructure) 2007*****Ausgrid***

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment: The proposal was referred to Ausgrid. No Ausgrid response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

***NSW Roads and Maritime Service***

The proposal was referred to the NSW RMS pursuant Section 101 for development with frontage to a classified road.

Comment: The proposal has been reviewed by the RMS and following NSW LEC Section 34 Proceedings, amended plans have considered by the RMS a revised referral response was issued on 16/8/2018. The RMS raises no objection to the proposal subject to requirements that are included with the recommended conditions of consent.

**SEPP (Educational Establishments and Child Care Facilities) 2017.**

The subject application (and NSW LEC Appeal) was lodged prior to the gazettal of the *SEPP (Educational Establishments and Child Care Facilities) 2017*. This Policy does not apply to or in respect of the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of this Policy.





## Regional Environment Plans (REPs)

Not Applicable

## Local Environment Plans (LEPs)

### ***Warringah Local Environment Plan 2000 (WLEP 2000)***

#### Desired Future Character (DFC)

The subject site is located in the C8 Belrose North Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

#### **C8 – Belrose North**

*"The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

*Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.*

*A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.*

*Development in the locality will not create siltation or pollution of Middle Harbour"*

The proposed development is defined as "Dwelling" and a "Child Care Centre" under the WLEP 2000 dictionary as follows:

**"Dwelling** means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."

**"Child care centre** means a building or place used (whether or not for profit) for the purpose of educating, minding or caring for children (whether or not any of the children are related to the owner or operator), but only if the following conditions are satisfied:

(a) the children number 6 or more, are under 6 years of age, and do not attend a government school, or a registered non-government school, within the meaning of the Education Act 1990,

(b) the building or place does not provide residential care for any of the children (other than those related to the owner or operator)."

"Child care centres" are identified as Category 3 development in this locality.



Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

**Requirement: "The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows:**

***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged."***

**Comment:** The Belrose North locality is generally characterised by residential development on large allotments. However, immediately adjoining the site to the south is a vacant two-storey building (formerly used by "Wright Pools" construction) and also a horse riding school. To the immediate north is a retail plant nursery and to the west of the site are rural residential properties in a bushland setting. To the east of the site is the Glenaeon retirement village. Other major land uses in the area include Covenant Christian School, Belrose Waste transfer station, a satellite telecommunications facility, a quarry and sport recreation facilities.

The proposed dwelling and child care centre is not considered to give rise to any significant impact on amenity to the surrounding land uses outlined above, such as overshadowing, loss of privacy or view impacts. The child care centre is located toward Forest Way where there is a higher intensity of existing development nearby, with the dwelling facing Linden Avenue opposite other rural houses in the street. As such, it is considered the proposed child care centre is consistent with the present character of the C8 Belrose locality and will not prevent the remainder of the locality from maintaining the DFC.

Some large exotic and native trees will be removed to provide building platforms, a driveway and parking area the majority of large native trees will be retained. To mitigate the loss of trees from the site, significant planting of smaller trees and shrubs will be located along the front setback to Forest Way and in suitable locations adjacent the buildings. This will assist to screen the development and ensure the bushland character of the locality is maintained and enhanced.

The proposal includes excavation works to construct parking and a basement area for the dwelling. The dwelling is situated along a terraced area to sit close to the natural fall of the land and included the use of natural stone and colours to blend with the bushland setting. The amended plans have included changes to break up visual bulk and wall planes.

Overall the development (as amended) is considered to adequately preserve the natural landform and landscape character of the locality and is therefore consistent with this element of the DFC.

**Requirement: "Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses."**





**Comment:** The proposal is for a part two-storey building to be used as a child care centre and a detached dwelling house.

An objective interpretation of what constitutes low intensity, low impact uses was used in the Land and Environment Court judgement *Vigor Master Pty Ltd v Warringah Shire Council* [2008] NSWLEC 1128. The interpretation within the judgement is provided as follows:

*"Intensity - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore 'low intensity' would constitute a development which has a low level of activities associated with it."*

AND

*"Impact - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality."*

**Low Intensity Comment:**

The proposed child care centre is to accommodate 90 children in a part two-storey building in keeping with the bulk and scale of surrounding development. The building presents as a single storey building facing Forest Way. The proposed hours of operation are between 7am and 6.00pm Monday to Friday, which although slightly later than the surrounding schools, would not result in unreasonable impacts on the adjoining residential occupiers as drop off and pick up times normally occur over a broader period in the morning and afternoon.

No operations are proposed on weekends and activities associated with the child care centre such as outdoor play time are confined within normal business hours.

In terms of density, it is noted that the density requirement for the C8 Belrose North locality is 1 dwelling per 20ha. The existing site with a total area of 9,098sqm (excluding the former road reserve) contains one approved dwelling only. It is noted the density control does not apply to further non-residential development of the site and the proposal does not seek to change the approved housing density.

The construction of the child care centre on the property whilst additional bulk, is not outside the scope of what other uses may be likely in the location such as a house with semi-agricultural business uses e.g. nursery, equestrian buildings or other semi-agricultural structures. The overall built form is therefore considered consistent with the density control.

As such, the proposed child care centre is maintain consistency with low intensity permissible land uses.

**Low Impact**

The relevant potential impacts of the proposed development are addressed as follows:



**Visual Impact:** The proposed child care centre is to be accommodated in a contemporary single storey building of a bulk and scale similar to surrounding non-residential uses. The chosen colours and materials, although they appear bright on the submitted perspective images, are of earthy undertones that are considered compatible with the locality. Furthermore, although a number of large trees are to be removed from the site to provide an Asset Protection Zone, selected native canopy trees are to be retained and significant planting of small shrubs and trees is proposed along the setback buffer areas. The proposed landscaping would substantially screen the development from the street and minimise the visual impact of the development.

**Noise:** The child care centre is proposed to operate between 7:00am and 6:00pm Monday to Friday, which is marginally outside the operation hours of the adjoining schools but generally within acceptable 'business hours'. A noise assessment report prepared by Acoustic Logic was submitted with the Development Application. The report concluded that the proposed development meets the noise criterion for children playing in both the indoor and outdoor play areas and also for road traffic noise and mechanical plant equipment. Subject to conditions requiring the recommendations of the report to be implemented, it is considered noise impacts as a result of the development will be sufficiently mitigated.

**Traffic:** The submitted Traffic and Parking Impact Assessment prepared by states that the anticipated increase in traffic movements would not create any unreasonable traffic safety or traffic delay issues on Linden Avenue, Crozier Road or Forest Way. Travel distances between Linden Avenue and the entry of the site are short with the increase in vehicle trips is remaining well below the capacity of the local road network in the vicinity. As such, the traffic implications of the proposal are considered to be of low impact.

**Vegetation:** As mentioned above, the proposal requires the removal of selected trees to meet provide an Asset Protection Zone for bushfire protection purposes and building works. Notwithstanding, the proposal will also retain numerous large trees where practicable and significant planting of smaller trees and shrubs is proposed within the building setback areas. Overall, the site will retain a bushland setting with wide landscape setbacks that are consistent with the desired future character of the area.

**Amenity:** The proposed development would not result in any significant loss of privacy, outlook or result in overshadowing of adjoining residential properties.

Given the development will involve the demolition of a dwelling house and construction of a new dwelling the housing density will remain unchanged. The capacity of the child care centre is consistent with other child care centres in the Locality. As a Category 3 use the proposal has ensured compliance with all the built form controls to assist in maintaining the DFC and rural amenity of the locality.

**Requirement:** *"A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape."*

**Comment:** The amended plans show a wide landscaped buffer will be retained along Forest Way. Open fencing is to be used for the road frontages with only short sections of "lapped and capped" fencing directly adjacent the child care centre to maintain privacy and reduce noise impacts to / from adjacent land.





**Requirement: "Development in the locality will not create siltation or pollution of Middle Harbour"**

**Comment** The proposal has included the construction of a water quality control dam to ensure runoff does not create siltation or pollution in Bare Creek Catchment or Middle Harbour. Relevant conditions in relation to erosion and sediment control are recommended.

As detailed above the proposed development is considered to be consistent with the Locality's DFC statement.

**Built Form Controls (Development Standards)**

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Control	Required	Proposed Development	Compliance
Housing Density	1 dwelling per 20ha  (Note: Lot 2 (the road reserve Lot) is not included for the purpose of calculating housing density as this Lot was not in existence on 8 March 1974.	Unchanged – 1 dwelling per 9,098.5 sqm (Total site area is 11,347sqm including the former road reserve area)  The proposal is not defined as a dwelling, and there is no subdivision proposed. As such there is no increase in the housing density of the subject site.  The Locality Statement states:  "Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses"  The assessment of the proposal against "low impact, low intensity" is considered the pertinent test as assessed earlier in this report.	Yes (As approved – no change)
Building Height (Measured from Natural Ground Level)	8.5m	6.7m (Child care Centre) 6.9m (Dwelling)	Yes
	7.2m	6.5m (Child care Centre) 6.7 (Dwelling)	Yes
Front Building Setback	20m (to Forest way)	23.5m (Driveway) Forest Way 20.0m (Carparking)	Yes Yes
	20m (to Linden Avenue)	57.4m (Childcare centre)  34.0m (Dwelling) Linden Avenue	Yes  Yes
Rear Building Setback	N/A – Dual frontage	N/A	N/A
Side Setback  (Driveway structures permitted)	North 10m	20.0m (Child care centre building)  10.9m (Dwelling) (Driveway has a 2m landscape buffer)	Yes  Yes



Built Form Control	Required	Proposed Development	Compliance
	South 10m (Driveway permitted)	12.2m (Child care centre building) 10m (Dwelling)	Yes  Yes
Bushland Setting	50% of site to be natural bushland or landscaped with local species (including former road reserve Lot 2)	61.5% (6,975sqm) – not including proposed outdoor play areas.  Note: The above calculation includes all new areas of landscaping within the western portion of the site as well as the existing grassed areas that comprise the eastern portion of the property.	Yes
National Park Setback	20m	No boundary with National Park land	N/A
Extractive Industry	Not applicable		

**Clause 20(1) stipulates:**

*“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”*

The application does not seek any variation to the development standards of WLEP 2000. No change is proposed to the approved housing density (single dwelling) for the site and concurrence of the Director of Planning is not required.

**General Principles of Development Control**

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
<b>CL38 Glare &amp; reflections</b>	Yes	The extent of the glazing proposed is not considered likely to result in light overspill or glare from artificial illumination, or sun reflection, and does not unreasonably diminish the amenity of the locality.  Standard conditions of consent will ensure that the roof finish be within the medium to dark colour range to reduce any likelihood of glare overspill from the proposed metal sheet cladding to the new roof elements.	Yes, subject to condition
<b>CL42 Construction Sites</b>	Yes	The site provides adequate area for the handling and storage of building materials, and will not unreasonably impact on the amenity of the locality.  If approval is granted, conditions of consent will be imposed that adequately address the construction requirements associated with the building works proposed on the site.	Yes, subject to condition



General Principles	Applies	Comments	Complies
<b>CL43 Noise</b>	Yes	<p>Clause 43 of WLEP 2000 provides "Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants".</p> <p>Child care centres typically result in increased levels of noise during some periods of the day. The subject site adjoins a horse riding school and a nursery. Traffic noise from Forest Way is also part of background noise levels.</p> <p>A noise assessment report by Acoustic Logic has been submitted with the application. The report notes spacing and activity levels for surrounding land uses. Additionally the report concludes, "that indoor noise levels from external noise sources and site noise emissions to nearby noise receivers can satisfy the requirements of Warringah Council, AAAC Technical Guideline for Child Care Centre Noise Assessment and NSW EPA Industrial Noise Policy requirements".</p> <p>Conditions are included to address recommendations within the noise report that are consistent with the amended plans.</p> <p>For the reasons listed above the proposal is considered to satisfy the requirements of Clause 43 subject to conditions.</p>	Yes, subject to condition
<b>CL44 Pollutants</b>	Yes	<p>The site will include as wastewater management system for on-site treatment including water quality control pond. Conditions have been recommended from Council's Environmental Health Officer and Natural Environment Unit to ensure no pollution risk from wastewater runoff and effluent disposal.</p>	Yes – subject to conditions.
<b>CL48 Potentially Contaminated Land</b>	Yes	<p>It is considered that the site will remain suitable for the proposed land use and that no further investigation is required.</p>	Yes
<b>CL50 Safety &amp; Security</b>	Yes	<p>The proposal maintains an acceptable level of safety and security through the site design and layout.</p> <p>Assessment of the proposal with regard to clause 50 is provided as follows:</p> <ul style="list-style-type: none"> <li>The proposed dwelling will be orientated towards the Linden Avenue to maintain passive surveillance</li> <li>The entrance to the Child care centre is clearly defined and is to be orientated towards Forest Way.</li> </ul> <p>The design includes the provision of appropriate lighting for pathways and entry areas.</p> <p>Subject to compliance with this requirement the proposal is satisfactory in terms of safety and security.</p>	Yes – subject to condition.
<b>CL51 Front Fences and Walls</b>	Yes	<p>Open style fencing is to be used with landscape planting to Forest Way and Linden Avenue.</p>	Yes – Subject to conditions.





General Principles	Applies	Comments	Complies
<b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	Yes	The site is not adjacent or abutting any public parks or bushland reserves. A front setback is maintained to provide a landscape setting to Forest Way.	Yes
<b>CL53 Signs</b>	No	No signage is proposed as part of this application.	N/A
<b>CL54 Provision and Location of Utility Services</b>	Yes	The subject site contains existing buildings with utilities currently servicing the site, including the supply of water, telecommunications and electricity. These utility services will be modified to suit connection to the proposed development.  Conditions are included to ensure compliance with environmental health requirements for the installation and operation of on-site aerated wastewater treatment system.	Yes, subject to condition
<b>CL56 Retaining Unique Environmental Features on Site</b>	Yes	The site does not contain any large rock outcrops but there are numerous large canopy trees on site that provide a feature. Numerous trees are pine trees however some native trees will be removed in order to construct the road access and building platforms.  Extensive landscaping will be provided to ensure screen planting is provided for the buildings and selected trees will be retained to maintain the bushland setting.	Yes
<b>CL57 Development on Sloping Land</b>	Yes	The proposal includes reducing the height of the existing raised fill area on the subject site to bring it more in line with natural ground level.  Additionally, as the dwelling and child care centres are part two storeys and utilise the slope of the land for an acceptable design response.  For the reasons listed above the proposal is considered to satisfy the requirements of Clause 57.	Yes
<b>CL58 Protection of Existing Flora</b>	Yes	The proposal includes the removal of numerous trees for building works and to comply with necessary asset protection zone in accordance with bushfire legislation. Notwithstanding, selected large eucalypt trees and new landscaping of smaller endemic trees and shrubs is proposed to maintain screen planting and a bushland setting. Council's Landscape Officer has raised no objections to the amended application subject to conditions and it is considered the proposed works will preserve the landscaped character of the area.	Yes – subject to conditions.
<b>CL60 Watercourses &amp; Aquatic Habitats</b>	Yes	Erosion and sediment controls will be required to be implemented prior to works in order to prevent sedimentation and water quality of Middle Harbour (including Bare Creek catchment).	Yes – subject to conditions.
<b>CL61 Views</b>	Yes	Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'.  The proposed child care centre is a single storey structure that will remain consistent with surrounding development	Yes





General Principles	Applies	Comments	Complies
		<p>in terms of visual bulk and scale. Views afforded from surrounding properties will not be adversely affected. It should be noted that there are no iconic views, or view corridors in the vicinity of the subject site.</p> <p>Upon investigation of the subject and surrounding sites, it is concluded that a reasonable sharing of views will be maintained from surrounding properties. As such, the proposal satisfies the General Principle.</p>	
<b>CL62 Access to sunlight</b>	Yes	<p>Clause 65 of the WLEP 2000 provides "<i>Development is not to unreasonably reduce sunlight to surrounding properties.</i>"</p> <p>The proposed development is not considered to unreasonably reduce sunlight to surrounding properties as the neighbouring properties will maintain at least two hours of solar access to over 50% of their private open space areas between 9am and 3pm on June 21.</p> <p>As such, the proposal satisfies the provisions of the General Principle.</p>	Yes
<b>CL63 Landscaped Open Space</b>	Yes	<p>The proposed development is deemed to satisfy the requirements of Clause 63 for the following reasons:</p> <ul style="list-style-type: none"> <li>• A detailed landscape plan has been submitted with the application detailing the planting of a significant array of trees and plants.</li> <li>• The proposed landscaping will maintain the privacy of adjoining dwellings and properties to the east and south.</li> <li>• The proposed landscaping provides landscaping commensurate with the proposed building bulk, given the rural nature of the area.</li> <li>• The proposed landscaping in the front setback will adequately screen the proposed building from Linder Avenue and Forest Way.</li> <li>• The landscaping provides for the adequate infiltration of stormwater.</li> <li>• The proposal provides the minimum 'bushland setting area' required by the locality statement.</li> </ul>	Yes
<b>CL63A Rear Building Setback</b>	No	The subject has a dual street frontage. Accordingly no further assessment is required in this regard.	N/A
<b>CL64 Private open space</b>	Yes	The dwelling house has a rural setting with adequate private open space around the house to meet the needs of the occupants.	Yes
<b>CL65 Privacy</b>	Yes	<p>Clause 65 of WLEP 2000 provides "<i>Development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other dwellings.</i>"</p> <p>The proposed child care centre is approximately 73m from the nearest dwelling (not including the dwelling on the subject site).</p> <p>The proposed dwelling is part two-storey structure that will not exceed 6.7m in height and the child care centre is 6.9m. As such there are no windows that will overlook</p>	Yes



General Principles	Applies	Comments	Complies
		neighbouring dwellings or properties. Additionally, the outdoor areas are not raised platforms and as such will not overlook adjoining properties.  Having regard to the provisions of the General Principle the proposal is satisfactory as it maintains an acceptable level of privacy.	
<b>CL66 Building bulk</b>	Yes	Clause 66 of WLEP 2000 provides that <i>"Buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise"</i> .  The proposal is considered to satisfy the provisions of the General Principle for the following reasons: <ul style="list-style-type: none"> <li>• The design of the proposed building is well articulated to reduce building bulk and provide visual interest.</li> <li>• The proposed building is a single storey structure that will not exceed the building height control and will maintain consistency with surrounding development.</li> <li>• Variation in the roof design is provided to break up the built form and a variety of colours and materials are proposed to create visual interest within the streetscape.</li> </ul>	Yes
<b>CL67 Roofs</b>	Yes	The skillion roof design is consistent with the contemporary design of surrounding buildings, particularly those at the school and would be complementary to the local area.	Yes
<b>CL68 Conservation of Energy and Water</b>	Yes	The proposal is considered to satisfy the requirements of Clause 68 for the following reasons: <ul style="list-style-type: none"> <li>• The layout of the proposed building allows for sufficient natural ventilation and solar access.</li> <li>• The proposal has minimal impact on the solar access of adjoining properties.</li> </ul>	Yes
<b>CL69 Accessibility – Public and Semi-Public Buildings</b>	Yes	Should approval be granted a condition is to be imposed requiring compliance with AS 1482.2.	Yes, subject to condition
<b>CL70 Site facilities</b>	Yes	The proposal includes a proposed garbage area off of the driveway near the entrance to the driveway. While no details are given of the elevation of the proposed garbage area, is considered adequate to provide for the likely needs of the child care centre. The proposal was referred to Council's waste officer who advised that as a commercial child care centre, bin waste will be collected by a private contractor. The dwelling will be serviced by Council's normal waste collection. In this regard, it is considered there is sufficient area for the access of waste collection vehicles into the site.	Yes, subject to condition
<b>CL71 Parking facilities (visual impact)</b>	Yes	The proposal is considered to satisfy the requirements of Clause 71 for the following reasons: <ul style="list-style-type: none"> <li>• The parking is located within a semi-basement/under</li> </ul>	Yes



General Principles	Applies	Comments	Complies
		<p>croft area so that it is not readily visible from the street.</p> <ul style="list-style-type: none"> <li>Significant landscaping within the front setback is proposed to screen the driveway and car park access from Linden Street</li> </ul>	
<b>CL72 Traffic access &amp; safety</b>	Yes	<p>The increase in traffic movements is primarily limited to the peak morning and afternoon drop off periods, with limited change in vehicle trips outside of these times. Including the dwelling and the child care centre the expected vehicle trips generated will be a maximum of 73 vehicle movements in the morning and 64 vehicle movements per hour in the afternoon.</p> <p>The application was referred to Council's Traffic Engineer who is satisfied the proposed car park meets the provisions of AS2890.1:2004 and that there is clear sight distance available at the vehicle entry and exit. As such, the proposal is considered to satisfy Clause 72.</p>	Yes
<b>CL73 On-site Loading and Unloading</b>	Yes	<p>The design of the site is sufficient to accommodate service vehicles for the purpose of garbage collection. Should approval be granted, it is to be conditioned that collection is not to occur during hours of peak usage to ensure safety of vehicles and pedestrians.</p>	Yes, subject to condition
<b>CL74 Provision of Carparking</b>	Yes	<p>Schedule 17 of WLEP 2000 requires 1 car space per 4 children for a child care centre. Given that the proposal is for 90 children, 23 spaces are required.</p> <p>The proposal provides for 23 on-site car parking spaces in accordance with the requirements of schedule 17.</p>	Yes
<b>CL75 Design of Carparking Areas</b>	Yes	<p>As mentioned above, the application was referred to Council's Traffic Engineer who is satisfied the proposed car park meets the provisions of AS2890 and that there is clear sight distance available at the vehicle entry and exit to Linden Avenue. Further, separate pedestrian access is provided from Forest Way to minimise vehicle and pedestrian conflict and the proposal would not affect public transport facilities. As such, the proposal is considered to satisfy Clause 75.</p>	Yes
<b>CL76 Management of Stormwater</b>	Yes	<p>The application includes the provision of an onsite stormwater detention system for the management of stormwater. The proposal was referred to Council's Development Engineers who have raised no objections subject to conditions.</p>	Yes - subject to conditions
<b>CL77 Landfill</b>	Yes	<p>The site will utilise excavated material from the site for any landfill / embankment contouring required. Landfill material will not be required to be brought in from off-site.</p>	Yes
<b>CL78 Erosion &amp; Sedimentation</b>	Yes	<p>Should approval be granted, appropriate conditions are to be imposed to mitigate erosion and sediment resulting from the construction process.</p>	Yes, subject to condition
<b>CL79 Heritage Control</b>	Yes	<p>There are no Warringah LEP 2000 listed heritage items in the immediate vicinity of the site.</p>	Yes





General Principles	Applies	Comments	Complies
CL83 Development of Known or Potential Archaeological Sites	Yes	Referral was made to the Aboriginal Heritage Office. The AHO provided comments and conditions in the event that any potential relics may be uncovered during site works.	Yes – subject to conditions.

#### Other Relevant WLEP 2000 Clauses

#### Schedule 8 - Site analysis

Site Analysis	The proposal includes a site analysis that satisfies the requirements of Schedule 8.
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#### Schedule 15 - Statement of Environmental Effects

Clause 15(1) of Warringah Local Environmental Plan 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15. In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application.

The applicant has submitted a Statement of Environmental Effects, addresses Schedule 15 of WLEP 2000. The following is provided having regard to these provisions:

Consideration	Proposed
(1) Summary of the Statement of Environmental Effects (SEE)	With regard to Point 1 of Schedule 15 the applicant has provided an executive summary which satisfactorily summarises the content of the statement of environmental effects.
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.	<p>With regard to Point 2 of Schedule 15 the applicant has provided the following:</p> <p><i>"Section 5 of the SEE outlines how the proposed development being a dwelling house, child care centre (the boundary adjustment is no longer proposed) as consistent with the relevant desired future character statement and an assessment of how the development proposal complies with the general principles of development control established by this plan. We are of the opinion that the development proposal is acceptable in terms of the desired future character statement of the C8 – Belrose North locality and complies with the principles of development control."</i></p> <p><b>Comment:</b> In Section 5 of the SEE the applicant has addressed how the proposal may be considered to be consistent with the desired future character of the locality with reference to the Category 3 classification of the proposal. In Section 5.8 of the SEE the applicant has addressed the relevant general principles of development control.</p>
(3) Objectives of the proposed development.	<p>With regard to Point 3 of Schedule 15 the applicant has provided the following:</p> <p><i>"the proposal is considered appropriate in that:</i></p> <ul style="list-style-type: none"> <li>• <i>The proposed child care centre is permissible within the zone.</i></li> <li>• <i>The proposal will provide a needed child care service within the Belrose area.</i></li> <li>• <i>The proposal will not result in any unacceptable or material</i></li> </ul>





Consideration	Proposed
	<p><i>environmental impacts to the neighbouring site uses.</i></p> <p><i>The DA is not expected to result in any adverse environmental impacts and as a consequence, it is considered that the site is suitable for the proposed use.</i></p> <p><b>Comment:</b> In Section 5.9 and 5.11 of the SEE the applicant has addressed the objectives of the proposed development including the need to consider the public interest. The proposal seeks to provide additional child care services for the Northern Beaches Local Government Area.</p>
<p>(4) An analysis of feasible alternatives.</p> <p>(including (a) Consequences of not carrying out the development and (b) Justification for the development)</p>	<p>With regard to Point 4 of Schedule 15 the applicant has provided the following:</p> <p>The consequences of not carrying out the development is that the property is likely to <i>"remain as a rural residential dwelling"</i> until alternative redevelopment or rezoning.</p> <p>Justification for the proposal is that the site is capable of providing for a dwelling house and child care centre providing a service to the local community, whilst achieving compliance with the built form controls and desired future character of the C8 Belrose North locality under WLEP 2000.</p> <p><b>Comment:</b> The SEE provides the consequences of not carrying out the development and gives reasons justifying the development. The child care centre will provide an in-demand service that caters for residents of the Northern Beaches Local Government Area.</p>
<p>(5) Development and context analysis.</p>	<p>With regard to Point 5 of Schedule 15 the applicant has provided the following:</p> <p><b><i>General description of the environment likely to be affected by the development, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and</i></b></p> <p>The proposed development will not give rise to any adverse environmental consequences, subject to conditions. The landscaped open space (bushland setting) provided on the site is significantly greater than required by the built form controls. Replacement plantings will be provided to ensure a balance of small, medium and large native canopy trees to maintain the DFC.</p> <p><b><i>The nature and extent of the development</i></b></p> <p>The proposed development will not result in any significant impacts on flora and fauna. The noise generated by the proposed development will not result in any unreasonable impacts on the nearby dwellings. There are no visual bulk impacts arising from the proposed development. The amended plans have addressed visual appearance and reduced the visible bulk and appearance to be consistent with the DFC.</p> <p><b><i>The nature and extent of any building or work associated with the development</i></b></p> <p>All hours of construction associated with the proposed construction works will be restricted in accordance with the Council &amp; EPA guidelines. A sediment control plan, demolition plan and waste management plan will ensure that the environmental impact of construction work is minimised.</p> <p><b><i>Any rehabilitation measures to be undertaken in connection with the development</i></b></p>



Consideration	Proposed
	<p>The landscape plan submitted with the application shows the extent of landscaping which will be undertaken. The landscaping proposed is considered to be adequate to complement the landscape and provide an appropriate landscape setting for the proposed development. The landscape plan shows that an appropriate number of replacement plantings will be provided to compensate for the tree removal which is required</p> <p><b>A full description of the measures proposed to mitigate any adverse effects of the development on the environment.</b></p> <p><i>Subject to conditions no unreasonable adverse environmental impacts are anticipated. Over the long term the proposal will not detract from the adjacent amenity, DFC and rural setting.</i></p> <p><b>Comment:</b> In Section 5 of the SEE the applicant gives an analysis of the development and the overall density of planting on site will be consistent with the DFC and as discussed earlier in this report, the proposed landscaping is considered acceptable.</p>
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	<p>With regard to Point 6 of Schedule 15 the applicant has outlined the following details"</p> <p>The proposed use will not change the existing character of the locality. The development has been designed to minimise the impact on the biophysical environment.</p> <p>The development will generate employment during construction and operation of the child care centre. In this regard the development will have a positive economic impact.</p> <p>The development will provide greater choice for families that require child care and it will also increase access to child care for families in the local area. In this regard the development will result in a positive social impact.</p> <p><b>Comment:</b> The proposal is considered to have no unreasonable impacts in relation to the economic and social environment as it will provide an additional child care service that is of benefit to the wider community without causing irreversible damage to the biophysical environment.</p>
(7) Measures to mitigate any adverse effects of the development on the environment	<p>With regard to Point 7 of Schedule 15 the applicant has provided the following:</p> <p>No unreasonable environmental impacts are anticipated as previously detailed. Section 5.3.8 addresses the <i>General Principles of Development Control</i>.</p> <p><b>Comment:</b> The Schedule under Section 5.3.8 outlines measures taken to mitigate any adverse impacts of the development on the environment. In conjunction with the amended (Section 34) plans submitted the proposal addresses the Warringah LEP 2000 requirements to minimise impacts on the environment in permitting development within the Locality.</p>
(8) Other approvals required	<p>With regard to Point 8 of Schedule 15 the applicant has provided the following:</p> <p>Pursuant to Section 91 &amp; 91A of the EP&amp;A Act, the development constitutes 'integrated development' as the development requires a Bush Fire Safety Authority in accordance with Section 100B of the Rural Fires Act 1997.</p>



Consideration	Proposed
	<p>and a concurrence under Section 138 of the Roads Act from the NSW RMS for development fronting a classified road.</p> <p>The approval of the Department of Community Services is required prior to the commencement of the use of premises for child care.</p> <p><b>Comment:</b> The NSW RFS have viewed the proposal and raise no objection, subject to conditions. It is noted that a Controlled Activity Approval is not required, as it has been confirmed the site is not within 40m of a watercourse. As such the proposal is considered satisfactory in this regard.</p>

It is considered that the submitted Statement of Environmental Effects in response to the provisions of Clause 15/Schedule 15 which adequately addresses the compatibility of the of the development with the Locality and the DFC.

#### Schedule 17 - Carparking Provision

<b>Carparking Provision</b>	<p>Schedule 17 of WLEP 2000 requires one car parking space for every four children. Based on the child care centre accommodating 90 children, 23 car parking spaces are required on-site.</p> <p>The proposed car-parking scheme provides for 25 spaces on-site plus a loading bay. Accordingly the proposal is considered satisfactory.</p>
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#### POLICY CONTROLS

##### Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan (adopted by Council on 13 June 2006).

The following monetary contributions are applicable:

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of		\$ 3,798,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	36,081.00
S94A Planning and Administration	0.05%	1,899.00
Total	1.0%	\$37,980.00

#### CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions





relevant Environmental Planning Instruments including Warringah LEP 2000, and the relevant codes and policies of Council.

The application was notified pursuant to Warringah DCP and two submissions were received. The issues raised by the objectors have been addressed by amended plans and conditions. The applicant lodged a "Deemed Refusal" Appeal in the NSW Land & Environment Court and the development application proceeded to a Section 34 conference within the Court.

Due to the lodgement of an Appeal, the NSW LEC is the consent authority for this application. However, the proposal includes matters relating to a "Category 3" use pursuant to the Warringah LEP 2000 and requires an Independent Public Hearing (IPH) to be held prior to determination. Rather than proceed to a full hearing where the Court would assume all the powers of a determining authority, the Court has allowed time for Council to deal with this issue in the interest of maintaining procedural fairness under the Warringah LEP 2000.

Following the Section 34 conference, amended plans were received from the applicant to address issues raised in the Statement of Facts and Contentions filed with the NSW LEC on 19/9/2017. The Section 34 plans have been supplied on a "without prejudice" basis to enable Council to further consider the application with a view to resolving the Contentions raised in the Section 34 proceedings.

The applicant has granted permission for the plans to be used for the purpose of assisting the IPH in considering the proposal as a "Category 3" use pursuant to WLEP 2000. The Category 2 component does not require a public hearing. In summary, the proposed Cat 3 child care centre and Cat 2 dwelling are considered to be consistent with the Desired Future Character of the C8 Belrose North Locality.

This assessment has taken into consideration the amended plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions. On merit, it is considered that the proposed development satisfies the appropriate controls and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to conditions contained within the recommendation.

As a direct result of the application and the consideration of the matters detailed within this report it is considered that the application be the subject of an Independent public hearing and approved in accordance with the following recommendation.

#### **RECOMMENDATION**

That the matter be the subject of an Independent Public Hearing and that Development Application No.DA2017/0087, for demolition of all existing structures and construction of a 90 place child care centre and a dwelling house, at a Lot 2069 DP752038 & Lot1205253, 198 Forest Way, Belrose is recommended for approval, subject to the conditions below:

#### **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**





**1. Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Consent stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A01 Site Plan	21.12.2017	Kaunitz Yeung Architecture
A02 Demolition Plan	21.12.2017	Kaunitz Yeung Architecture
A03 Site Plan - Proposed Child care centre	21.12.2017	Kaunitz Yeung Architecture
A04 Site Plan - Proposed Residential dwelling house	21.12.2017	Kaunitz Yeung Architecture
A05 Child care Centre Floor Plan	21.12.2017	Kaunitz Yeung Architecture
A08 Residential Ground Floor Plan	21.12.2017	Kaunitz Yeung Architecture
A09 Residential First Floor Plan	21.12.2017	Kaunitz Yeung Architecture
A11 Site Section A / Building Elevations	21.12.2017	Kaunitz Yeung Architecture
A12 Site Section B / Building Elevations	21.12.2017	Kaunitz Yeung Architecture
A13 Site Section C, D / Building Elevations	21.12.2017	Kaunitz Yeung Architecture
A14 Site Section E, F, G / Building Elevations	21.12.2017	Kaunitz Yeung Architecture
A15 Site Section R, S, T / Building Elevations & Sections	21.12.2017	Kaunitz Yeung Architecture
A15 Site Section U, V, W / Building Elevation & Sections	21.12.2017	Kaunitz Yeung Architecture
A700 Materials and finishes Schedule (Child care)	21.12.2017	Kaunitz Yeung Architecture
A701 Materials and finishes Schedule (Dwelling)	21.12.2017	Kaunitz Yeung Architecture

<b>Engineering Plans*</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DR-000 Legend	19.12.2017	Stellen
DR-001 Site Layout	19.12.2017	Stellen
DR-002 Stormwater and septic layout -	20.12.2017	Stellen



Residential Dwelling		
DR-003 Stormwater and septic layout - Child care Centre	20.12.2017	Stellen
DR-004 Roof layout residential and child care centre	20.12.2017	Stellen
DR-005 Pit and swale details	5.4.2017	Stellen
DR-006 Wastewater process flow diagram residential and child care centre	20.12.2016	Stellen
DR-007 On site Detention Basin Detail	20.12.2017	Stellen
DR-008 Gross Pollutant Trap Long section and Drains output	5.4.2017	Stellen

\* Engineering layout and plans are to correspond with the stamped architectural plans.

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Soil Assessment for Design of On-Site Wastewater System J0955	26.9.2016	White Geotechnical Group
BCA Design Compliance Report	12.1.2017	Matt Shuter
Plan for Child care Service Report	10.12.2016	Child care by Design
Basix Report 784614S	21.12.2016	JHA Consulting Engineers Pty Ltd
NatHERS	21.12.2016	Mahbub Hassan
Emergency Management Plan 2015-2016	Received 8.2.2017	Applicant
Fire Design 161104_JN16-00148	Received 8.2.2017	Red Fire Engineering
Bushfire Hazard Assessment Report 160669	7.12.2016	Building Code & Bushfire Hazard Solutions Pty Ltd
Water Management Report	20.12.2016	Stellen
Arboricultural Impact Assessment 2531	21.11.2016	Redgum Horticultural
Acoustic Assessment* 20160310,1	8.12.2016	Acoustic Logic

\* Subject to fencing change by conditions.

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

<b>Landscape Plans*</b>
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Drawing No.	Dated	Prepared By
LCP-01 Site Plan	December 2016	Fiona Robbe
LCP-02 DA Landscape Plan	December 2016	Fiona Robbe
LCP-04 Carpark Landscape Plan	December 2016	Fiona Robbe
LCP-05 CCC and Carpark Planting Plan	December 2016	Fiona Robbe
LCP-06-B Residence Landscape Plan	December 2016	Fiona Robbe
LCP-07 Fencing Details	December 2016	Fiona Robbe

\*Landscaping plans to be updated to correspond with Stamped Architectural Plans and conditions of consent for the Construction Certificate.

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	25.1.2017	Maggs & Lee

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

**2. Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- Fencing, along the side boundaries and road frontage boundaries, is to be of open rural style (ranch style post and rail / post and wire) except for the side boundary sections shown as "1.8m capped and lapped / acoustic fencing" immediately adjacent the child care centre building and carpark area.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land. (DACPLB02)

**3. 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
NSW Rural Fire Service	Response RFS Referral	9.3.2017
NSW Roads and Maritime Service	Response RMS Referral (Response to amended plans showing emergency Exit only)	16.1.2018
Aboriginal Heritage Office	Response AHO Referral	21.2.2017

(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 Department, Authority or Body's. (DACPLB02)

#### 4. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a single **dwelling** and **child care centre**:

*"dwelling means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."*

*"child care centre means a building or place used (whether or not for profit) for the purpose of educating, minding or caring for children (whether or not any of the children are related to the owner or operator), but only if the following conditions are satisfied:*

*(a) the children number 6 or more, are under 6 years of age, and do not attend a government school, or a registered nongovernment school, within the meaning of the Education Act 1990,*

*(b) the building or place does not provide residential care for any of the children (other than those related to the owner or operator)."*

(development is defined by the Warringah Local Environment Plan 2000)

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

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

#### 5. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or



demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement (DACPLB09)

## 6. General Requirements

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





to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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





- a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following:
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater



- (4) management system.  
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. (DACPLB10)

**7. Vegetation Maintenance at driveway entrance**

- i) The ongoing clearing of vegetation and tree pruning near the property driveway at Forest Way and Linden Avenue is to be organised by the property owner.
- ii) Clearing of vegetation in the road reserve shall only be undertaken by a Council approved tree contractor.
- iii) Details of currently approved tree contractors can be obtained from Northern Beaches Council Public Trees Section prior to removal.

Reason: To minimise vehicular conflicts within the property access. (DACTRBOC2)

## FEES / CHARGES / CONTRIBUTIONS

**8. Policy Controls**

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 3,798,000.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 36,081.00
Section 94A Planning and Administration	0.05%	\$ 1,899.00
Total	1%	\$ 37,980.00

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.



## 9. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.warringah.nsw.gov.au/your-council/forms](http://www.warringah.nsw.gov.au/your-council/forms)).

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

## 10. Works Bonds

### **(a) Construction, Excavation and Associated Works Bond (Drainage)**

A Bond of \$40,000.00 as security against any damage or failure to complete the construction of stormwater drainage works in Linden Avenue as part of this consent.

(Note: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate or Subdivision Certificate.)

### **(b) Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a Maintenance Bond of \$5,000.00 for the construction of stormwater drainage pit and pipe in Linden Avenue. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans to the satisfaction of Council.

(Note: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate or Subdivision Certificate.)  
An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection)

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





Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.warringah.nsw.gov.au/your-council/forms](http://www.warringah.nsw.gov.au/your-council/forms)).

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

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

#### 11. Vehicle Crossings Application Formwork Inspection

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

#### 12. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

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

Reason: To ensure suitable vehicular access to private property. (DACENC13)

#### 13. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.



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

Reason: Safety. (DACENC19)

**14. Detailed Design of the Stormwater Quality System**

Detailed designs of the Stormwater Quality System must be prepared by a suitably qualified engineer in accordance with the: Stormwater and Sewerage Management Plans dated 20 December 2017 prepared by Stellen Consulting.

*child care*

The detailed designs and certificate prepared by a suitably qualified engineer shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

**15. Kitchen Design, construction and fit out of Food Premises**

Where food is being prepared on site ; The construction fit-out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'. Prior to any Occupation Certificate (OC) being issued certification is to be provided by a suitably qualified person that the fit-out complies with the above requirement.

Reason: To ensure that the kitchen complies with the design requirements.

**16. Plans of Mechanical ventilation**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

**17. Approval to Install an On-site Sewage Management System**

Prior to the release of the Construction Certificate (CC), the applicant must receive an 'Approval to Install an On-Site Sewage Management System' from Council.

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

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993

**18. Tree protection**

(a) Existing trees which must be retained

i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation





ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by the Project Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Impact Assessment prepared by Redgum Horticultural - revised 21 November 2016 and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

19. **Landscaping**

Prior to vegetation clearance for construction and Asset Protection Zone establishment, the Project Ecologist is to identify suitable areas of existing native vegetation which can be incorporated and managed in the proposed bushland planting areas of the property (as per Landscape Plan prepared by Fiona Robbe - December 2016) and also remain within specified standards for designated Asset Protection Zones.

Trees are to be managed in accordance with Arboricultural Impact Assessment prepared by Redgum Horticultural - revised 21 November 2016.

Native plants used in the landscaping for this development must be grown from local provenance seed and cuttings as per the species list available from Northern Beaches Council.

No Grevillea or Banksia hybrids are to be used in the landscaping for this development.

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

Reason: Management and protection of bushland (DACNEC02)

20. **Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland protection measures are carried out according to the conditions of consent.

The Project Ecologist will ensure and provide certification that conditions relating to the





biodiversity management of the property are carried out. The Project Ecologist is to be a vegetation management specialist and to have at least 4 years experience in the management of native bushland in the Sydney region and have at least a TAFE Certificate III in Bush Regeneration or Conservation and Land Management - Natural Area Restoration.

Reason: To ensure bushland management. (DACNEC07)

**21. Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

**22. External Finishes to Roof**

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

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

**23. Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

**24. On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's "On-site Stormwater Detention Technical



Specification" and the concept drawing by Stellen Consulting, drawing numbers DR – 000, 001, 002, 003, 004, 005, 006, 007, 008, revision 3, dated December 2017. Drainage plans are to be amended to comply with the following:

- i. Maximum design water surface of the OSD basin for the 1 in 100 year ARI storm is RL179.50m
- ii. Overflow weir invert level of the OSD basin is RL179.60m
- iii. Low level flow discharge from the OSD basin is to comprise of 225mm diameter orifice to be contained within a stormwater inlet pit with the orifice set at RL178.70m
- iv. High level flow discharge from the OSD basin to comprise of 300mm diameter vertical pipe with the opening set at RL179.07m

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

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (DACENC03)

## **25. Submission of Engineering Plans for Civil Works in the Public Road Reserve**

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of stormwater drainage pit and pipeline within Linden Avenue reserve which are to be generally in accordance with the Development Application and Council's specification for engineering works – AUS-SPEC #1 and Council's Minor Works Specification.

The Fee Associated with the assessment and approval of the plans is to be in accordance with Council's Fees and Charges.

The developer/applicant must lodge with Council a Maintenance Bond for the construction of \$5,000.00. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council.

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

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

Reason: Ensure engineering works are constructed in accordance with relevant standards.

## **26. Vehicle Crossings**





The provision of one vehicle crossing six metres wide along the Linden Avenue frontage in accordance with Northern Beaches Council Drawing No A4-3330/ Extra High, one vehicle crossing three metres wide along the Forest Way frontage in accordance with Northern Beaches Council Drawing No. A4-3330/1 Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

#### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

##### 27. Property Boundary Levels

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve. (DACENE01)

##### 28. Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment. (DACHPE01)

##### 29. Imported Fill

Prior to the importation of any landfill material onto the site, a validation report prepared in accordance with the NSW Office of Environment and Heritage validation report shall state in an end statement that the fill material is suitable for the proposed use on the land.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the fill being imported to the site.

Reason: To ensure that imported fill is of an acceptable standard. (DACHPE02)

##### 30. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by





ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLA03)

### 31. **Fauna and Tree Hollow re-location**

During any vegetation clearance for construction or Asset Protection Zones the Project Ecologist is to be present to re-locate any displaced fauna that may be disturbed during this activity.

Tree hollows are to be salvaged from trees within the development area and placed within the proposed bushland planting areas of the property (as per Landscape Plan prepared by Fiona Robbe - December 2016). This is to be done by a qualified and experienced Arborist, under the direction of the Project Ecologist.

Details prepared by the project ecologist in writing demonstrating compliance is to be submitted to the Principal Certifying Authority.

Reason: To ensure bushland management in accordance with Local Habitat Strategy 2007, (DACNEE01)

### 32. **Weeds**

No noxious or environmental weeds, as listed on the Northern Beaches Council - Warringah website are to be imported on to the site.

Any noxious weeds or environmental weeds on the site are to be managed continuously, in accordance with the Noxious Weeds Act 1993.

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

Reason: To ensure bushland and riparian management. (DACNEE02)



**33. Aboriginal Heritage**

If in undertaking excavations or works, 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 Officer for Warringah Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

**34. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed and maintained in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and Construction Soil and Water Management Plan dated 20/12/2016 prepared by Stellen Consulting.

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised..

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

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

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

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

**36. Project Arborist**

a) A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works.

b) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment prepared by Redgum Horticultural - revised 21 November 2016

c) The Project Arborist is to familiarise themselves with and ensure compliance as relevant with, any other tree and environmental requirements conditioned under this consent.

Reason: Environmental protection

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





**36. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

**37. Certification for the Installation of Stormwater Quality System**

A certificate from a suitably qualified Civil Engineer, stating that the stormwater quality management system has been installed in accordance with the detailed designs and Construction Certificate Plans.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

**38. Positive Covenant for Stormwater Quality Devices**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater quality devices. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands.

The Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater quality system

**39. Stormwater Quality Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure proposed stormwater quality measures remain effective.

The Plan must contain the following:

- a) Inspection and maintenance schedule of all stormwater quality treatment devices
- b) Record keeping and reporting requirements
- c) Funding arrangements for the maintenance of all stormwater quality treatment





devices

- d) Waste management and disposal
- e) Traffic control measures (if required)
- f) Relevant contact information
- g) Renewal and replacement requirements of all stormwater quality treatment devices
- h) Work Health and Safety requirements

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

**40. Works as Executed Drawings - Stormwater Quality System**

Works as Executed Drawings for all stormwater quality devices must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

**41. Approval to Operate the On-site Sewage Management System**

Prior to the release of the Occupation Certificate, the applicant must submit an 'Approval to Operate an On Site Sewage Management System' to the Certifying Authority.

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993.(DACHPFPOC4)

**42. 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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

**43. House / Building Number**

House/building number is to be affixed to the letterbox / gate entry fronting Linden Avenue to be readily visible from the public domain.

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

Reason: Proper identification of buildings. (DACPLF04)

**44. Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards



of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

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

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

**45. Disabled Persons Parking**

Disabled persons parking spaces shall comply with Australian Standards AS2890.6:2009, including the provision of a bollard in the adjacent 'shared area'. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with Australian Standards. (DACTRFPOC1)

**46. Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

**47. Required Tree Planting**

a) tree planting shall be provided within the site in accordance with the following minimum schedule:

No. of Trees Required	Species	Location	Minimum Pot Size
All trees	As indicated on the approved Landscape Plans	As indicated on the approved Landscape Plans	As indicated on the approved Landscape Plans

b) Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate

Reason: Preservation of environmental amenity and landscape character of the area.

**48. Landscape Works Certification**

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying





Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and conditions of consent.

- b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity

#### **49. Authorisation of Legal Documentation Required for On-site Stormwater Detention**

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land. (DACENF01)

#### **50. On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

#### **51. Positive Covenant for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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





Reason: To ensure ongoing maintenance of the on-site stormwater detention system.  
(DACENF12)

## **52. Creation of Positive Covenant and Restriction as a User**

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

## **53. Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To identify encumbrances on land. (DACENF02)

## **54. Restriction as to User for On-site Stormwater Detention**

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

## **55. Certification of Drainage Works and Works as Executed Data**

A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. Works as Executed data certified by a registered surveyor prepared in



accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Occupation Certificate. Council's guidelines are available at <https://www.warringah.nsw.gov.au/sites/default/files/documents/general-information/stormwater-and-development/guideline-preparing-works-executed-data-council-stormwater-assets.pdf>

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

Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACNEF12)

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

**47. Maximum Capacity**

The maximum child care enrolment permitted for the Child care Centre is 90 places.

Reason: Restriction on intensity of use (DACBCGOG2)

**48. Maintenance of Stormwater Quality System**

The stormwater quality system must be maintained at all times in accordance with manufacturers specifications and as necessary to achieve the required stormwater quality targets for the development.

Reason: Protection of the receiving environment

**49. Waste Management On-going Arrangements**

The residential dwelling will be provided with a Council residential waste service. The child care facility will be required to acquire specific commercial waste service. The child care will not be allowed and is not entitled to use the residential waste service.

Reason: to ensure adequate waste provision (DACHEGOG1)

**50. Notification of Food Business**

Where food is being prepared on site as part of the child care service provided the business must register "notify" as a Food Business with Council.

Reason: To ensure preparation of safe food (DACHPGOG1)

**51. Noise Impact on Surrounding Areas**

Any noise from the premise shall not exceed more than 5dB(A) above the background level when measured from within any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy and any appropriate legislation to prevent offensive noise.

Reason: To ensure that noise generated from the premise does not create offensive noise (DACHPGOG5)

**52. Hours of Operation**

The hours of operation for child care are restricted to:

- Monday to Friday – 7:00am to 6:00pm

(Staff attendance is to be staggered to address any early or late (arrival/départure) occasional occurrences within or outside these hours)

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)

**53. No Illumination**

No consent is given or implied for any form of illumination or floodlighting to any sign or building or other external areas other than that approved.

Reason: To ensure appropriate forms of illumination that are consistent with Council's controls, and do not interfere with amenity of nearby properties. (DACPLG13)

**54. Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

**55. Maintenance period for civil works under the provisions of the Roads Act 1993 and Environmental Planning and Assessment Act 1979**

A Maintenance Period of six (6) months shall apply to the stormwater drainage works located in, on or over a public road as approved under the provisions of Section 139 of the Roads Act 1993 and Section 80A of the Environmental Planning and Assessment Act 1979, after it has been completed and approved in writing by the appropriate Roads Authority. In that period the applicant shall be liable for any part of the work which fails to perform in the manner outlined in Roads Authority's specifications, or as would be reasonably be expected under the design conditions.

Reason: To ensure works are appropriately constructed and repaired where defective. (DACENG01)





