

# AGENDA

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

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

**WEDNESDAY 6 FEBRUARY 2019**

Beginning at 1:00pm for the purpose of considering and determining matters included in this agenda.



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

**Panel Members**

Lesley Finn	Chair
Steve Kennedy	Urban Design Expert
Robert Hussey	Town Planner
Peter Cotton	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 Local Planning Panel  
to be held on Wednesday 6 February 2019  
in the Council Chambers, Civic Centre, Dee Why  
Commencing at 1:00pm**

<b>1.0</b>	<b>DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>5</b>
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3.2	DA2018/1254 - 4-6 Niangala Close, Belrose - Alterations and Additions to the Belrose Supa Centre and the addition of two takeaway food and drink premises .....	22
3.3	DA2018/0639 - 7 Bruce Avenue, Manly - Alterations and additions to an existing dwelling house .....	59
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## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 19 DECEMBER 2018**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 19 December 2018 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	MOD2018/0554 - 20 JUBILEE AVENUE, WARRIEWOOD - MODIFICATION OF DEVELOPMENT CONSENT N0116/06 GRANTED FOR CONSTRUCTION OF AN ADMINISTRATION AND PACKAGING FACILITY FOR BLACKMORES
REPORTING OFFICER	Luke Perry
TRIM FILE REF	2019/049136
ATTACHMENTS	1 Assessment Report

#### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the original application was determined by an independent panel.

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0554 for modification of Development Consent N0116/06 granted for Construction of an administration and packaging facility for Blackmores Limited at Lot 50 and 54 DP 1237461, 20 Jubilee Avenue, Warriewood subject to the conditions and for the reasons set out in the Assessment Report.

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## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0554
<b>Responsible Officer:</b>	Luke Perry
<b>Land to be developed (Address):</b>	Lot 50 DP 1237461, 20 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 54 DP 1237461, 20 Jubilee Avenue WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of Development Consent N0116/06 granted for Construction of an administration and packaging facility for Blackmores Limited
<b>Zoning:</b>	B7 Business Park B7 Business Park
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Blackmores Ltd
<b>Applicant:</b>	Turnbull Planning International Pty Ltd
<b>Application lodged:</b>	17/10/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	06/11/2018 to 10/12/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

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

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

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

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

### **SUMMARY OF ASSESSMENT ISSUES**

There are no assessment issues.

### **SITE DESCRIPTION**

<b>Property Description:</b>	<p>Lot 50 DP 1237461 , 20 Jubilee Avenue WARRIEWOOD NSW 2102</p> <p>Lot 54 DP 1237461 , 20 Jubilee Avenue WARRIEWOOD NSW 2102</p>
<b>Detailed Site Description:</b>	<p>The subject site is rectangular in shape, with an area of 25,210 m2 with 2 street frontages with all access from Jubilee Avenue, and a rear boundary to Mona Vale Road.</p> <p>The site contains a large warehouse and distribution centre (originally approved by Development Application No. N0116/06 and since modified), which also includes the following:</p> <ul style="list-style-type: none"> <li>• Administrative offices;</li> <li>• A large loading area (which includes reversing docks within the south-east corner of the warehouse and a large open hardstand area within the front setback);</li> <li>• Multiple car parking areas (mostly situated towards the side and rear of the site); and</li> <li>• Landscaped areas (mostly within the front, rear and western setbacks).</li> </ul> <p>The development and associated uses was approved in 2006 by Development Application No. N0116/06 and was subject to a number of modifications to the consent (refer to the background section of this report).</p> <p>The subject site is within a B7 Business Park zone. The front and side boundaries within the same B7 zone, though the rear boundary adjoins an SP2 Infrastructure (Classified Road; Mona Vale Road) zone. The site is in close proximity to a large number of other zone boundaries which are as follows:</p>

- An IN2 Light Industrial zone is located to the south-east, south and southwest of the site, and is located approximately 20m from the subject site at its nearest point;
- Further SP2 Infrastructure zones are located approximately 135m northwest (a cemetery), 265m northwest (electricity supply infrastructure) and 300m northwest (a cemetery) of the subject site;
- R2 Low Density Residential zones are located around the site and are approximately 55m north, 100m east, and 140m south-east of the subject site at their nearest respective points;
- R3 Medium Density Residential zones are located approximately 145m south-east and 415m south of the subject site;
- RE1 Public Recreation zones are located approximately 45m north, 185m north, 305m east and 295m south of the subject site; and
- E4 Environmental Living zones are located approximately 120m south-east and 225m east of the subject site.

As is reflected by the large number of zone boundaries that are close to the subject site, there are a wide range of development types within the surrounding area. Most development is consistent with the zones in which they are located (e.g. business/industrial type structures within business and industrial zones, low scale residential development within R2 zones, etc.).

Notable exceptions include Pittwater RSL and associated recreational facilities which adjoin the subject site's eastern boundary, and multiple takeaway food and drink premises that adjoin the subject site's northwest boundary. Despite being within an IN2 zone, the site immediately to the southwest (diagonally opposite Jubilee Avenue) contains residue residential development.

The subject site is flood affected and Class 5 Acid Sulphate soils, and is affected by biodiversity considerations (heathland vegetation). The site contains a number of easements, though the rear of the site is not affected by land reservation considerations. The site does not contain a heritage item and is not within a heritage conservation area.

Map:



#### SITE HISTORY

Date	Details
26/05/1998	Development Application No.HA4/0059/98 approved for the construction of a factory complex comprising of 36 industrial units with associated car parking and landscaping.
23/10/2001	Development Application No.N0833/01 approved for the filling of a dam (Note: While this application affected the subject site, the historic address associated with this application is 86 Mona Vale Road, Mona Vale).
17/12/2003	Development Application No.N0636/03 refused. The application was a SEPP 5 application proposing 82 residential units, a community building and 150 car parking spaces.
16/09/2005	Development Application No.N0550/05 approved for demolition works (Note: While this application affected the subject site, the historic address associated with this application is 86 Mona Vale Road, Mona Vale).
08/06/2006	Development Application No. N0116/06 approved for a warehouse and distribution centre with associated administration offices, car parking and landscaping.
24/08/2006	Section 96 Modification Application N0116/06/s96/1 approved. The approval related to a change of conditions regarding operating/business hours and vehicular deliveries.



22/09/2006	Development Application No. N0502/06 approved for a kitchen facility for use by onsite staff.
22/11/2006	Section 96 Modification Application N0116/06/s96/2 approved. The approval related to the deletion of a mezzanine area and internal changes to Level 1 of the building at the southern end of the site.
22/05/2007	Section 96 Modification Application N0116/06/s96/3 refused. The application proposed changes to conditions of consent relating to S94 contributions. An appeal before the NSW Land and Environment Court was discontinued on 28/02/2008.
16/06/2008	Section 96 Modification Application N0116/06/s96/4 approved for modifications to conditions regarding construction vehicle access to the site.
15/06/2009	Section 96 Modification Application N0116/06/s96/5 approved for modifications to the roof of the building (cooling towers and ducts).
15/09/2010	Development Application No. N0213/10 approved for the installation of a sewer mining and water recycling treatment facility (i.e. a blackwater system).
23/08/2016	Development Application No. N0456/15 withdrawn. The application proposed the construction of an awning structure over an existing hardstand loading area and associated signage.
24/10/2016	Section 96 Modification Application No. N0116/06/S96/6 approved for operational changes to the site. <b>NOTE:</b> This application included the approval of additional/modified conditions that are the subject of the current modification application before Council.
08/11/2017	Section 96 Modification Application N0116/06/s96/7 approved for the modification of Condition B45 relating to truck movements within the site and restriction on the operation of loading/unloading in certain areas of the site.

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

The proposal seeks to modify Development Consent N0116/06 granted for Construction of an administration and packaging facility for Blackmores Limited.

Specifically the proposal seeks to delete Condition No. B42A which relates to a 12 month trial period of operation hours of the hardstand/loading dock area.

Condition No. B42A reads as follows:

*'The use of the hardstand/loading dock area is subject to a 12 month trial period from the date of this determination.*

*At the end of the 12 month trial period if the applicant wishes to make the hours of operation of the hardstand/loading dock area permanent, the applicant must lodge a Section 96 Modification Application together with supporting documentation (including details of the reports referred to below) on or before 2 months prior to the end of this 12 month trial period.*

*During the 12 month trial period the applicant is to provide to the Council every 3 months an acoustic report which details:*

- a. A daily log of the number of vehicles entering and leaving the property between the hours of 6pm and 10pm*
- b. The acoustic report is to show compliance with the noise criteria in the NSW EPA Industrial Noise Policy*
- c. Acoustic readings must be undertaken at the most, or potentially the most, noise sensitive locations being the nearest residential property boundary from the hardstand/loading dock area d. The details that must be included in the report are:*
  - 1. The background noise level must be measured as an LAeq 15 minute and LA90 15 minute*
  - 2. Acoustic readings of the truck, forklift and any other operations within the hardstand/loading dock area*
  - 3. The above readings are to be done over a period of 7 consecutive days during approved operating hours*
- e. Acoustic details showing that the noise generated from any operation from the hardstand/loading dock area shall not exceed more than 5dB(A) above the background level when measured from the most affected noise sensitive location.*

*The approved hours of operation of the hardstand/loading dock area can remain in place until the Section 96 application has been finally determined subject to:*

- a. A Class 1 appeal to the Land and Environment Court being commenced against any actual refusal of the S96 application by Council within 14 days from the date of that refusal or*
- b. If the Council does not determine the S96 application within 40 days of the lodgement of that application, a Class 1 appeal being commenced against the Councils deemed refusal of the application within 60 days of the date of the lodgement of the S96 application or*
- c. In the event that the S96 is not lodged in accordance with the above, Council may commence a Class 4 application against a breach of these conditions.'*

The deletion of Condition No. B42A will result in the hours of operation stipulated in Condition No. B40 becoming permanent.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0116/06, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0116/06.
(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	Development Application N0116/06 did not require concurrence from the relevant Minister, public authority or approval body.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2011 and Pittwater 21 Development Control Plan.
(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.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment



In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Philip Charles Walker	184 Warriewood Road WARRIEWOOD NSW 2102

The following issues were raised in the submission and each have been addressed below:

- **Noise**

The matters raised within the submissions are addressed as follows:

**Noise**

The submission raises general concerns regarding the ongoing operation of the facility and resultant noise impacts. The submission raises concerns that the incorrect industrial noise policy has been applied.

Comment:

This application relates to the deletion of the 12 month trial condition relating to the operation of the hardstand/loading dock area (Condition No. B42A).

The applicant has fulfilled its obligations contained within Condition No. B42A relating to ongoing acoustic monitoring and daily log of vehicle movements.

Council's Environmental Health Team is satisfied that the Applicant has addressed the appropriate Noise criteria as required by the relevant legislation and Condition No. B42A.

In response to the concerns regarding noise impacts, Council's Environmental Health Team have reviewed the submitted Acoustic Reports, Council's records (complaints) and undertaken its own comprehensive noise and vehicle usage assessment in accordance with applicable legislation and raises no objections to the proposed deletion of Condition No. B42A subject to the imposition of ongoing conditions.

The ongoing conditions are as follows:

1. The Applicant must submit to Council an annual Acoustic Report (prepared by a suitably qualified Acoustic Engineer) that demonstrates compliance with the noise criteria in the NSW EPA Industrial Noise Policy for Industry;
2. Deliveries and dispatch must be limited to 10pm; and
3. Daily truck log records are to be kept on-site.

Therefore, given the comments made by Council's Environmental Health Team and subject to the imposition of the conditions referred to above, these matters raised above do not warrant refusal of the application.

**MEDIATION**

No requests for mediation have been made in relation to this application.

**REFERRALS**

Internal Referral Body	Comments
Environmental Health (Industrial)	The application was referred to Council's Environmental Health Team who have provided the following comments:

Internal Referral Body	Comments
	<p><b>'General Comments</b></p> <p><i>Environmental Health has been asked to comment on the proposed modification to consent number N0116/06/S96/7- operation of a hardstand and proposal to make hours of operation permanent.</i></p> <p><i>This matter has had previous long and protracted history which is not repeated here; however, this culminated with Council giving an approval consent which was conditional on a number of conditions including condition number B42A which imposed a trial period in regard to the use of the hardstand area at the Warriewood Campus at 20 Jubilee Avenue Warriewood.</i></p> <p><i>In summary:</i></p> <p><i>The use of the hardstand/loading dock area is subject to a 12 month trial period from the date of this determination.</i></p> <p><i>At the end of the 12 month trial period if the applicant wishes to make the hours of operation of the hardstand/loading dock area permanent, the applicant must lodge a Section 96 Modification Application together with supporting documentation (including details of the reports referred to below) on or before 2 months prior to the end of this 12 month trial period.</i></p> <p><i>During the 12 month trial period the applicant is to provide to the Council every 3 months an acoustic report which details:</i></p> <ul style="list-style-type: none"> <li><i>a. A daily log of the number of vehicles entering and leaving the property between the hours of 6pm and 10pm</i></li> <li><i>b. The acoustic report is to show compliance with the noise criteria in the NSW EPA Industrial Noise Policy</i></li> <li><i>c. Acoustic readings must be undertaken at the most, or potentially the most, noise sensitive locations being the nearest residential property boundary from the hardstand/loading dock area</i></li> <li><i>d. The details that must be included in the report are:</i> <ul style="list-style-type: none"> <li><i>1. The background noise level must be measured as an LAeq 15 minute and LA90 15 minute.</i></li> <li><i>2. Acoustic readings of the truck, forklift and any other operations within the hardstand/loading dock area.</i></li> <li><i>3. The above readings are to be done over a period of 7 consecutive days during approved operating hours.</i></li> </ul> </li> <li><i>e. Acoustic details showing that the noise generated from any operation from the hardstand/loading dock area shall not exceed more than 5dB(A) above the background level when measured from the most affected noise sensitive location.</i></li> </ul> <p><i>The applicant has now requested that this condition of the trial period (condition) be removed and has submitted evidence including an acoustic engineer's report by Acoustic Dynamics, daily log of vehicles</i></p>

Internal Referral Body	Comments
	<p>entering and leaving the property between the hours of 6 PM and 10 PM and also submitted a statement of environmental effects and other supporting documentation including significantly reduced evening use of the hardstand due to alternative off site operational changes.</p> <p>Environmental Health also completed its own separate comprehensive noise and vehicle usage assessment and determined that the noise assessment submitted by the applicant was generally in accordance.</p> <p>In the absence of any contrary information the applicant has met the requirements of condition number B42A of the consent and Environmental Health therefore has no objection to the removal of the said condition.</p> <p>Environmental Health however further recommend that the condition be replaced with a condition to assist in any future issues that may arise, monitor, if necessary, undertakings in the application of reduced site usage due to operational needs, to monitor the number of vehicles in this regard and therefore the following condition is recommended :</p> <p><b>Condition Proposed:</b></p> <p><u>Access to information</u></p> <p>That should Council verbally request information with regard to the numbers , types of vehicles and hours entry/exit to/from the site, in investigating any future complaints, that this information shall be freely provided with a view to assisting all parties eliminate any potential nuisances that may occur.</p> <p>Reason: To assist in investigation and resolution of any complaints with regards to vehicle numbers, types of vehicles and hours entry/exit to/from the site to maintain the amenity of the area.</p> <p>Additionally as requested by Environmental Health Management conditions in regard to :</p> <ul style="list-style-type: none"> <li>• Yearly acoustic report to demonstrate compliance with the noise criteria in the NSW EPA Industrial Noise Policy</li> <li>• Deliveries and dispatch limited to 10pm</li> <li>• Daily truck log records kept onsite and available to Council on request</li> </ul> <p><b>Recommendation</b></p> <p>APPROVAL - subject to condition outlined above.'</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is



External Referral Body	Comments
	assumed that no objections are raised and no conditions are recommended.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

##### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the industrial land use.

##### **SEPP (Infrastructure) 2007**

###### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

###### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### Pittwater Local Environmental Plan 2014

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

#### Principal Development Standards

There are no development standards applicable to this modification application.

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes

#### Pittwater 21 Development Control Plan

#### Built Form Controls

There are not built form controls applicable to this modification application.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
C3.7 Pollution Control	Yes	Yes
C3.13 Industrial Development Adjoining Residential Land	Yes	Yes

#### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

#### CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

#### CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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



**RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0554 for Modification of Development Consent N0116/06 granted for Construction of an administration and packaging facility for Blackmores Limited on land at Lot 50 DP 1237461,20 Jubilee Avenue, WARRIEWOOD, Lot 54 DP 1237461,20 Jubilee Avenue, WARRIEWOOD, subject to the conditions printed below:

**A. Delete Condition No. B42A.****B. Add Condition No. 48A to read as follows:****On going Noise Minimisation**

1. The Applicant must submit to Council an annual Acoustic Report (prepared by a suitably qualified Acoustic Engineer) that demonstrates compliance with the noise criteria in the NSW EPA Industrial Noise Policy for Industry;
2. Deliveries and dispatch must be limited to 10pm; and
3. Daily truck log records are to be kept onsite.

The reports and records detailed above must be made available to Council upon request.

Reason: To ensure noise minimisation to maintain the amenity of the area.

### ITEM 3.2

**DA2018/1254 - 4-6 NIANGALA CLOSE, BELROSE -  
ALTERATIONS AND ADDITIONS TO THE BELROSE SUPA  
CENTRE AND THE ADDITION OF TWO TAKEAWAY FOOD AND  
DRINK PREMISES**

**REPORTING OFFICER**

## Anna Williams

TRIM FILE REF

**2019/044608**

## ATTACHMENTS

- 1 **Assessment Report**  
2 **Plans**  
3 **Clause 4.6**

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10%.

## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1254 for alterations and additions to the Belrose Supa Centre and the addition of two takeaway food and drink premises at Lot 1 DP 1104786, 4-6 Niangala Close, Belrose subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1254
<b>Responsible Officer:</b>	Renee Ezzy
<b>Land to be developed (Address):</b>	Lot 1 DP 1104786, 4 - 6 Niangala Close BELROSE NSW 2085
<b>Proposed Development:</b>	Alterations and Additions to the Belrose Supa Centre and the addition of two takeaway food and drink premises
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B7 Business Park Warringah LEP2011 - Land zoned E2 Environmental Conservation WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes - Zone B7 Business Park Yes - Zone E2 Environmental Conservation
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Aventus Belrose Pty Ltd
<b>Applicant:</b>	Hgw Projects Pty Ltd
<b>Application lodged:</b>	26/07/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	10/08/2018 to 24/08/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,331,000.00

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

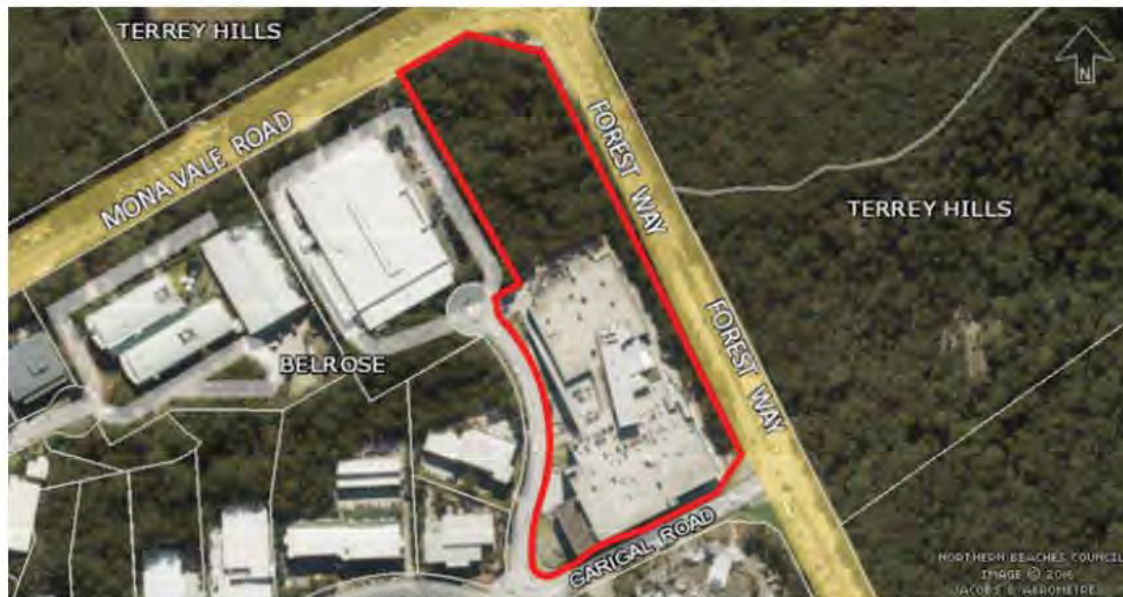
## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 1104786 , 4 - 6 Niangala Close BELROSE NSW 2085
<b>Detailed Site Description:</b>	<p>The subject site consists of a single allotment located on the northern side of Niangala Close, Belrose. The site is irregular in shape with three street frontages. The site has a frontage of 328.11m along Forest Way, 109m along Mona Vale Road. The site has a surveyed area of 4.023ha.</p> <p>The site is located within the B7 Business Park zone and accommodates a bulk good premises comprising 32 000m<sup>2</sup> of gross floor area. 1185 car spaces are provided across the 6 levels of the building and on the roof top.</p> <p>The site is also zoned E2 Environmental Conservation. This zoning applies to a portion of land around the perimeter of the site along the street frontages to Forest Way and Mona Vale Road.</p> <p>The existing building comprises retailers such as Harvey Norman, Freedom Furniture and Domayne.</p> <p>Surrounding development consists of a mix of light industrial and commercial premises including Bunnings Warehouse and BCF.</p> <p>The topography of the site is characterised by a cross fall to the south western corner. The site is bushfire prone and classified as Landslip Risk Class A and B on Council's Landslip Risk Map.</p>

Map:



## SITE HISTORY

### DA2001/1615

The existing development was approved under Development Consent 2001/1615 on 11 May 2004 for the construction of a bulky goods retail outlet, shops, restaurants, conservation of bushland and associated parking.

### 2001/1615Mod 1

On 27 February 2006, Council granted modified consent (2001/1615Mod 1) to provide an additional 124 car parking spaces on the rooftop, ramping, lighting and an increase to the parapet.

### 2001/1615Mod 2

On 26 September 2006, Council granted modified consent (2001/1615Mod 2) for the provision of a stairway linking the lower and upper level rooftop carparking areas.

### MOD2009/0030 (Modification 3)

On 18 February 2010, Council granted consent (MOD2009/0030) to modify condition No. 39 of consent 2001/1615 to increase the gross floor area of the shops component of the Development from 1,000m<sup>2</sup> to 2,500m<sup>2</sup>.

*Condition 39 stated:*

*39. The gross floor space of shops and restaurants in the development shall not exceed 2500 square metres for shops and 302 square metres for restaurants.*

Condition Nos. 41A and 41B were added to the Consent by MOD2009/0030 as a result of an Economic Impact Assessment provided by Hill PDA dated 7 January 2010.

*Condition No. 41A stated:*

*41A. Retailing of clothing or apparel*

*This consent does not authorise the use of any shop whose primary purpose is for the retailing of clothing or apparel.*

*Reason: To maintain the use of the centre for retailing of bulky goods.*



Condition No. 41B stated:

*41B. Size of the individual shops*

*This consent does not authorise any individual shop to exceed 400 square metres of gross floor space.*

*Reason: To prevent the creation of mini major retailers*

**MOD2010/0178 (Modification 4)**

On 4 November 2010, Council granted consent (MOD2010/0178) to modify Condition No. 39 to become Condition No. 39A and to delete Condition Nos. 41A and 41B.

Condition No. 39A states:

*39A. Notwithstanding Condition 41 [see note below] the following restrictions also apply to the gross floor*

*space of shops:*

*a) 1,000 square metres of shops may be utilised for general retailing.*

*b) 1,500 square metres of shops is subject to the following restrictions:*

*i. This consent does not authorise the use of the additional 1,500 square metres for shops whose primary purpose is for the retailing of clothing or apparel.*

*ii. This consent does not authorise any individual shop to exceed 400 square metres of gross floor space.*

Note: Condition No. 41 states:

*41. This consent does not authorise the use of any shop for the purposes of a supermarket or other similar food sales outlet.*

**DA2014/1369**

On 1 July 2015, DA2014/1369 for alterations and additions including addition of a store room at Level 1, 2290m<sup>2</sup> of retail floor space, corridor, plant room and goods lift at Level 2 was approved by Council subject to conditions.

**DA2018/1254**

Development Application No. DA2018/1254 for alterations and additions to the existing Level 2 of the bulky goods retail centre was lodged with Council. This application is the subject of this assessment.

**PROPOSED DEVELOPMENT IN DETAIL**

The proposed development seeks alterations and additions to the existing bulky goods retail centre and a change of use. Specifically, the works include:

**Level 2**

- Removal of existing roof structures
- Removal of glass wall structures
- Enclose approximately 152m<sup>2</sup> of 'existing outdoor seating area' to be internal floor space
- Create new internal tenancy floor area of approximately 51m<sup>2</sup> to be partitioned into two (2) shops and change of use to takeaway food and drink premises.
- Hours of operation for new tenancies:

Monday to Wednesday	9.00am - 5.30pm
Thursday	9.00am - 9.00pm
Friday	9.00am - 5.30pm
Saturday	9.00am - 5.00pm
Sunday	10.00m - 5.00pm

- New operable glass walls with doors to existing outside terrace
- New awning along the eastern facade of the building
- New kids play area with tensile awning structure over
- New pergola over outdoor seating area
- Glass panel balustrade along the eastern edge of the outdoor area

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.



## **BUSHFIRE PRONE LAND**

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by BPAD - Bushfire Planning & Design, dated 14.06.2018). The report stated that the bushfire attack level of the site is "Flame Zone" the report recommends the works comply with Planning for Bush Fire Protection.

The application was accompanied by a Bushfire Risk Assessment Certificate in accordance with Section 4.14 (1)(b) and does not rely on an Alternate Solution. Accordingly, the application is not required to be referred to the NSW RFS.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

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

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

## **MEDIATION**

No requests for mediation have been made in relation to this application.

## **REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
Building Assessment - Fire and Disability upgrades	No objections, subject to conditions.
Environmental Health (Food Premises, Skin Pen.)	Reconfiguration and fit-out of food premises. No Objections subject to conditions.
<b>External Referral Body</b>	<b>Comments</b>
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

#### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for bulk goods retail purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the continued bulky goods retail land use.

#### SEPP (Infrastructure) 2007

##### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

##### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### Warringah Local Environmental Plan 2011

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

##### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	No change to existing height of 19.27m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	12.5m
Percentage variation to requirement:	13.6%

##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

##### Clause 4.6 Exceptions to development standards:

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

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

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

##### Comment:

The proposed development is considered to satisfy the objectives of this clause as it seeks to undertake upgrade works within the same footprint area currently being used for a similar purpose . Clause 4.3 – Height of Buildings and therefore flexibility in applying the maximum building height controls should be considered. Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

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

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

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

*(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard which occurs in the location of the proposed pergola only.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:



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

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in Section 3.1 (of the Applicants Clause 4.6 variation);
- The proposed development fully achieves the objectives of WLEP 2011 for the B7 Business Park zone and the E2 Environmental Conservation zone, as described in Section 3.2;
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 3.3;
- The exceedance of building height would only occur in the location of the proposed pergola, contravening the building height provision by 1.5m, pursuant to Clause 4.3 of WLEP 2011. In this regard, no adverse environmental impacts with regard to excessive bulk and scale, overshadowing, loss of views or privacy due to the physical composition would occur to surrounding sites;
- The proposed development would remain compatible with commercial and industrial land uses within the Belrose locality in light of the above; and
- Compliance with the remaining development standards applicable to the site is achieved.

The Applicant's arguments support the extent of works which exceed the height limit in relation to improving the design and amenity of the built environment of the site.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B7 Business Park zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The area of the proposed height non-compliance is within the existing maximum height of the bulky goods development and is located on the eastern side of the building. The non-compliance pergola section will not adversely impact on the compatibility of the site with surrounding and nearby development.

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

Comment:

The proposed works are unlikely to be perceivable from any of the surrounding properties or even from Forest Way and will not result in any adverse visual impact, loss of views, privacy or solar access.

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

Comment:

The proposed development will not result in any adverse impact on Warringah's coastal and bush environments.

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

Comment:

The proposed works are located within the existing roof terrace area on Level 2 and will not be prominently discernible from the adjoining Forest Way.

### Zone objectives

The underlying objectives of the B7 Business Park zone are:

- *To provide a range of office and light industrial uses.*

Comment

The existing bulky goods retail centre will remain in operation as part of the proposed development upgrade works.

- *To encourage employment opportunities.*

Comment:

The proposed works will continue to support employment opportunities generated by the existing centre.

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

Comment:

The proposed works will not impact on other facilities or services in the area.

- *To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The proposed upgrade works within the Level 2 terrace area will compliment the existing architecture of the development while providing improved amenity and functionality for the customers using the centre.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.*

Comment:

There are no anticipated conflicts with adjoining zones as the proposed works are located at Level 2 of the development and are substantially separated from any other landuse or residential zone.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B7 Business Park zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

### **Warringah Development Control Plan**

#### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
B4 Site Coverage	33.3%	No change to approved (39%)	N/A	Yes
B7 Front Boundary Setbacks	Niangala Close - 6.5m Garigal Road - 10m	63m 94m	N/A	Yes
B14 Main Roads Setback	Forest Way - 30m  Mona Vale Road - 30m	No change to existing setback Forest Way - 34m to roof 25m to playground Mona Vale Road - 258m	N/A	Yes

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A.5 Objectives	Yes	Yes
B4 Site Coverage	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B14 Main Roads Setback	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches Council Contributions Plan 2018**

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 1,331,000		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 12,645
Section 7.12 Planning and Administration	0.05%	\$ 666
Total	1%	\$ 13,310

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1254 for Alterations and Additions to the Belrose Supa Centre and the addition of two takeaway food and drink premises on land at Lot 1 DP 1104786, 4 - 6 Niangala Close, BELROSE, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-DA-0001 - Site Plan & Location Plan	6.06.2018	Buchanan Group
A-DA-0100 - Overall Level 2 Plan	6.06.2018	Buchanan Group
A-DA-0101 - Demolition Level 2 Plan	6.06.2018	Buchanan Group
A-DA-0102 - Demolition Roof Plan	6.06.2018	Buchanan Group
A-DA-1001 - Part Floor Plan Existing Level RL 188	6.06.2018	Buchanan Group
A-DA-1201 - Part Roof Plan Existing Level RL 192.5	6.06.2018	Buchanan Group
A-DA-2001 - Elevation & Section	6.06.2018	Buchanan Group

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Assessment Report	14.6.2018	Bushfire Planning & Design
Bushfire Risk Assessment Certificate	14.6.2018	Bushfire Planning & Design
Traffic and Parking Report	9.07.2018	CIRQA Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

#### 2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement (DACPLB09)

### 3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:



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

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 1,331,000.00		
<b>Contributions</b>	<b>Levy Rate</b>	<b>Payable</b>
Total Section 7.12 Levy	0.95%	\$ 12,644.50
Section 7.12 Planning and Administration	0.05%	\$ 665.50
<b>Total</b>	<b>1%</b>	<b>\$ 13,310.00</b>

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 Contributions Plan 2018.

#### 5. **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.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

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

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

#### 6. **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)

7. **Registration of Food Business**

The food business must be registered "notified" with the Appropriate Regulatory Authority (Council), prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

8. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a person who is suitably qualified that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

Reason: To ensure that the kitchen complies with the design requirements. (DACHPFPOC3)

9. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements. (DACHPFPOC4)

10. **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)

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

11. **Hours of Operation**

The hours of operation for the two (2) new take away food premises are to be restricted to:

- Monday to Wednesday - 9.00am - 5.30pm
- Thursday - 9.00am - 9.00pm
- Friday – 9.00am - 5.30pm
- Saturday – 9.00am - 5.00pm
- Sunday and Public Holidays – 10.00am - 5.00pm

Upon expiration of the permitted hours, all service shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.  
(DACPLG08)



DATE	2018/08/20	BY	DA
REV	01	DESCRIPTION	ISSUED FOR PERMIT



NOTES:  
1. THIS DRAWING IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION.  
2. THE DESIGN IS SUBJECT TO APPROVAL BY THE LOCAL COUNCIL.  
3. THE DESIGN IS SUBJECT TO APPROVAL BY THE STATE GOVERNMENT.  
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**BELROSE  
SUPER CENTRE**

LEVEL 2 FOOD COURT EXTENSION

Project No: 217185  
Rev: DA  
Date: 15.02.2018  
Drawn by: DA  
Scale: AS SHOWN

TITLE SHEET, DRAWING INDEX,  
SITE PLAN & LOCATION PLAN

Drawing No: A-DA-0001  
Rev: 2

**BUCHAN**

Spring Studio  
+61 2 9561 1011 / buchansgroup.com.au

DA ISSUE



PROPOSAL LOCATION

1 SITE PLAN  
SCALE: 1:500 (APPROX.)

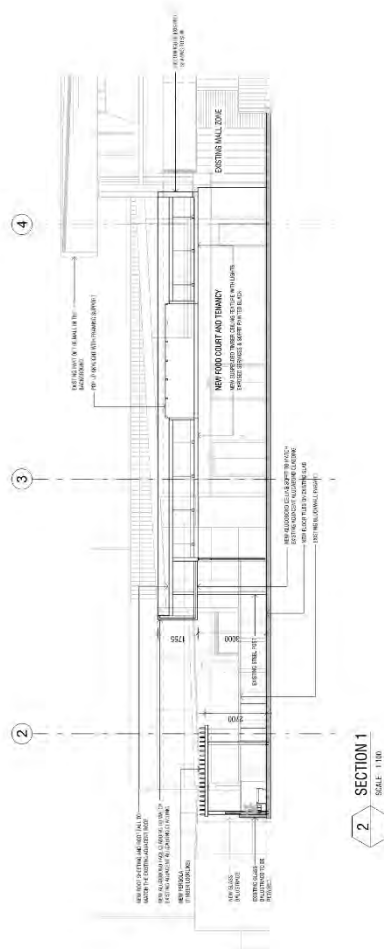
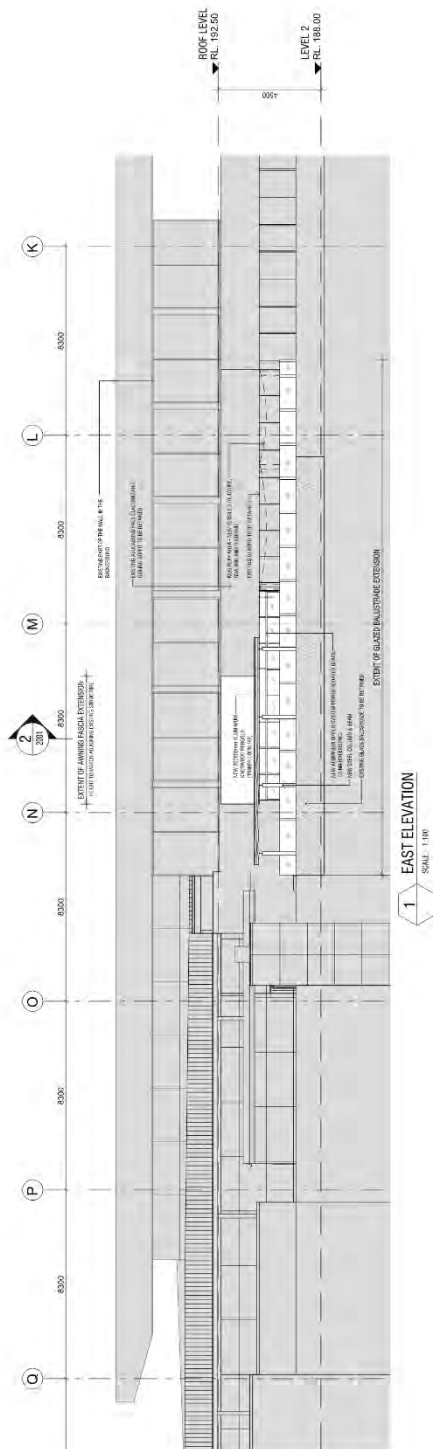


2 LOCATION PLAN  
SCALE: 1:1000 (APPROX.)

PROJECT DETAILS	
PROJECT:	BELROSE HOMEOWNERS SUPACENTA LEVEL 2 COURT FOOD EXTENSION
ADDRESS:	443 NIANGALA CL, BELROSE NSW 2085
PROPOSAL:	<ul style="list-style-type: none"> <li>EXTENSION OF LEVEL 2 FOOD COURT BY REMOVING 2 WALLS AND CREATING BIGGER ENCLOSURE WITH NEW GLAZING</li> <li>REMOVAL OF EXISTING TENSILE STRUCTURE IN THE OUTDOOR TO BE REPLACED WITH NEW TENSILE STRUCTURE</li> <li>NEW OUTDOOR BANQUET SEATING PERGOLA AND GLASS BALUSTRADE</li> </ul>

DRAWING INDEX	
S/N	DRAWING NAME
1	TITLE SHEET, DRAWING INDEX, SITE PLAN & LOCATION PLAN
2	OVERALL LEVEL 2 FLOOR PLAN
3	A-DA-0101 DEMOLITION PART LEVEL 2 FLOOR PLAN
4	A-DA-0102 DEMOLITION PART ROOF PLAN
5	A-DA-1001 PROPOSED PART LEVEL 2 FLOOR PLAN
6	A-DA-1002 PROPOSED PART ROOF PLAN
7	A-DA-2001 ELEVATION AND SECTION





December 2018

WTJ18-036



## **Clause 4.6 Variation Height of Buildings**

### **Proposed Alterations, Additions and Additional Use to an Existing Bulk Goods Centre**

**Belrose Super Centre, 4-6 Niangala Close, Belrose**

Lot 1 DP1104786

Prepared by Willowtree Planning Pty Ltd on behalf  
of Aventus Property Group

December 2018



**Clause 4.6 Variation – Height of Buildings**

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

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**Document Control Table**

<b>Document Reference:</b>		WTJ18-233 48 Pirrama Road, Pyrmont		
<b>Date</b>	<b>Version</b>	<b>Author</b>	<b>Checked By</b>	
19 December 2018	1	S Wu	A Cowan	

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#### Clause 4.6 Variation – Height of Buildings

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

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### Clause 4.6 Variation – Height of Buildings

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

## PART A PRELIMINARY

### 1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of a Development Application (DA) for the proposed alterations, additions and additional use to an existing bulky goods centre at 4-6 Niangala Close, Belrose. The site is legally described as Lot 1 DP1104786. The proposed non-compliance relates to Clause 4.3 under *Warringah Local Environmental Plan 2011* (WLEP 2011), being the height of buildings. This Variation request has therefore been prepared in accordance with Clause 4.6 of WLEP 2011, which includes the following objectives:

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

### 1.2 PROPOSED NON-COMPLIANCE

The proposed variations to development standards for the proposal are in relation to Clause 4.3 Height of Buildings of WLEP 2011. In summary the following variations are proposed:

WLEP 2011 Clause	WLEP 2011 Development Standard	Proposed Non-Compliance	Variation Percentage
Clause 4.3 Height of Buildings	11m	The proposal seeks development consent for a maximum building height of 12.5m.	13.6%

In accordance with Clause 4.6 of WLEP 2011 Council is required to consider the following Subclause 4.6(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.*

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under WLEP 2011.



### Clause 4.6 Variation – Height of Buildings

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

## PART B THRESHOLDS THAT MUST BE MET

### 2.1 CLAUSE 4.6 OF WLEP 2011

In accordance with Clause 4.6 of WLEP 2011 Council is required to consider the following provisions:

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

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

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

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

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

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

These matters are responded to in Part C of this Clause 4.6 Variation.

### 2.2 CASE LAW

Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions has established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
  - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
  - There are sufficient environmental planning grounds to justify contravening the development standard;
  - The development is in the public interest;
  - The development is consistent with the objectives of the particular standard; and
  - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasised the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning

**Clause 4.6 Variation – Height of Buildings**

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

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grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in Part C of this Clause 4.6 Variation.



#### Clause 4.6 Variation – Height of Buildings

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

### PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

#### 3.1 OBJECTIVES OF THE CLAUSE 4.3 HEIGHT OF BUILDINGS STANDARD UNDER WLEP 2011

A key determination of the appropriateness of a Clause 4.6 Variation to a development standard is the proposed development's compliance with the underlying objectives and purpose of that development standard. Indeed, *Wehbe v Pittwater Council* recognized this as one of the ways in which a variation to development standards might be justification (refer to **Section 2.2**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 2.2**).

Therefore, while the site is subject to a specified numerical control for building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

The objectives of Clause 4.3 under the WLEP 2011 are as follows:

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

The height of the proposed development would be in keeping with the surrounding built form elements of the B7 Business Park zone, as identified with the vast diversity of industrial and commercial uses present surrounding the site. The proposed building height of 12.5m is considered compatible with the existing height and scale of the surrounding industrial and commercial development. As the variation of building height would only occur in the location of the proposed pergola, the proposal would not result in adverse visual impacts or disruption of views. In addition, given that the site is not located in proximity to any residential development, the proposed building height would not result in significant impacts on privacy or solar access. Due to the minor nature of the pergola, the proposal would not significantly impact the view of the development from public spaces and the adjoining E2 Environmental Conservation zone.

#### 3.2 OBJECTIVES OF THE ZONE

The site is currently zoned B7 Business Park and E2 Environmental Conservation under WLEP 2011. The proposed development is consistent with the following B7 and E2 zone objectives:

Consistency with the B7 Business Park zone and the E2 Environmental Conservation zone are addressed in **Table 1** below.

Table 1 Consistency with the B7 Business Park and E2 Environmental Conservation Zone Objectives	
Zone objectives	Comments
<b>B7 Business Park zone</b>	
<ul style="list-style-type: none"> <li>To provide a range of office and light industrial uses.</li> </ul>	The proposal would support the continued operation of the site as a bulky goods centre which positively contributes to the commercial and industrial character of the site and the surrounding area.
<ul style="list-style-type: none"> <li>To encourage employment opportunities.</li> </ul>	The proposal would support the role of the Belrose Super Centre as a key employer for the region. The proposed take away food and drinks premises would also provide employment opportunities to the local area.





#### Clause 4.6 Variation – Height of Buildings

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

<ul style="list-style-type: none"> <li>To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</li> </ul>	The proposed additions and alterations to the food court and outdoor terrace would provide additional use to the site, which would meet the day to day needs of workers in the area.
<ul style="list-style-type: none"> <li>To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.</li> </ul>	The proposed alterations and additions to the outdoor terrace and pergola would enhance the visual quality of the site and provide high quality landscape treatment to the adjoining E2 Environmental Conservation zone and the surrounding area.
<ul style="list-style-type: none"> <li>To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.</li> </ul>	The proposal would not result in conflict between land uses and would ensure the amenity of the adjoining E2 zone.  The site does not adjoin a residential zone.
<b>E2 Environmental Conservation zone</b>	
<ul style="list-style-type: none"> <li>To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li> </ul>	The proposal is entirely contained within the existing footprint of the building. Hence the proposal would not result in significant impacts on the ecological or aesthetic values of the E2 zone.
<ul style="list-style-type: none"> <li>To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> </ul>	As the proposal does not entail any works within the E2 zone, the proposal would not destroy or damage the ecological, scientific, cultural and aesthetic values of the E2 zone.
<ul style="list-style-type: none"> <li>To protect and enhance the quality and character of visually sensitive areas and preserve significant natural landforms in their natural state.</li> </ul>	The proposal would enhance the visual quality of the site and would preserve the natural landforms of the E2 zoned portion of the site.
<ul style="list-style-type: none"> <li>To manage development in areas having steep sloping topography or that are subject to any potential landslide.</li> </ul>	While the site has been identified as partially being sloped <5° (Area A) and partially containing flanking slopes of 5° to 25° (Area B) on the Landslip Risk Map, the proposal would not alter the existing topography of the site. Therefore, no changes to the risk of landslides or stormwater discharged are anticipated.
<ul style="list-style-type: none"> <li>To manage water quality in significant water catchment areas.</li> </ul>	The proposal would not affect the water quality in any water catchment areas.
<ul style="list-style-type: none"> <li>To ensure that development, by way of its type, design and location, complements and enhances the natural environment in environmentally sensitive areas.</li> </ul>	The proposed outdoor terrace and pergola would enhance the visual quality of the site and would complement the natural landscapes of the E2 zoned portion of the site.

### 3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.2**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

As the exceedance of building height only occurs in the location of the proposed pergola, the proposal would generally maintain the maximum permitted building height under WLEP 2011 with regard to the subject site (exceedance by 1.5m). Accordingly the density and scale of the built form proposed, would remain generally consistent with the existing industrial and commercial buildings in the surrounding area. Additionally, the proposed development would effectively integrate the streetscape and character of the area into the proposed scheme.

#### **Clause 4.6 Variation – Height of Buildings**

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
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Furthermore, the proposed exceedance of the building height will retain compatibility with the surrounding development and the environmental planning framework in terms of visual appearance, and adverse environmental impacts as the proposed pergola would be of minor nature. No adverse environmental impacts on the surrounding environment have been identified. As no sensitive receptors are located in proximity to the site, the proposal would not result in adverse impacts in terms of solar access, visual privacy or overshadowing.

The proposal would enhance the functionality and amenity of the Belrose Super Centre whilst maintaining the existing bulk and scale, which further establishes the centre as a prominent retail destination for the Northern Beaches area.

The abovementioned justifications are considered valid and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the site. The objectives of the relevant clauses, the B7 Business Park zone and the E2 Environmental Conservation zone would be upheld as a result of the proposed development.

#### **3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

The variation to the development standard for height of buildings is considered well founded in this instance as:

- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**;
- The proposed development fully achieves the objectives of WLEP 2011 for the B7 Business Park zone and the E2 Environmental Conservation zone, as described in **Section 3.2**;
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**;
- The exceedance of building height would only occur in the location of the proposed pergola, contravening the building height provision by 1.5m, pursuant to Clause 4.3 of WLEP 2011. In this regard, no adverse environmental impacts with regard to excessive bulk and scale, overshadowing, loss of views or privacy due to the physical composition would occur to surrounding sites;
- The proposed development would remain compatible with commercial and industrial land uses within the Belrose locality in light of the above; and
- Compliance with the remaining development standards applicable to the site is achieved.

#### **3.5 PUBLIC INTEREST**

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

**Sections 3.1** and **3.2** have already demonstrated how the proposed development is consistent with the objectives of Clause 4.3, the B7 Business Park zone and the E2 Environmental Conservation zone under WLEP 2011.

In *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.



**Clause 4.6 Variation – Height of Buildings**

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

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The public advantages of the proposed development are as follows:

- Providing employment-generating opportunities to the region during both the construction and operational phases of the proposal;
- Supporting retail uses within the Belrose locality through the provision of services and facilities that meet the day to day needs of the workers in the area; and
- Facilitating the operation of the building which supports the use of the site as a bulky goods centre.

There are no significant public disadvantages which would result from the proposed development. The proposed development is therefore considered to be justified on public interest grounds.

**3.6 PUBLIC BENEFIT IN MAINTAINING THE CLAUSE 4.3 HEIGHT OF BUILDINGS CONTROL**

Given that strict compliance with Clause 4.3 would result in the proposal not being able to construct the pergola required to facilitate the viable operation of the site, there is no material public benefit in maintaining this strict building height control in the context of the proposed development.

**3.7 OVERVIEW**

For the reasons outlined above, it is considered that the variation to Clause 4.3 of WLEP 2011 is well-founded in this instance and is appropriate in the circumstances. Overall, the Variation request is considered to be well founded for the following reasons as outlined in 4.6 of the WLEP 2011, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives of the particular standard;
- The development is consistent with the objectives for development within the zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

Accordingly, it is considered that the proposed Clause 4.6 Variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within WLEP 2011 Clause 4.6.



**Clause 4.6 Variation – Height of Buildings**

Proposed Alterations, Additions and Additional Use to an Existing Bulky Goods Centre  
4-6 Niangala Close, Belrose (Lot 1 DP1104786)

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**PART D CONCLUSION**

It is requested that the Northern Beaches Council exercises its discretion (as identified in *Randwick City Council v Micaul Holdings Pty Ltd* – refer to **Section 2.2**) and find that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of WLEP 2011 (refer to **Section 2.1**). This is particularly the case given the proposed development's otherwise compliance with WLEP 2011 and Warringah Development Control Plan 2011, and the site's suitability for the proposed development at a local government level.

<b>ITEM 3.3</b>	<b>DA2018/0639 - 7 BRUCE AVENUE, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE</b>
<b>REPORTING OFFICER</b>	<b>Luke Perry</b>
<b>TRIM FILE REF</b>	<b>2019/049142</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b>
	<b>2 Plans</b>
	<b>3 Clause 4.6</b>

## PURPOSE

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

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/0639 for Alterations and additions to an existing dwelling house at Lot 2 DP 218836, 7 Bruce Avenue, Manly subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/0639
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 2 DP 218836, 7 Bruce Avenue MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to an existing dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	P3 Developments 1 Pty Ltd
<b>Applicant:</b>	P3 Living
<b>Application lodged:</b>	20/04/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	18/10/2018 to 05/11/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	13
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 880,000.00

### ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Assessment - Foreshore and Waterways Planning and Development Advisory Committee  
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area  
 Manly Development Control Plan - 3.2 Heritage Considerations  
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites  
 Manly Development Control Plan - 4.4.2 Alterations and Additions

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 DP 218836 , 7 Bruce Avenue MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the south-eastern side of Bruce Avenue.</p> <p>The site is irregular in shape with a frontage of 6.23m along Bruce Avenue and an average depth of 21.9m. The site has a surveyed area of 430m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a dwelling house and garage.</p> <p>The site slopes from north-west to south-east corner and includes a approximate crossfall of 12m.</p> <p>The site is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins in Manly.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential accommodation including one and two storey dwelling houses and residential flat buildings.</p>

Map:





#### **SITE HISTORY**

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

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

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

The proposal is for alterations and additions to the existing dwelling house including:

- Second floor addition.
- Internal alterations
- External alterations.
- New windows and balconies.
- Demolition.
- Landscaping.

#### **AMENDMENTS TO THE SUBJECT APPLICATION**

Following a preliminary assessment of the application Council wrote to the applicant outlining a number of issues that would not allow for Council to support the application in its current form. The issues included building height non-compliance, view loss and privacy. Following receipt of the letter the applicant advised that they intended to amend the development application. Council agreed to accept amendments to the application. Amendments to the proposal included reduction to the size of the proposed east facing ground level balcony, revised roof designed and the lowering of the building height.

The applicant subsequently provided amended plans to address the concern raised on 9 October 2018.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Tom Wallis	23 / 25 Addison Road MANLY NSW 2095
Dr Philip Harry Phillips Ms Judy Phillips	5 Bruce Avenue MANLY NSW 2095
Jenny Sutton Mr Peter Dorset Sutton Charles Hill Planning	9 Bruce Avenue MANLY NSW 2095
Mr Jack Morrison	2 / 3 Bruce Avenue MANLY NSW 2095
Mr Clive Mount	1 Bruce Avenue MANLY NSW 2095
Mr Mark David Powell	4 / 46 Addison Road MANLY NSW 2095

Name:	Address:
Mrs Lynda Yvette Powell	
Dr Oliver Robert Heybourn Hambidge	25 / 140 Addison Road MANLY NSW 2095
Nicolas Ewald	3 / 57 Stuart Street MANLY NSW 2095
Manly Community Forum	
Mr Adam Everett	2 / 46 Addison Road MANLY NSW 2095
Mr Roderick John Waterhouse	5 A Prince Alfred Parade NEWPORT NSW 2106
Boston Blyth Fleming Pty Ltd Dr Stephen Alexander Skinner Mrs Megan Marion Skinner	1 / 9 Narabang Way BELROSE NSW 2085
Gae Elizabeth Mullane	3 / 46 Addison Road MANLY NSW 2095

The following issues were raised in the submissions and each have been addressed below:

- **View loss.**
- **Privacy.**
- **Sunlight access and overshadowing.**
- **Excessive bulk and scale.**
- **Disruption to endangered species.**
- **External Finish**
- **Building Height.**
- **Side setback non-compliance.**

The matters raised within the submissions are addressed as follows:

- **View Loss**

Comment:

Concern was raised in regards to view loss from private and public spaces to Sydney Harbour. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*' in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

This matter does not warrant refusal of the application.

- **Privacy**

Comment:

Concern was raised about resulting privacy impacts (acoustic and visual) from the dwelling house, particularly outdoor living area. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.1 of the Manly DCP.



This matter does not warrant refusal of the application.

- **Sunlight access and overshadowing**

Comment:

Concern is raised that the proposed development will result in unreasonable overshadowing of the adjoining western property (No. 9 Bruce Avenue, Manly), particularly to living rooms and courtyards that immediately adjoin the subject site.

This matter has been addressed in detail elsewhere within this report (refer to cl 3.4.1 Sunlight Access and Overshadowing under the Manly DCP 2013 section of this report). In summary, the development allows for a reasonable level of sunlight to be maintained to adjoining properties (living rooms and outdoor living areas) between 9am and 3pm on June 21.

This matter does not warrant refusal of the application.

- **Excessive bulk and scale.**

Comment:

The proposed design of the house is sympathetic to the topography and landscape of Bruce Avenue and the foreshore area, allowing for significant landscaping throughout the site, consistent with the numerical control under the Manly DCP. It is also noted that the proposed dwelling house itself will not be readily visible from the streetscape. The bulk and scale of the proposed dwelling house is not unreasonable, and doesn't warrant the refusal of the application.

- **Disruption to endangered species.**

Comment:

The subject site is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. As such, the application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.

This matter does not warrant refusal of the application.

- **External Finish**

Comment:

Concern was raised in regards to the visual impact that may result from the external white finish and glazing of the development. The proposed white finish is not unreasonable within the streetscape, with similar white finishes seen for dwelling houses along the harbour foreshore. The proposed eastern facing window will not lead to unreasonable visual privacy impacts.

This matter does not warrant refusal of the application.

- **Building Height**

Comment:

The matter of non-compliance with the Height of Buildings Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the MLEP 2013 section of this report).



In summary, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.3 and Clause 4.6 of the MLEP 2013 and that compliance with the standard is unreasonable and unnecessary and that there is sufficient environmental planning grounds to justify and support the variation in this instance.

This matter does not warrant refusal of the application.

- **Side setback non-compliance**

Comment:

This matter is addressed in detail elsewhere within this report (refer to Cl. 4.1.4 Setbacks (front, side and rear) and Building Separation under the MDCP 2013 section of this report.

In summary, the siting of the building on the site, proposed building setbacks and resultant bulk and scale are considered to be appropriate in this context and satisfy the requirements and objectives of Cl. 4.1.4 Setbacks (front, side and rear) and Building Separation.

This matter does not warrant refusal of the application.

- **Visual impact as viewed from Little Manly Beach/harbour**

Comment:

Concern was raised by a number of objectors including the Manly Community Forum, that the proposed development will have an adverse visual impact as viewed from the Little Manly Beach and the harbour

The visual impact of the proposed house is consistent with that of other dwelling houses along the foreshore. Neighbouring dwelling houses particularly west of the subject site include a similar white external finish and overall built form. Similar finishes are seen at Nos. 9, 12 Bruce Avenue and 30A Addison Road, Manly. The white external finish will not be offensive when viewed from any nearby public domain.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application has been reviewed by Council's Landscape Officer who raised no objection to the development, subject to conditions contained within the recommendation of this report.
Landscape Officer	The proposed landscaping is acceptable.
NECC (Bushland and Biodiversity)	<p>The application has been reviewed by Council's Biodiversity officer who has provided the following comments:</p> <p><i>'The proposed development is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. The site also occurs</i></p>

Internal Referral Body	Comments
	<p><i>approximately 100m north-east of the Area of Outstanding Biodiversity Value for Little Penguins (AOBV; formerly Little Penguin Critical Habitat) declared under the Biodiversity Conservation Act 2016 (BC Act), and within close proximity to an active penguin nest on another property. Assessments of Significance (AoS) for Little Penguins and Long-nosed Bandicoots, prepared in accordance with Section 7.3 of the BC Act, have been submitted with the DA.</i></p> <p><i>The assessments conclude that the proposal is unlikely to result in a significant impact to threatened entities, subject to the following ameliorative conditions:</i></p> <ul style="list-style-type: none"> <li><i>- Maintenance of current wildlife access to habitat on the property;</i></li> <li><i>- Timing restrictions on demolition, excavation and rock removal to avoid the penguin breeding season;</i></li> <li><i>- Pre-work surveys of potential penguin breeding habitat and restrictions on work if penguins/active nests are recorded;</i></li> <li><i>- Ground protection to reduce noise and visual disturbance to wildlife;</i></li> <li><i>- Restrictions on pneumatic hammers to reduce noise and vibration impacts;</i></li> <li><i>- Sediment control to protect water quality within North Harbour;</i></li> <li><i>- Landscaping to maintain habitat quality on site;</i></li> <li><i>- Wildlife-exclusion fencing and pre-work surveys to prevent injury to animals which may attempt to shelter in stockpiles.</i></li> </ul> <p><i>Council's Biodiversity Section supports the recommended ameliorative measures and the ecologist's conclusion that the proposal is unlikely to result in significant impact to threatened entities, subject to these measures as conditioned.'</i></p>
NECC (Coast and Catchments)	<p>The application has been reviewed by Council's Coast and Catchment officer who has provided the following comments:</p> <p><i>'The application is supported with conditions. The following reports were used to undertake a coastal assessment:</i></p> <p><i>Statement of Environmental Effects</i>  <i>Geotechnical Report</i>  <i>Plans - Master Set</i>  <i>SEPP (Coastal Management).</i></p> <p><i>The works are proposed in a sensitive coastal environment. The SEE has addressed the relevant planning controls including the Sydney Harbour Regional Environment Plan, and Sydney Harbour DCP 2006 and the Manly LEP and DCP. The DA has been referred to the Foreshores Committee who have no</i></p>

Internal Referral Body	Comments
	<p><i>objection to the development.</i></p> <p><i>The SEE did not address SEPP (Coastal Management) however the development has been assessed internally. It is within Coastal Environment Area and Coastal Use Area and is consistent with requirements of the SEPP and has been found to have no adverse impacts subject to following conditions.'</i></p>
NECC (Development Engineering)	The application has been reviewed by Council's Development Engineer who raised no objection to the development, subject to conditions contained within the recommendation of this report.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.
Strategic and Place Planning (Heritage Officer)	<p>The application has been reviewed by Council's Heritage Advisor who has provided the following comments:</p> <p><i>'Further to a review of the available documents and site visit,</i></p> <p><i>The site of proposed development is not a listed heritage item in its own right, it is not located in the vicinity of heritage items, however, it is in the coastal area.</i></p> <p><i>The proposal utilises architectural style, materials, finishes and details which are, in my opinion, not suited to the sensitive context. Given the nature of the proposal, it is deemed reasonable in planning terms. Conversely, the for, particularly the roof balcony, would present as awkward when viewed from a distance, particularly given the un-favourable topography.</i></p> <p><i>Based on the above, I would recommend change of roof form and materials and, subject to these, would have no objections to this proposal from heritage perspective.'</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

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

A BASIX certificate has been submitted with the application (see Certificate No. A293674).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

##### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### **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 considered necessary.

The committee responded to Council on 25 May 2018. The Committee raised no issues in regards to the proposed development.

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

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.5m	35%	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.50:1	N/A	Yes
	258m <sup>2</sup>	230m <sup>2</sup>		

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

### Detailed Assessment

#### **4.6 Exceptions to development standards**

Description of non-compliance:

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Requirement:	8.5m
Proposed:	11.5m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	35%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) *the consent authority is satisfied that:*

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

**cl 4.6 (4)(a)(i) (Justification) assessment:**

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required

to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The applicant's written request has demonstrated consistency with the objectives of the Building Height development standard as detailed below:

- The request puts forth that the height, scale and bulk of the proposed works are consistent with the height and scale of the 9 Bruce Street and other nearby dwellings fronting the foreshore. The overall height of the dwellings has been increased by only 1.13m from RL13.97m to RL15.1m. Importantly, the overall (ridge) height of the additions sits below the ridge height of the adjacent dwellings. Further, the works have regard to the site topography by containing the upper level addition within a sloped roof form. The additions are setback to the rear of the existing dwelling, thereby ensuring a stepped built form that responds to the topography.
- The request submits that the height, scale and bulk of the proposed works are consistent with the height and scale of the 9 Bruce Street and other nearby dwellings fronting the foreshore. The overall height of the dwellings has been increased by only 1.13m from RL13.97m to RL15.1m. Importantly, the overall (ridge) height of the additions sits below the ridge height of the adjacent dwellings.
- The request submits that potential view impacts has indicated that the proposal is unlikely to have unreasonable impacts on views from the adjacent properties. Potential view impacts have been assessed as minor to negligible.
- The request submits that proposed non-compliances in the height do not give rise to unreasonable overshadowing impacts of adjacent dwellings.
- The request submits that the proposal does not involve works within the existing foreshore. Potential impacts on the ecological values and water quality of foreshore and harbour will be mitigated through the implementation of the stormwater management measures.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

The objects of this Act are as follows:

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

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, as detailed below:

- The request states that development that strictly complied with the numerical standard would not significantly improve the amenity of surrounding development or the landscape or environmental qualities of the foreshore. In the context of the locality it would be unreasonable for strict compliance to be enforced. The non-compliance is not considered to result in any precedents for future development within the LGA given the particular site circumstances and surrounding pattern of development.
- The request submits that there are sufficient planning grounds to justify contravening the development standard in the circumstances of the case given the proposal is for alteration and additions to an existing development that already exceeds the controls and there will be minimal adverse impacts associated with the development as proposed.
- The proposal does not negatively impact on the foreshore. It does not alter the existing rock face, or other nearby geological features.

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

In this regard, the applicants written request has adequately demonstrated the that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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



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

Comment:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the E4 Environmental Living General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of cl 4.3 Height of Buildings development standard are:

*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 height of the dwelling house is appropriate when considering the constraints of the site including fall of the land and close vicinity to the Harbour. The proposed works which increase the overall bulk of the dwelling are located to the front of the property and will not be readily visible either Bruce Avenue or Little Manly Beach. The change of roof form, will allow for additional floor space while not unduly impacting upon adjoining properties.

The development satisfies this objective.

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

Comment:

The proposed bulk and scale of the building relates favourably to the topography of the site. The works will allow for an appropriate relationship and spatial separation with surrounding development. The visual bulk of the dwelling house as viewed from the public open space (the foreshore and Little Manly Beach) is not adverse nor unreasonable.

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

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

Comment:

The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

*(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the*



*public domain,*

Comment:

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

The development satisfies this objective.

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

Comment:

Not applicable, the subject site is not located within a business zone.

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

## **Zone objectives**

### **The underlying objectives of the E4 Environmental Living zone**

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

Comment:

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values. The application was referred to the Aboriginal Heritage Office for comment. There are no known special ecological, scientific or aesthetic sites of value recorded on the subject site.

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

Comment:

The proposed works would not have an adverse effect on those values.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed works would have no impact on tree canopies. The subject site is not in close vicinity of any important trees. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore. The proposed built form, as amended will fit comfortably within its surrounds.

- *To ensure that development does not negatively impact on nearby foreshores, significant*

*geological features and bushland, including loss of natural vegetation.*

Comment:

The proposed works are located near the foreshore however by design and as conditioned will have no impact on natural features. The generous setback proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the the harbour.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The height and bulk of the proposed building has had regard to the adjoining development and the existing landscaping and topography of the adjoining sites.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, 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%. Following the release of PS18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the building height standard by more than 10%.

As the development varies development standard by more than 10% the concurrence of the Secretary is assumed subject to determination through Councils Development Determination Panel. However, due to number of submissions received as part of the assessment process (more than 10) the application will be determined by the Northern Beaches Local Planning Panel.

**6.8 Landslide risk**

The application was accompanied by a geotechnical report which supported the proposed development. Recommendations proposed within the geotechnical report have been imposed as part

of this recommendation.

The proposal complies with this clause.

#### 6.9 Foreshore scenic protection area

The proposal is over the existing building footprint and will not encroach any further into the foreshore building line than the existing dwelling. Furthermore the proposal will not result in any unreasonable impacts on the natural or built environment within the locality or limit access to the foreshore area. The proposal complies with this clause.

#### 6.10 Limited development on foreshore area

A portion of the proposed works are within the foreshore area mapped under Clause 6.10 of Manly LEP. 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.

(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,
- (b) 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,
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

#### Comment:

The proposed works within the foreshore area are consideration to be both the extension and alterations of an existing building, consistent with sub clause (2)(a) under clause 6.10. As such. the works proposed are deemed to be acceptable under this clause.

#### Manly Development Control Plan

##### Built Form Controls

Built Form Controls - Site Area: 430m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 8m (based on gradient 1:4)	10.7m	33.75%	No
	West: 8m (based on gradient 1:4)	6.52m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.4m	N/A	Yes
	Pitch: maximum 35 degrees	18 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	3.56m (based on eastern wall height)	1.93-4.09m	45.8%	No
	2.17m (based on western wall	0.75- 1.53m	34.5%	No

	height)			
	Windows: 3m	0.75m-4.1m	75%	No
4.1.4.4 Rear Setbacks	8m	6.7m	16.25%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (236.5m <sup>2</sup> ) site area	55.8% (240m <sup>2</sup> )	N/A	Yes
	Open space above ground 25% (80m <sup>2</sup> ) of total open space	25% 60m <sup>2</sup>		
4.1.5.2 Landscaped Area	Landscaped area 35% (84m <sup>2</sup> ) of open space	21.25% 51m <sup>2</sup>	39.3%	No
	2 native trees	0 trees	100%	No
4.1.5.3 Private Open Space	18sqm per dwelling	111sqm	N/A	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment



### 3.2 Heritage Considerations

The proposal is adjacent to the harbour foreshores heritage item. The proposed development is appropriately designed to ensure it is consistent with the existing built form on the site. The proposal will not result in any unreasonable impacts on the environmental heritage of the area.

#### 3.4.1 Sunlight Access and Overshadowing

##### Merit consideration:

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

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

##### Comment:

The proposed development allows for equitable access to light and sunlight to penetrate the subject site and surrounding properties.

*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.*

##### Comment:

#### **No. 9 Bruce Avenue, Manly- West of the subject site**

The proposed works will increase overshadowing to living room windows and private open space of the adjoining western property.

Clause 3.4.1.1 a) of the Manly DCP requires new development to not eliminate more than one third of existing sunlight accessing the private open space of adjacent properties between 9am and 3pm throughout the winter solstice.

No. 9 Bruce Avenue benefits from multiple private open space areas located off each floor level of the dwelling. The private open space areas are located on the southern, south-western, northern and north-western sides of the dwelling. The living rooms are located on south-western and northern sides of the dwelling.

The south-western and northern private open space and living room windows currently enjoy minimal solar access throughout the winter solstice.

At present, sunlight is only available to parts of the northern private open space and living room door at 12pm, with no solar access to these areas at 9am and 3pm.

The proposed works will further reduce the extent of sunlight provided to the northern private open space and living room door at 12pm.

However, as detailed above, the dwelling at No 9 Bruce Avenue benefits from multiples private open space areas and dual aspect living room doors and windows. In this regard, the existing level of

sunlight enjoyed to the south-western private open space (of which is the largest private open space area within the dwelling) will be retained. There will be no additional shadow cast onto the living room doors or windows on this aspect either.

Therefore and on balance, the proposed loss of sunlight is not unreasonable, with equitable access to sunlight being retained to the outdoor living areas during the winter solstice. The proposal is consistent with this objective.

*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.*

Comment:

The majority of the built form of the addition is proposed to the north of the site to mitigate the loss of sunlight to the subject site and adjoining properties to the east and west.

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

### 3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposed development allows for reasonable levels of privacy to be maintained to adjoining properties as well as the subject property, subject to conditions.

The proposed ground level balcony is orientated to the east of the dwelling house. Amended plans lodged to Council reduced the size of the balcony by approximately 8.4sqm from the northern side, to lessen the usability of the outdoor living space and alleviate any potential for any unreasonable overlooking towards neighbours to the east of the subject site. To further mitigate the potential overlooking between outdoor living area screening by way of a concrete awning is proposed to the northern side of the balcony. The balcony is supported.

The proposed lower level balcony off bedroom 3 is orientated to the east of the dwelling house. The proposed balcony will not result in an unreasonable privacy impacts given the usability of the balcony. The minor overall size of the balcony and location with the balcony adjoining a bedroom, and not a primary living area. Furthermore, the balcony is located to the southern edge of the eastern elevation with suitable physical separation being provided between the balcony and adjoining properties. The reduction to the size of the balcony allows for an additional 3.9m separation from the balcony to the northern property boundary. The proposed lower level balcony is supported as proposed.

The proposed sliding doors to rear of the property while extensive will not be readily visible to and from adjoining properties including No. 1 Bruce Avenue, Manly and No. 46 Addison Road, Manly. The proposed doors are setback 3.8m from the eastern boundary and further offset by existing landscaping (See image 1 and 2).

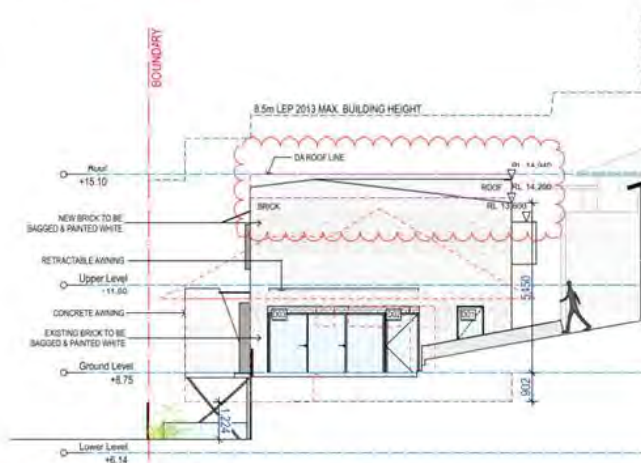


Image 1- Proposed rear elevation.



Image 2- Existing rear

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

Comment:

The proposed amended balcony will allow for increased sunlight access to private open space without compromising reasonable levels of privacy between neighbouring properties. The terrace minimises openings and outlook onto side boundaries through screening to the sides of the balcony, while providing a direct view to Little Manly Beach. This ensures that access to light and air can be maintained and provided to the side and rear of the property whilst also ensuring privacy impacts are minimised to the nearest neighbours to the north and north-east.

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

Comment:

The proposed works will unreasonably compromise neighbourhood security.

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

### **3.4.3 Maintenance of Views**

As a result of the public exhibition of the development application Council received a number of submissions raising view loss as a concern.

Submissions have been received from a number of neighbouring properties at No. 1, 3 (units 1 and 2), 5 and 9 Bruce Avenue as well as No. 46 (units 3 and 4) Addison Road.

To assist Council in its assessment of the application, on 23 June 2018 a request was made for the Applicant to erect height poles.

The Applicant subsequently erected height poles with certification of the height and location of the poles provided by a Registered Surveyor on 30 August 2018, the level of view loss was found to be unreasonable by Council. Council agreed to accept amendments to the application. The amendment lodged with Council included a revised roof designed and the lowering of the building height. Following amended plans being lodged with Council the poles were amended to reflect the amended with certification of the height and location of the poles provided by a Registered Surveyor on 4 December 2018. (Refer to plan prepared by Norton Survey Partners dated 28/11/2018).

The location of the height poles (amended) is shown below:



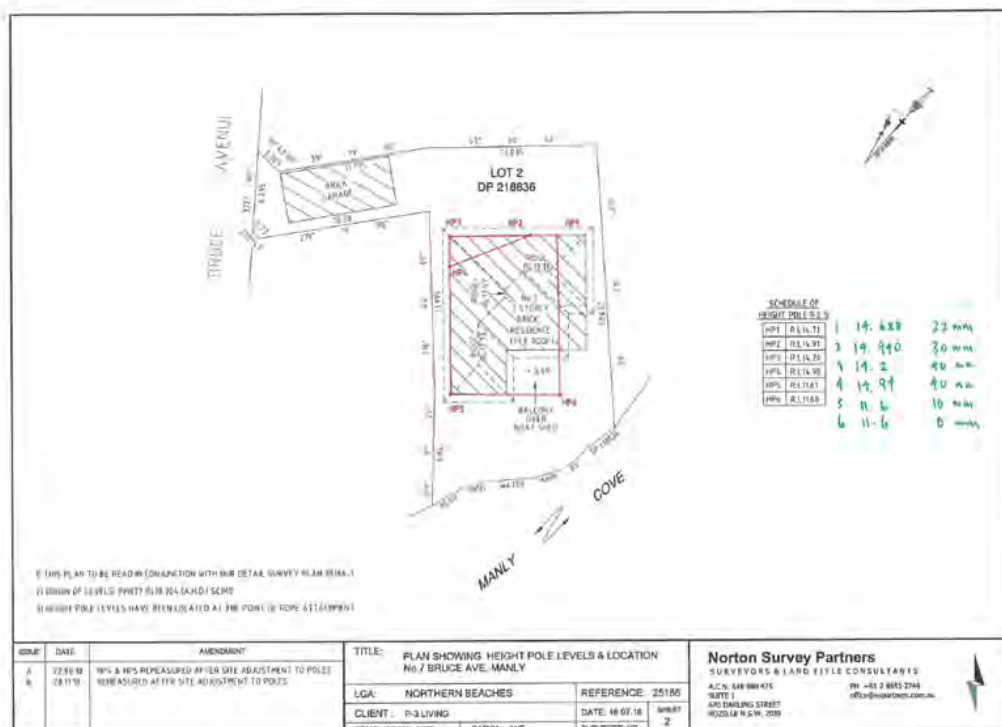


Image 1- Survey confirmation of height poles

#### Merit consideration:

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

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

#### Comment:

The proposed development will result in a minor to moderate loss of view from neighbouring properties to Sydney Harbour and Little Manly Beach. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

*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).*

#### Comment:

The proposal results in a disruption of views from neighbouring properties. The level of view loss is not unreasonable and has been assessed below with regard to the planning principle established by the NSW Land and Environment Court.

Council received seven (7) submissions from neighbouring properties in relation to view loss from the original and amended plans submitted. The Manly DCP refers to the planning principal within Tenacity Consulting v Warringah [2004] NSWLEC 140 when considering the impacts on the views of the adjoining properties. This is provided below:

**Note:** The pictures provided below include the height poles referred to above for ease of reference.

#### 1. Nature of the view affected

*"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."*

Comment to Principle 1:

#### **No. 3 (Unit 1 and Unit 2) Bruce Avenue, Manly**

The nature of the view affected from this property would be beach and harbour (water) views to the south. Particularly, the views of the land water interface will be impacted. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house (No.7 Bruce Avenue, Manly).



**Photo 1- Living room Unit 2 (Standing)**



*Photo 2- Living room Unit 2 (Standing)*



*Photo 3- Living room Unit 1 (Standing)*





*Photo 4- Study/rumpus room Unit 1 (Standing)*



*Photo 5- Outdoor living Unit 1 and 2 (Sitting)*





***Photo 6- Outdoor living Unit 1 and 2 (Standing)***

**No. 1 Bruce Avenue**

The nature of the view affected from this property would be harbour (water) views to the south particularly, the views of the Heads and the land water interface will not be impacted. The views would be filtered through existing development and vegetation as pictured below. At present, a large portion of the existing views are to the side and over the top of the subject site dwelling house.



***Photo 7- Outdoor living (sitting)***



*Photo 8- Outdoor living (standing)*



*Photo 9- Living room (standing)*

No. 5 Bruce Avenue, Manly



The nature of the view affected from this property would be beach and harbour (water) views to the south and south-east. The views of the land water interface will not be impacted. The views would be filtered through existing vegetation as pictured below. At present there is a large portion of the views to the side and over the top of the subject site dwelling house.



*Photo 10- Outdoor living adjoining bedroom (Standing)*



*Photo 11- Outdoor living adjoining bedroom (sitting)*



*Photo 12- Bedroom (Standing)*

**No. (Unit 3 and 4) 46 Addison Road, Manly**

The nature of the view affected from this property would be harbour views to the south-west, the views of the land water interface. The heads will not be impacted. The views would be filtered through existing vegetation and development as pictured below. At present a large portion of the views to the side and over the top of the subject site dwelling house.



*Photo 13- Living room (Standing)- Unit 4*





*Photo 14- Living room balcony (standing)- Unit 4*



*Photo 15- Bedroom (standing)- Unit 4*



*Photo 16- Bedroom (Standing)- Unit 4*



*Photo 17- Balcony- Unit 3*





*Photo 18- Balcony (Sitting) Unit 3*

**No. 9 Bruce Avenue, Manly**

The Nature of views affected from this property would be harbour and beach views to the south-east. Views of the land-water interface and the heads will not be impacted. The views would be filtered through existing development as picture below.



*Photo 19- Outdoor living east (Standing)*



**Photo 20- Outdoor living west (standing)**

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

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

### Comment to Principle 2:

*Note: Views obtained from the sitting position are of a lesser quality than those obtained in the standing position.*

### **No. 3 (Unit 1 and Unit 2) Bruce Avenue, Manly**

The views affected from both of the units of No. 3 Bruce Avenue are obtained over the rear boundary. The views are over the top and to the side of the dwelling house. Views are obtained from a standing and sitting position from living rooms and private open space, filtered through vegetation from No.3 Bruce Avenue and the subject site.

### **No. 1 Bruce Avenue, Manly**

The views affected from this property are obtained over the side boundary of the site over the top of the dwelling house. Views are obtained from a standing and sitting position in the living room and private open space.

### **No. 5 Bruce Avenue, Manly**

The views affected from this property are obtained over the side boundary of the site over the top of the



dwelling house. Views are obtained from both a standing position from the bedroom and private open space.

**No. (Unit 3 and 4) 46 Addison Road, Manly**

The views affected from both units 3 and 4 are obtained over the side boundary of the site over the top and to the rear of the existing dwelling house. Views are obtained from the sitting positions from the living room and private open space are partial and heavily filtered through existing development.

**No. 9 Bruce Avenue, Manly**

The views affected from this property are obtained over the side boundary over the top and to the rear of the existing dwelling house. Views are obtained from both a standing position from the living room and private open space.

**3. Extent of Impact**

*"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 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".*

Comment to Principle 3:

**No. 3 (Unit 1 and 2) Bruce Avenue, Manly**

No. 3 (Unit 1 and 2) Bruce Avenue, Manly currently have substantial views to the Harbour and Little Manly Beach. Panoramic views are taken from the living rooms and partial views are taken the shared outdoor living spaces (terrace) to the rear of the site that serves both dwellings.

In regards to the living rooms of unit 1 and 2 the views to the harbour will, to a minor extent, be lost as a result of the proposed works. Views of the land water interface will be retained from the primary living room, and views to Little Manly Beach will be retained. Views from the lower ground rumpus room of Unit 1 (See photo No. 4) including water views and land water interface will be lost to a moderate extent.

In regards to the shared terrace area, the occupants will continue to enjoy beach and water views to the south-east as well of the land and water interface to the south-east. Views over the top of the existing dwelling house will be lost. The loss views over the top of the dwelling house include water views and the land and water interface. The level of impact is considered moderate.

Qualitatively and considering the existing provision of panoramic views available from No. 3 Bruce Avenue, the overall extent of view loss proposed is moderate.

**No. 1 Bruce Avenue, Manly**

No. 1 Bruce Avenue, Manly currently has substantial views to the Harbour and Little Manly Beach. Panoramic views are taken from the living room and adjoining balconies (Outdoor living space) on the ground and first floor to the rear of the site.

In regards to both the living rooms and balconies, the proposed works will result in a minor loss of view to the Harbour. The views compromised are over a side boundary. Large views of the Harbour will be retained with the land and water interface retained in full, from the living rooms and balconies.

Qualitatively and considering the existing provision of panoramic views available from No. 1 Bruce Avenue, the extent of view loss proposed is minor.

It is noted that the amended plans did not offer opportunities for greater level of views of the harbour or the land-water interface to be retained for this property.

#### **No. 5 Bruce Avenue, Manly**

The property currently has significant water views to south and south east, the whole of Little Manly Beach and North Head. Views are enjoyed from the bedroom and adjoining balcony on the ground floor and living room and terrace on the first floor.

Views from the ground floor bedroom and balcony would be impacted to a minor extent as a result of the proposed works. Water views over the top of existing dwelling would be compromised by the proposed works. Views of Little Manly Beach, the land and water interface and the majority of water views would be retained.

The loss of view from the first floor living room and balcony, as result of the proposed works is negligible to minor.

Therefore, the extent of the impact is considered to be minor.

#### **No. (Unit 3 and 4) 46 Addison Road, Manly**

The property has panoramic views to the water to the south and south west, Little Manly beach, North Head and South Head. Views are enjoyed from the living room and adjoining balcony (ground floor of both units) and bedroom and adjoining balcony (first floor of both units).

Water views from both the living rooms and bedrooms and the adjoining balconies of both units would be impacted to a negligible to minor extent. Views of Little Manly Beach, the land and water interface, North Head, South Head and the majority of water views would be retained.

Therefore, the extent of impact is considered to be negligible.

#### **No. 9 Bruce Avenue, Manly**

The property has panoramic water views to the south, south east and south west, Little Manly beach, the land and water interface, north and south head. Views are enjoyed from balconies and the living room on the ground floor.

Beach and water views to the south east will be impacted to a negligible to minor extent. The large majority of views to Little Manly Beach will be retained. The land and water interface, North Head, South Head and the majority of water views will be wholly retained.

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

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the*

*views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

Comment:

In considering the totality of impact it is noted that proposal is non-compliant with the Height of building and compliant with the Floor Space Ratio development standards under Manly LEP 2013.

The proposal responds appropriately to the available views through the provisions of appropriate view corridors over the side and top of proposed dwelling house. Together with a design which incorporates substantial building articulation into the proposal, the proposal ensures highly valued views including water, beach and the land water interface are retained from all affected properties, with the overall impact of the proposal on neighbouring properties in terms of view loss being minor and moderate.

Given the above, it is considered that the proposal is acceptable and viewing sharing is achieved.

*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.*

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

**Conclusion**

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

**4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

This clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 3.56m from the eastern boundary, 2.17m from the western boundary. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

Clause 4.4.4.4 of the Manly DCP requires development be setback 8m from the rear boundary.

The development proposes the following:

**East side setback-** 1.93-4.09m (45.8% variation to the numeric control)

**West side setback-** 0.75-1.53m (34.5% variation to the numeric control)

**Windows-** 0.75m-1m (75% variation to the numeric control)

**Rear setback-** 6.7m (16.25% Variation to the numeric control)

Merit consideration:

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

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

Comment:

The proposed works will not be visible from 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.*

Comment:

Amenity considerations including privacy, maintenance of views and solar access are all maintained to adjoining properties and the public domain.

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

Comment:

Flexibility is provided in this situation as the proposed works will not unreasonably compromise amenity (privacy, sunlight access and views) of adjoining properties

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

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

Comment:



The proposed level of landscaping proposed on site is reasonable given the existing constraints on site and existing landscaping on site. No important landscape features on site as proposed to be removed.

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

Comment:

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

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

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at 35% (84m<sup>2</sup>) of total open space be landscaped open space. The development proposes 21.25% (51m<sup>2</sup>), non-compliant with the numeric control (39.3% variation).

Merit consideration:

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

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

Comment:

While there is a minor reduction of landscaped open space on site, no particular important landscape features are proposed to be removed.

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

Comment:

Significant landscaping is proposed to the northern end of the property to offset any visual impact of the dwelling house and outdoor living spaces.

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

Comment:

The loss of landscaped open space does not unreasonably compromise amenity for adjoining properties or the subject site.

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

*minimise stormwater runoff.*

Comment:

The proposal retains reasonable levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff.

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

Comment:

The proposed private open space is compliant with the numerical requirements under the Manly DCP. The proposed works will not lead to an unreasonable spread of weeds across the site, adjoining properties or public open spaces including the foreshore.

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

Comment:

The application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.

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

#### 4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site.

The majority of works are within the existing building footprint, and as such no significant changes to the topography of the site are sought. Accordingly, the development satisfies this objective.

#### 4.4.2 Alterations and Additions

##### Planning Principle

In a merit consideration of the proposal, consideration of the development has been given against the Land and Environment Court Planning Principle in relation to determining if a development application should be described as being for additions and alterations rather than a new development detailed under Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187- as follows:	
<b>Qualitative issues</b>	
How is the appearance of the existing building to be changed when viewed from public places?	The proposed dwelling house will appear higher than the existing dwelling, with a minor change to the existing envelope.

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?	There is no major impact upon existing landscaped open space.
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 subject site is not a heritage item.
What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?	The existing eastern side wall is to be removed as part of the works.
What is the extent, if any, of any proposed change to the use of the building?	The building retains a residential use.
To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?	There will be no major change to the streetscape of Bruce avenue. The dwelling house is readily visible from the streetscape.
To what extent, if any, are the existing access arrangements for the building proposed to be altered?	Access to the dwelling house and the garage which is ancillary to the dwelling house remains as existing.
To what extent, if any, will the outlook from within the existing building be altered as a consequence of the proposed development?	The proposed works will allow for larger outlook to the Sydney Harbour and Little Manly Beach.
Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?	Significant demolition is proposed, however the characteristics of the existing structure remain largely the same.
<b>Quantitative issues</b>	
To what extent is the site coverage proposed to be changed?	The works are largely within the existing building footprint.
To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?	The height of buildings numeric non-compliance will be increased by the proposed works.
To what extent is the building envelope proposed to be changed?	The building envelope will be significantly altered.
To what extent are boundary setbacks proposed to be changed?	The side boundary setbacks are increased to the eastern side of the dwelling house and reduced to the western side.
To what extent will the present numerical degree of landscaping on the site be changed?	The numeric change to landscaping is minimal.
To what extent will the existing floor space ratio be altered?	The floor space ratio will increase by 29sqm. The proposal is compliant with the numeric control.
To what extent will there be changes in the roof form?	The roof form of the dwelling house will be changed.
To what extent will there be alterations to car parking/garaging on the site and/or within the building?	No changes to parking are proposed.
To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?	No significant levels of cut or fill are proposed.
What relationship does the proportion of the	While substantial works are proposed, the

retained building bear to the proposed new development?	existing structure and overall shape of the existing building is mostly retained.
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Having regard to the extent of the works proposed, consideration was given to the planning principle *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*. An assessment against the matters set out in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187* determined that the application is correctly characterized as alterations and additions.

### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

### CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

### POLICY CONTROLS

#### Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

### CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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



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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/0639 for Alterations and additions to an existing dwelling house on land at Lot 2 DP 218836, 7 Bruce Avenue, MANLY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Site Plan/ Revision 2	9 October 2018	Durbach Block Jaggers
Demolition Plan Sheet 1/ Revision 1	December 2017	Durbach Block Jaggers
Demolition Plan Sheet 2/ Revision 1	December 2017	Durbach Block Jaggers
Floor Plans: Roof Level/ Revision 2	9 October 2018	Durbach Block Jaggers
Floor Plans: Upper Level/ Revision 1	December 2017	Durbach Block Jaggers
Floor Plans: Ground Level/ Revision 2	9 October 2018	Durbach Block Jaggers
Floor Plans: Lower Level/ Revision 1	December 2017	Durbach Block Jaggers
Floor Plans: Boatshed Level/ Revision 1	December 2017	Durbach Block Jaggers
Elevations: North West/ Revision 2	9 October 2018	Durbach Block Jaggers
Elevations: North East/ Revision 2	9 October 2018	Durbach Block Jaggers
Elevations: South East and Bruce Avenue/ Revision 2	9 October 2018	Durbach Block Jaggers
Elevations: South West/ Revision 2	9 October 2018	Durbach Block Jaggers
Section 1/ Revision 2	9 October 2018	Durbach Block Jaggers
Section 2/ Revision 2	9 October 2018	Durbach Block Jaggers

<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>
BASIX Certificate Number: A293674	7 February 2018	Durbach Block Jaggers Architects
Geotechnical Assessment Report	19 April 2018	JK Geotechnics
Terrestrial Biodiversity Report	April 2018	Nicholas Skelton and Sophia Mueller Sewell,

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>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Site and Landscape and Landscape Plan	December 2017	Durbach Block Jaggers

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**2. Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement

### 3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative



change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

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

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

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

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

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

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

### 5. Stormwater Disposal

Engineering Plans certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater plan must be designed in accordance with Manly Specification for On -site Stormwater Management 2003. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

### 6. No Bright Lighting – Bandicoot and Penguin Habitat

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

7. **Access to Undercroft Areas – Bandicoot Habitat**

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

8. **Preparation of CEMP**

A Construction Environmental Management Plan (CEMP) is to be prepared outlining all measures for the protection of native fauna and vegetation during the construction phase. Measures to be addressed in the CEMP include, but are not limited to, all conditions of this consent addressing construction-related biodiversity impacts.

The CEMP is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

9. **No Artificial Lighting – Penguin Habitat**

No artificial light is to be directed toward or illuminate the Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat) at any time during or post-construction. No bright lighting or motion detectors which illuminate the formed back yard or foreshore areas are to be installed. Low intensity lighting may be used in the formed back yard for safety purposes only.

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

Reason: Artificial light can prevent penguins from returning to shore and result in abandonment of chicks.

10. **Preparation of CEMP**

A Construction Environmental Management Plan (CEMP) is to be prepared outlining all measures for the protection of water quality during the construction phase. Measures to be addressed in the CEMP include, but are not limited to, all conditions of this consent addressing construction-related water quality impacts. The CEMP is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure conditions for the prevention of construction-related water quality impacts are complied with during the construction phase (DACNECPCC4)

11. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater

pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact receiving waters.

12. **Amend Landscape Drawings – Bandicoot Habitat**

The Landscape drawings, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, is to include native plant species with a low dense clumping habit to provide Long-nosed Bandicoot habitat. The planting schedule must comprise species including *Lomandra* sp., *Dianella* sp. *Banksia spinulosa*, *Westringia fruticosa*, *Caustis* sp., *Xanthorrhoea* sp., *Isolepis* sp., *Juncus* sp., *Adiantum* sp., *Callistemon* sp., *Grevillea* sp., and tussocky native grasses (e.g. *Themeda* spp.).

Plans are to be amended and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To improve potential Long-nosed Bandicoot habitat at the site and/or to offset reductions in potential Bandicoot habitat as a result of the development.

13. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is 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)

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

14. **Pre-demolition check of penguin habitat**

Prior to commencement of demolition works, a suitably qualified ecologist is to confirm that no penguins are breeding or moulting on the site or within 20m of the site. If penguins or bandicoots are found on the site, works must cease and advice must be sought from the site ecologist.

Reason: Wildlife protection (DACNEDPC1)

15. **Installation and Maintenance of Sediment and Erosion Control**

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

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



16. **Installation of foreshore pollution control**

All work undertaken on the south east side of the dwelling in the vicinity of the foreshore must have no net impact on the condition of the rock platform or water quality of receiving waters. Suitable façade treatment such as shade cloth or catch netting must be installed to, and below, the building or scaffolding and on the foreshore to ensure the rock shelf remains free of debris, cement render, mortar, paint and other building materials. Scaffolding or other temporary structures are not to damage the rock platform.

Reason: To ensure the rock platform and receiving waters remain free of debris, paint and other building materials during construction and to ensure the rock platform is not (DACNEDPC1).

17. **Site Induction Required – Penguin and Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

18. **Fauna Protection Fencing – Penguin and Bandicoot Habitat**

Temporary fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

19. **Runoff and Sediment Control – Penguin Habitat**

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works.

Reason: To prevent impacts to Little Penguins and their habitat, including the Area of Outstanding Biodiversity Value, in accordance with the Biodiversity Conservation Act 2016.

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

20. **Maintenance of Sediment**

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.

Reason: To ensure sediment controls are effective

21. **Works to be undertaken outside penguin breeding season**

No demolition, excavation or rock removal works are to be undertaken on the property during the penguin breeding season (1 July to 29 February) or if there are penguins nesting within 20m

of the property at any time of year.

Reason: To prevent disturbance to nesting penguins on the foreshore (DACNEEDW1)

22. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

23. **Daily Inspections Required – Penguin and Bandicoot Habitat**

An inspection register log-book must be kept on site recording daily inspections of all holes, machinery and construction material stockpiles, checking for Long-nosed Bandicoots and Little Penguins. Inspections are to be undertaken each work day before the commencement of works and works may only proceed once any bandicoot or penguin has safely vacated any holes, machinery or stockpiles. The log-book is to be made available to Principal Certifying Authority.

**Reason:** To avoid injury or death of Long-nosed Bandicoots or Little Penguins which may be utilising stockpiles of vegetation, materials or debris.

24. **Fencing for Wildlife Passage**

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.

Reason: Management of wildlife corridors

25. **Works within 3m of known penguin nest**

There are to be no construction works within 3m of the known penguin nest (including the eastern stairs, garden bed and boat shed level patio) while there are penguins using this nest. Construction works include, but are not limited to, placement or removal of scaffolding, plumbing or fencing. When construction works are to occur within 3m of this nest, the absence of nesting penguins is to be confirmed by weekly inspections by a suitably qualified ecologist. Absence of nesting penguins from the known nest is to be confirmed in writing by the site ecologist and forwarded to Council should works within 3m of the known nest site occur.

Reason: To protect penguins nesting on the foreshore and their habitat (DACNEEDW2)

26. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

27. **CEMP to be Implemented – Manly LEP Clause 6.5**

Construction is to be undertaken in accordance with the Construction Environmental Management Plan (CEMP). All workers are to be made aware of the content of the CEMP.

**Reason:** To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

28. **Report Dead or Injured Penguins or Bandicoots – Penguin and Bandicoot Habitat**  
Any injured or dead Long-nosed Bandicoots or Little Penguins found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

**Reason:** To prevent impacts to Long-nosed Bandicoots and Little Penguins in accordance with the Biodiversity Conservation Act 2016.

29. **Little Penguin Protection**  
During the Little Penguin breeding season (1 July to 29 February), plywood hoarding is to be fixed along the southern 15m of the north-eastern boundary to a height of at least 1.5m from the existing ground level. The boards are to be in place before the start of the penguin breeding season and are to remain in place for the duration of the breeding season each year.

**Reason:** To reduce noise and visual disturbance to Little Penguin nesting within known breeding habitat.

30. **Protect AOBV – Penguin Habitat**  
The Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat), including rocky cliff and intertidal areas below the formed backyard, are to be fully protected for the duration of the works. There shall be no machinery use, storage of construction materials/waste, dumping, or clearing of vegetation, soil, rock or rubble within these areas.

**Reason:** To prevent impacts to Little Penguins and the adjoining Area of Outstanding Biodiversity Value.

31. **Slurry and Concrete to be Removed – Penguin Habitat**  
All slurry or spilt concrete associated with works (including drilling) is to be contained at the source and within the construction area. Spilt concrete is to be removed before it dries. Slurry and spilt concrete are to be removed offsite.

**Reason:** To prevent construction-related impacts to the Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat).

32. **Geotechnical Issues**  
All conditions outlined in Report to P-3 Living on Geotechnical Assessment for proposed alterations and additions at 7 Bruce Ave Manly prepared by JK Geotechnics dated 18 April 2018 are to be complied with and adhered to throughout development.

**Reason:** To ensure work is undertaken in an appropriate manner and structurally sound.

33. **Pollution Control**  
Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

**Reason:** To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE****34. 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.

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

**35. Landscape Completion**

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 and a maintenance program has been established.

*Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately*

**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****36. Landscape maintenance**

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

*Reason: This is to ensure that landscaping is maintained appropriately.*

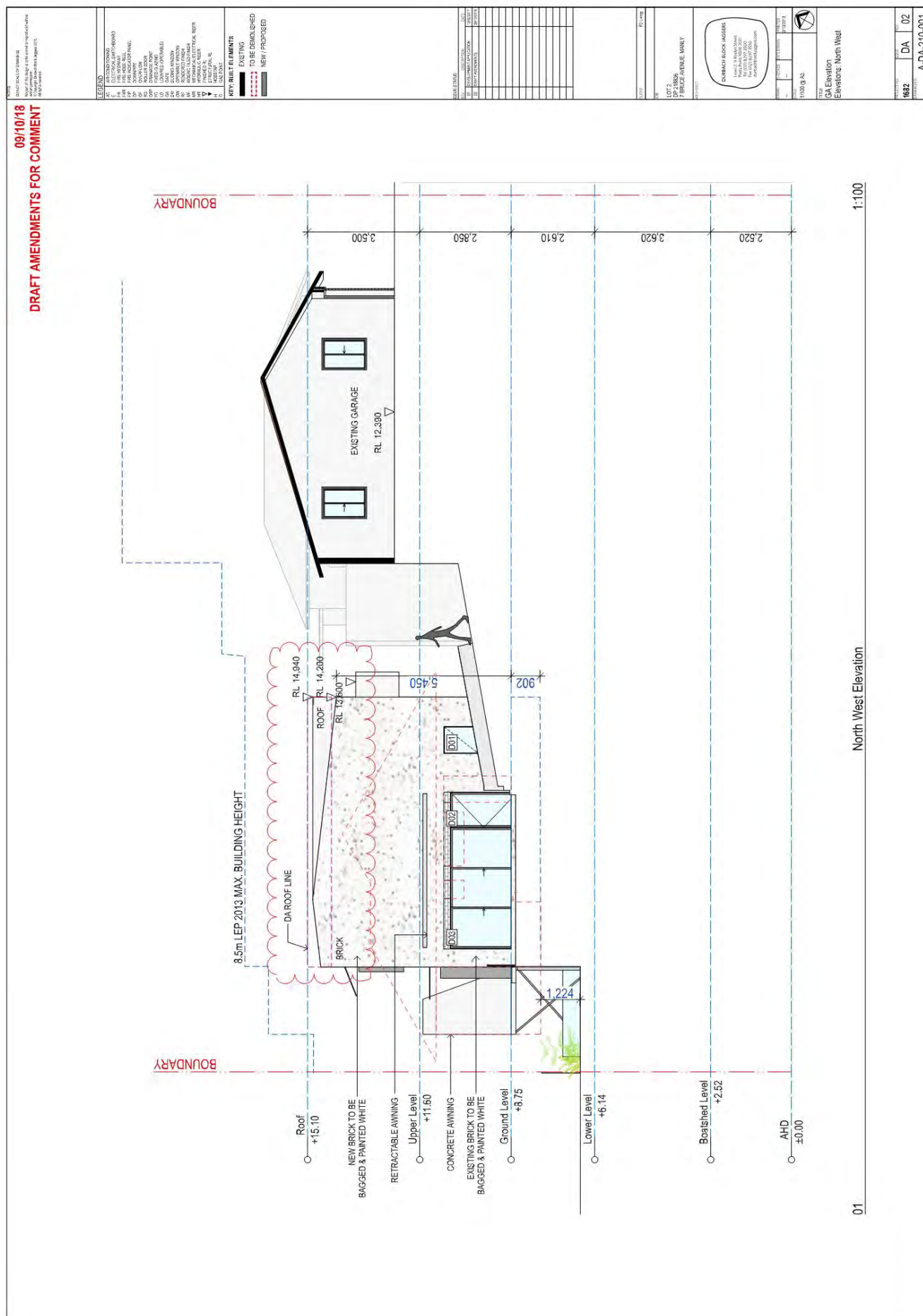
**37. Stormwater Pollution Control Pits**

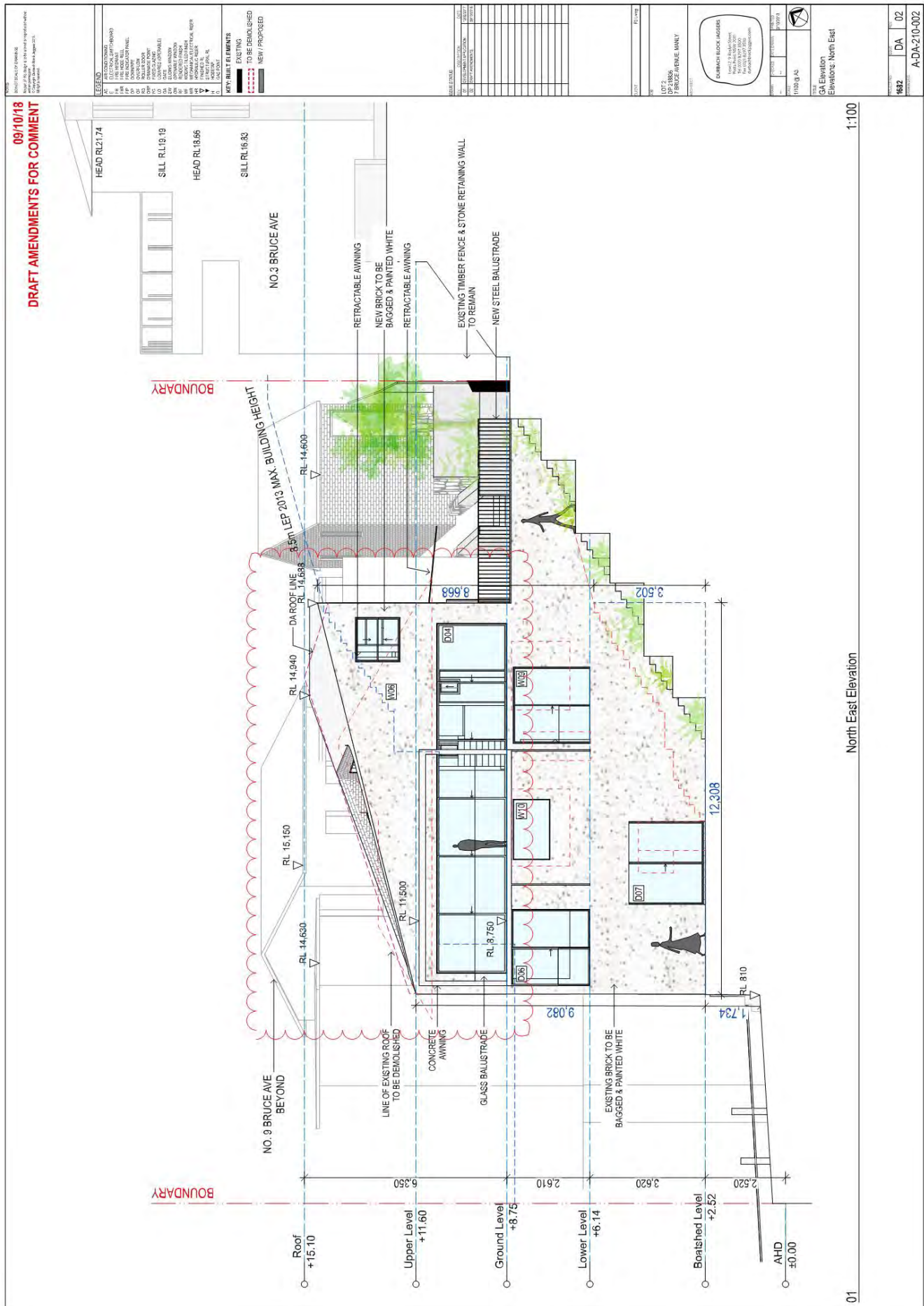
The Registered Proprietors of the property must maintain on a regular basis (every six months or after heavy rain events) stormwater pollution control pits including the clearing of silt, debris and rubbish, in perpetuity. The Registered Proprietors must ensure the effective operation of pollution control pits to prevent pollution of Sydney Harbour by stormwater generated onsite.

Reason: To ensure appropriate provision is made for the treatment and management of storm water generated by the development for the protection and preservation of the aquatic habitats and biota within receiving waters.





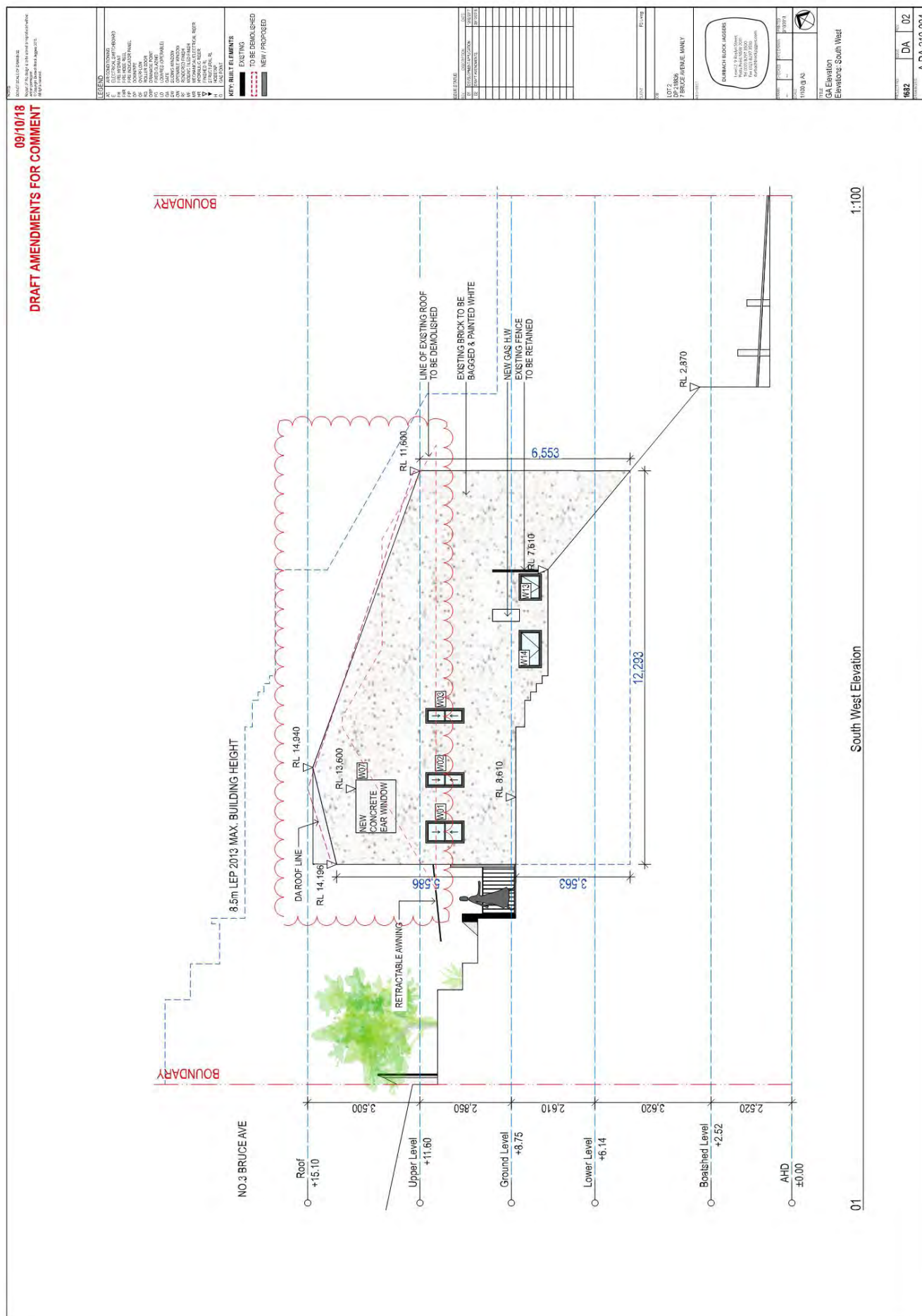












## SJB Planning



### Clause 4.6 – Exceptions to Development Standards – Height of Buildings (Cl 4.3)

**Address:** 7 Bruce Avenue, Manly

**Proposal:** Alterations and additions to existing dwelling

#### 1.0 Introduction

This is a written request to seek an exception to a development standard under Clause 4.6 – Exceptions to Development Standards of the Manly Local Environmental Plan (MLEP) 2013. The development standard for which the variation is sought is Clause 4.3 Height of Buildings under MLEP 2013.

This application has been prepared in accordance with the NSW Department of Planning and Environment (DP&E) guideline *Varying Development Standards: A Guide*, August 2011, and has incorporated as relevant the latest principles on Clause 4.6, contained in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1');*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2');*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 ('Four2Five No 3');*
- *Micaul Holdings Pty Limited v Randwick City Council (2015) NSWLEC 1386; and*
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSWLEC 7.*

#### 2.0 Description of the planning instrument, development standard and proposed variation

##### 2.1 What is the name of the environmental planning instrument that applies to the land?

The Manly Local Environmental Plan (MLEP) 2013.

##### 2.2 What is the zoning of the land?

The site is zoned E4 Environmental Living zone under MLEP 2013.

##### 2.3 What are the objectives of the zone?

The objectives of the E4 Environmental Living zone are:

- 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;

8160\_5\_Clause 4.6 - Height\_180419

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L2/490 Crown St, Surry Hills  
Sydney NSW 2010

planning@sjb.com.au  
sjb.com.au

T 61 2 9380 9911  
F 61 2 9380 9922

SJB Planning (NSW) Pty Ltd ACN 112 509 501

- To protect tree canopies and ensure that new development 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;
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality; and
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

**2.4 What is the development standard being varied?**

The proposal seeks to vary the maximum building height of 8.5m. The height of a building on any land is not to exceed the maximum height shown on the Height of Buildings Map.

**2.5 Is the development standard a performance based control? Give details.**

No. The abovementioned development standards are numerical controls.

**2.6 Under what clause is the development standard listed in the environmental planning instrument?**

The maximum building height is contained in clause 4.3 (2) of the MLEP 2013.

**2.7 What are the objectives of the development standard?**

The objectives of clause 4.3 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,*
- (b) to control the bulk and scale of buildings,*
- (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),*
- (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,*
- (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."*

**2.8 What is the numeric value of the development standard in the environmental planning instrument?**

Clauses 4.3 of MLEP 2013 establishes an 8.5m maximum building height control as illustrated on the Height of Buildings Map included in Figure 1.

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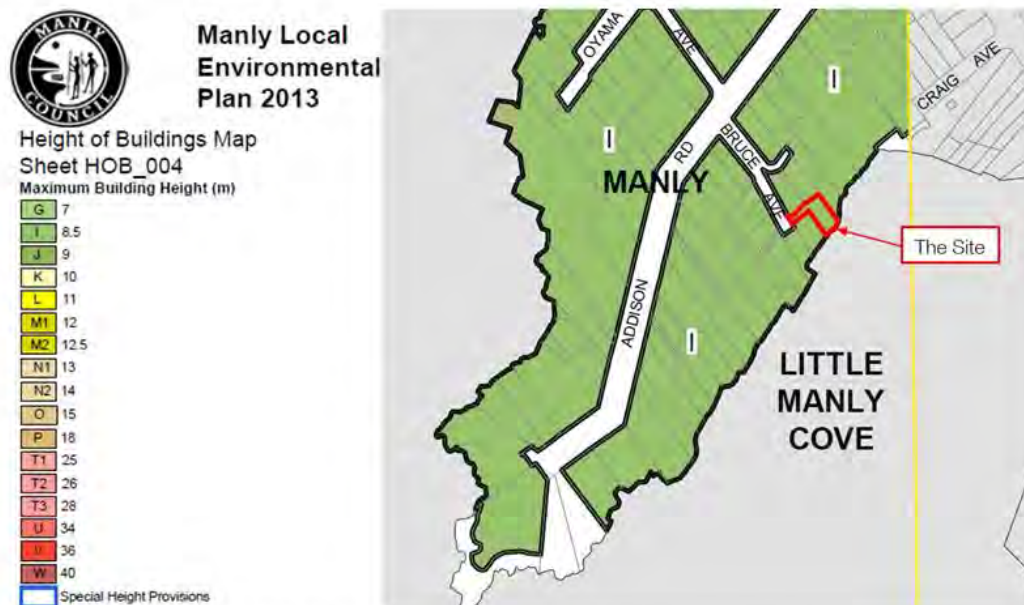


Figure 1: Extract of MLEP 2013 Height of Buildings Map

**2.9 What is the proposed numeric value of the development standard in the development application?**

The proposal exceeds the 8.5m maximum building height standard as outlined in Table 1 below. As identified in the table the existing building on site currently exceeds the height control.

Building Height Control	Existing Heights	Existing non-compliance	Proposed Heights	Proposed non-compliance	Proposed increase in existing non-compliance
8.5m	A. Ridge: 1.45m (max. existing height = RL13.97m)	Ridge: 2.950m (max. non-compliance = 35%)	C. Roof slope: 11.928m (max. proposed height)	3.428m (Max. non-compliance = 41%)	0.478m (Max. overall increase in height = 6%)
	B. Roof flat: 8.932m	Roof flat: 0.432m (min. non-compliance = 5%)	D. Roof/terrace flat: 9.28m	0.78m (non-compliance = 9%)	
			E. Terrace balustrade: 10.28m	1.78m (non-compliance = 9%)	
			F. New ridge: 8.96m (RL15.1)	0.46m (non-compliance = 5%)	

Table 1: Description of Building Height Exceedances

**2.10 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage of the proposed variation to the height standard ranges from 5% to 41%. The existing building varies from the height standard from 5% to 35%.

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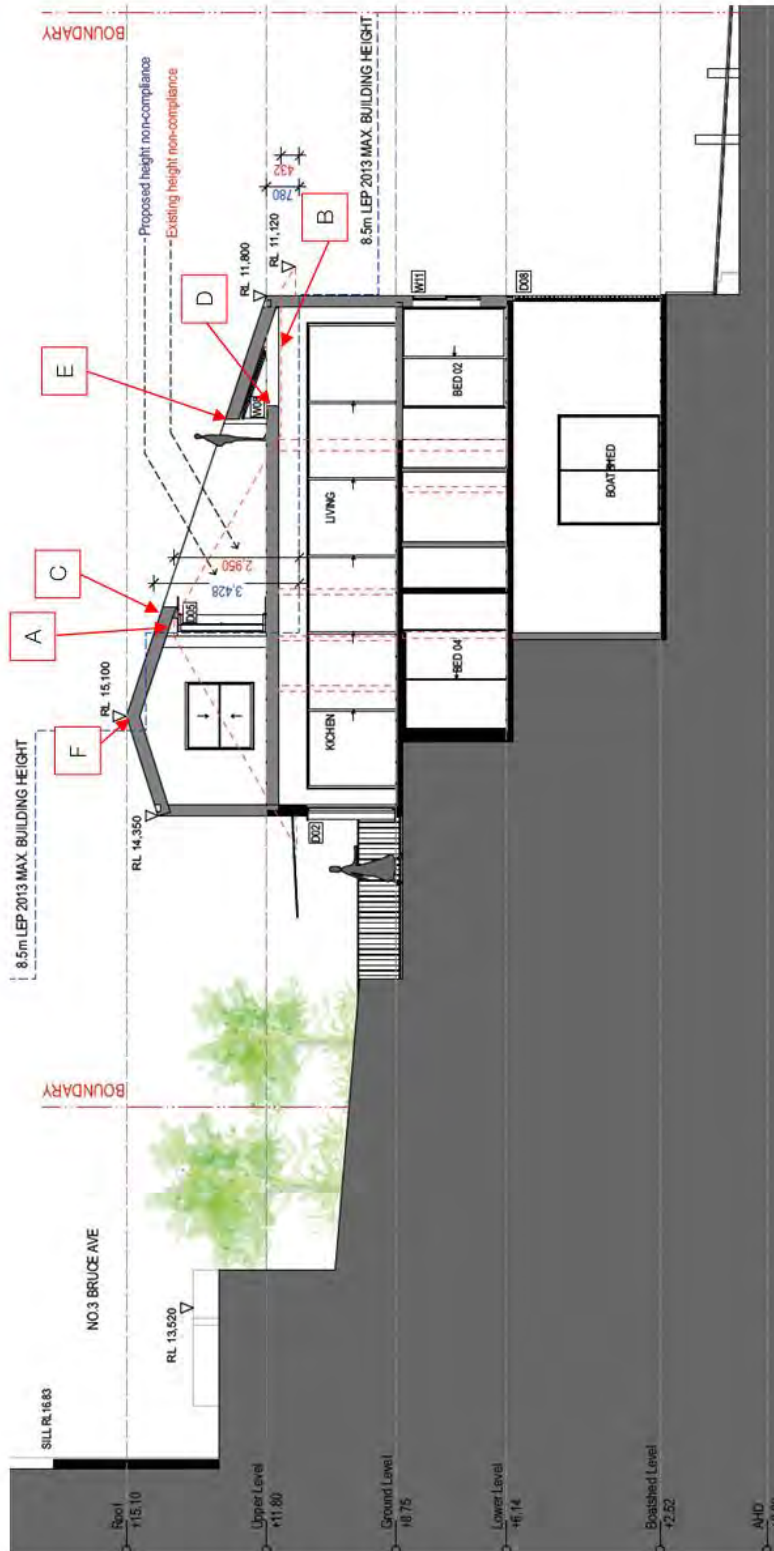


Figure 2: Existing and Proposed Building Height Non-compliances

### 3.0 Assessment of the Proposed Variation

#### 3.1 Overview

Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) are as follows:

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

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- "(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."*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- "(a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and"*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

#### 3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

##### 3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the 8.5m maximum building height is unreasonable or unnecessary in this circumstance for the following reasons:

- The existing dwelling currently exceeds the height controls. This is primarily the result of the steep slope of the site. As the proposal maintains the existing dwelling it continues to exceed the height limit. The additions to the existing dwelling result in a marginal increase in the height non-compliance.
- The height, scale and bulk of the proposal is consistent with the surrounding development and nearby dwellings fronting the foreshore. The overall height of the dwellings has been increased by only 1.13m from RL13.97m to RL15.1m. Importantly, the overall (ridge) height of the additions sits below the ridge

height of the adjacent dwellings. The proposal maintains appropriate scale relationships so that built form outcomes are compatible with surrounding development

- The proposal does not have unreasonable amenity impacts on adjoining properties by way of overshadowing, visual and view impacts, or loss or privacy.
- The height non-compliance does not adversely impact on the character or landscape setting of the harbour or foreshore. Removing the non-compliance would not significantly alter the perceived height and bulk of the building as viewed from the harbour and foreshore, or from surrounding development.
- The proposal remains consistent with the objectives of the building height standard and the objectives of the E4 Environmental Living zone, despite the non-compliance;

### 3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The underlying purpose of the objectives would not be defeated if compliance was required, however it is considered unnecessary in the circumstances as the proposal does not give rise to any adverse impacts in terms of views, visual impacts, overshadowing and privacy, or bulk and scale. In addition, the proposal is consistent with the character of the existing foreshore.

### 3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

The development standard has been virtually abandoned in this instance as the existing development on the site and neighbouring sites significantly exceeds the relevant controls.

### 3.2.4 Is the zoning of the land unreasonable or inappropriate?

No. But the choice of controls has not taken into account the scale and form of surrounding development.

### 3.3 *Are there sufficient environmental planning grounds to justify contravening the development standard?*

The objectives of Clause 4.6 seek to provide flexibility in applying development standards to achieve better outcomes for and from developments. This can involve a consideration of the objectives of s1.3(a), (b), and (c) of the *EP&A Act 1979* which are addressed separately at Section 3.6.

There are sufficient planning grounds to justify contravening the development standard in the circumstances of the case given the proposal is for alteration and additions to an existing development that already exceeds the controls and there will be minimal adverse impacts associated with the development as proposed.

### 3.4 *Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?*

#### 3.4.1 Objectives of the height standard

Broadly, the objectives of the height standard as outlined in Section 2.7 above, seek to control the bulk and scale of buildings and allow development that:

- Is consistent with the prevailing building heights, desired streetscape character and landscape topography;
- Minimises disruption of views to, from and between public spaces;
- Provides solar access to public spaces and maintains solid access to adjacent dwellings; and
- The height and bulk has regard to the existing vegetation and topography.

The proposal achieves the abovementioned objectives as outlined below:

- The bulk of the new addition is located to the rear of the existing dwelling where the ground level is higher (i.e. above the existing boatshed level). Consequently, while the proposal increases the overall height of the existing dwelling by 1.13m from RL13.97 to RL15.1 this only results in a small variation to the height limit of 0.46m (5%) which is equivalent to the existing minimum height non-compliance;
- A preliminary analysis of potential view impacts has indicated that the proposal is unlikely to have unreasonable impacts on views from the adjacent properties. Potential view impacts have been assessed as minor to negligible;
- Removing the non-compliance would not significantly alter the perceived height of the building as viewed from the harbour and foreshore;
- The proposed non-compliances in the height do not give rise to unreasonable overshadowing impacts of adjacent dwellings;
- As the site is a battle-axe block, the proposed additions are not visible from Bruce Avenue. Consequently, the increase in the non-compliance with the height standard will not adversely impact on the streetscape of Bruce Avenue;
- The proposed alterations and additions have regard to the site topography by containing the upper level addition within a sloped roof form. The additions are setback to the rear of the existing dwelling, thereby ensuring a stepped built form that responds to the topography; and
- The height, scale and bulk of the proposed works are consistent with the height and scale of the 9 Bruce Street and other nearby dwellings fronting the foreshore. The overall height of the dwellings has been increased by only 1.13m from RL13.97m to RL15.1m. Importantly, the overall (ridge) height of the additions sits below the ridge height of the adjacent dwellings.

#### 3.4.2 Objectives of the zone

The proposal is consistent with the objectives of the E4 Environmental Living zone included in Section 2.3 above, as outlined below:

- The proposal provides for alterations and additions to the existing dwelling house. The proposal maintains the existing setback to the foreshore and primarily sits within footprint of the existing dwelling;
- The proposal does not adversely impact on the ecological, scientific or aesthetic values of the area;
- The proposal does not result in the removal of existing trees and does not dominate the natural scenic qualities of the harbour;
- The proposal does not negatively impact on the foreshore. It does not alter the existing rock face, or other nearby geological features. The proposal does not alter nearby bushland environs or involve the removal of natural vegetation;
- The proposal does not involve works within the existing foreshore. Potential impacts on the ecological values and water quality of foreshore and harbour will be mitigated through the implementation of the stormwater management measures detailed in the Stormwater Management Plan prepared by ITM Design Consulting Hydraulic Engineers included at Attachment 3; and
- The proposed alterations and additions respond to the topography of the site by containing the upper level addition within a sloped roof form. The bedroom and en suite are setback to the rear of the existing dwelling. As a result, the overall height of the dwellings has been increased by only 1.13m from RL13.97m to RL15.1m. Importantly, the overall (ridge) height of the additions sits below the ridge height of the adjacent dwellings.

Given the circumstances of the case, the provision of a strict numerical compliance in accordance with Council's interpretation would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard and the objectives of the E4 Environmental Living zone.

8160\_5\_Clause 4.6 - Height\_180419



**3.5 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?**

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

**3.6 How would strict compliance hinder the attainment of the objects specified in Section 1.3(a), (b), and (c) of the Act?**

The objects set down in Section 1.3(a), (b), and (c) are as follows:

- "(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,"*

A strictly complying development would result in diminished amenity for residents and would require the levels of the existing building to be removed.

Strict compliance with the development would not result in discernible benefits to the amenity of adjoining sites, or views from the foreshore or the public.

The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3(a), (b), and (c).

**3.7 Is there public benefit in maintaining the development standard?**

Generally speaking, there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. The breach of the development standard in this instance is justifiable as the existing development already exceeds the controls and the proposal does not give rise to any adverse impacts. There is, in the specific circumstances of this case, no public benefit in maintaining the development standard.

**3.8 Is the objection well founded?**

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

The development does not contravene the objectives specified in Section 1.3(a), (b), and (c) of the Act, and the development will satisfy the E4 Environmental Living zone objectives and the objectives of Clause 4.3 Height of Building standard.

The development does not hinder the attainment of the objects specified with Section 1.3(a), (b), and (c) of the Act.

**4.0 Conclusion**

The proposed variation is based on the reasons contained within this formal request for an exception to the standard.

The development will not result in unacceptable impacts with regard to the amenity of adjoining properties or the foreshore.



A development that strictly complied with the numerical standard would not significantly improve the amenity of surrounding development or the landscape or environmental qualities of the foreshore. In the context of the locality it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in any precedents for future development within the LGA given the particular site circumstances and surrounding pattern of development.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.

<b>ITEM 3.4</b>	<b>DA2018/1716 - STIRGESS AVENUE, CURL CURL - CONSTRUCTION OF AN ELECTRONIC SCOREBOARD</b>
<b>REPORTING OFFICER</b>	<b>Steve Findlay</b>
<b>TRIM FILE REF</b>	<b>2019/050737</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Plans</b>

#### **PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is the Council.

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#### **RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1716 for construction of an electronic scoreboard at Lot 75 DP 456141, Stirgess Avenue, Curl Curl subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1716
<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 75 DP 456141, 70 / 0 Stirgess Avenue CURL CURL NSW 2096
<b>Proposed Development:</b>	Construction of an electronic scoreboard
<b>Zoning:</b>	Warringah LEP2011 - Land zoned RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Northern Beaches Council
<b>Applicant:</b>	Manly Bombers Junior AFL Club
<b>Application lodged:</b>	19/10/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	07/11/2018 to 21/11/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	36
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 77,000.00

### ASSESSMENT INTRODUCTION

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

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



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

## SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 75 DP 456141 , 70 / 0 Stirgess Avenue CURL CURL NSW 2096
<b>Detailed Site Description:</b>	<p>Weldon Oval consists of four allotments located on the southern side of Greendale Creek which divides the Park into north and south within the larger John Fisher Park Reserve.</p> <p>Weldon Oval is accessed via Stirgess Avenue and the electronic scoreboard will be located at the south-western corner of the oval adjacent to the cricket nets, half court (basketball) and futsal courts.</p> <p>The site is relatively flat.</p> <p>The location of the electronic scoreboard will be clear of significant vegetation and there are no known threatened species within the immediate vicinity.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential dwellings and the Harbord Bowling Club to the south, futsal courts to the southwest, cricket nets and basketball court to the west and the extended John Fisher Park to the north, east and west.</p>

Map:



## **SITE HISTORY**

A search of Councils records has revealed the following relevant history for the site:

DA2004/0259 - Upgrade lighting facilities at Weldon Oval (Approved 17/05/2004)

DA2007/1114 - Alterations and additions to the existing building housing Manly Warringah AFL and cricket clubs (Refused 02/06/2008)

REV2008/0029 - Section 82A Review of Determination for alterations and additions to existing grandstand and clubhouse (Approved 27/01/2009)

MOD2009/0143 - Section 96(1) for the removal of Conditions 9, 10 & 11 from DA2007/1154 (Approved 10/06/2009)

MOD2011/0182 - Modification of development consent DA2007/1114 - (Rev2008/0029) granted for alterations and additions to existing grandstand and clubhouse (Approved 18/08/2011)

DA2018/0468 - Construction of an electronic scoreboard was lodged on 27 March 2018 and was withdrawn due to the conflicts with the creekline and associated vegetation.

DA2018/1533 - Alterations and additions to a recreational facility (outdoor) to provide two coaches boxes adjacent to grandstand approved by Northern Beaches Local Planning Panel on 21 November 2018.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is to construct an electronic scoreboard on the western side of Weldon Oval. The scoreboard is to display the scores and relevant information for the sporting activities played on the oval.

The scoreboard has the following dimensions:

- Height : 5.02m
- Width : 3.2m
- Depth : 0.2m
- Slab : 4.2m x 1.6m x 0.3m
- Scoreboard Area : 6.14sqm (3.2m wide x 1.92m high)

In addition to above, an integrated audio output for siren and audio playback is proposed.

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 36 submission/s from:

Name:	Address:
Mr Justin O'Hare	89 Bennett Street CURL CURL NSW 2096
Mrs Deborah Anne Moffat	18 Stirgess Avenue CURL CURL NSW 2096
Mr Geoffrey Edward Pridgeon	21 Austin Avenue NORTH CURL CURL NSW 2099
Mr Gary John Wearne	6 Undercliff Road FRESHWATER NSW 2096
Benjamin Collins	1138 Pittwater Road COLLAROY NSW 2097
Mr Eric Michael Burke	13 / 89 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Norman Howard Randall	21 Timaru Road TERREY HILLS NSW 2084
Aidan Butler	17 Hall Avenue COLLAROY PLATEAU NSW 2097
Michael Atkinson	2 / 109 Griffiths Street BALGOWLAH NSW 2093
Mr Jacob Paul Graham	12 / 3 - 4 Carousel Close CROMER NSW 2099
Warren Rowe	57 Northcote Avenue SWANSEA HEADS NSW 2281



Name:	Address:
Hayden Washington	45 Wattle Road NORTH MANLY NSW 2100
James Loughnan	64a Beacon Hill Road BEACON HILL NSW NSW 2100
Holly Graham	41 Babbage Road ROSEVILLE CHASE NSW 2069
Chris Donovan	Cd@Totalsurveying.Com.Au NSW
James Mason	22/1 Cranbrook Avenue CREMORNE NSW 2090
Ashley Parker	14 Augusta Road MANLY NSW 2095
David Lawson	Level 1 Sheridan Building Moore Park Road MOORE PARK NSW NSW 2021
Campbell Mcphee	20 Davison Street CROMER NSW 2099
Mr Jack Christopher Nelson	40 Wyadra Avenue FRESHWATER NSW 2096
Kelly Maree McNaughton	16 Sturt Street FRENCHS FOREST NSW 2086
Isobella Tremauville	29 Karingal Crescent FRENCHS FOREST NSW 2086
Wills Brassil	5 / 23 Koorala Street MANLY VALE NSW 2093
Warringah Cricket Club Inc	37 Burruga Avenue TERREY HILLS NSW 2084
Mikaela Bate	17 Whaddon Avenue DEE WHY NSW 2099
Mr Scott Alexander Edmonds	51 A Windrush Avenue BELROSE NSW 2085
Richard Colin Hutchings	33 Grasmere Crescent WHEELER HEIGHTS NSW 2097
Tagan James Wright	76 Forest Way FRENCHS FOREST NSW 2086
John Catapirra Pereira	2 Anzio Avenue ALLAMBIE HEIGHTS NSW 2100
Mr Paul Andrew Chapman	28 / 31 - 37 Pacific Parade DEE WHY NSW 2099
Ms Jacqueline Wharton	18 Fairy Bower MANLY NSW 2095
Jo Ann McNamara	52 Soldiers Avenue FRESHWATER NSW 2096
Mr Lee Samuel Armstrong	7 Cobbadah Place FRESHWATER NSW 2096
Mr Mark David Stack	4 Spring Road NORTH CURL CURL NSW 2099
Mr Raymond James Cox	3 Austin Avenue NORTH CURL CURL NSW 2099
Curl Curl Lagoon Friends Inc	PO Box 380 FRESHWATER NSW 2096

The notification of the application resulted in thirty-six (36) submissions with thirty-one (31) in support of the proposal and five (5) objecting to the proposal.

The following issues were raised in the submissions and each have been addressed below:

- Overdevelopment
- Cumulative impact of development
- Not in keeping with the character of John Fisher Park
- Not in the public interest
- Potential for vandalism
- Potential for use beyond the development application
- Increased traffic
- Loud speaker system

The matters raised within the submissions are addressed as follows:

- **Overdevelopment**

*The submissions raised concern that a permanent electronic sign board was not necessary and that a portable electronic sign would be better suited to the site.*

Comment:

The sign will be sited adjacent/or nearby other sporting facilities/infrastructure, such as the cricket nets, half court (basketball) and futsal courts. Additionally, given the position, height and size of the scoreboard, it is considered that the existing trees surrounding the oval will screen the scoreboard from the public view. The scoreboard is considered ancillary to the needs of local sporting groups and is considered not to be an overdevelopment of Weldon Oval and/or John Fisher Park.

It is considered that this issue does not warrant refusal of this application and/or amendment via condition.

- **Cumulative impact of development**

*The submissions raised concern that 'continual, cumulative development in the park is detrimental to the character of the place, contributes to poorer water quality through hard surface run-off, and our concern is the precedent that allowing this permanent, electronic screen would set for the many other sporting groups in the park'.*

Comment: The scoreboard is ancillary infrastructure to the sporting activities carried out at Weldon Oval. The size and location of the scoreboard will be screened largely by the existing trees surrounding the oval. Therefore, the scoreboard will not be visually prominent when viewed from the street and nearby dwellings outside the oval. The size of the sign is considered to be modest and the additional hard surface is very minimal/minor and will not create any adverse water run-off or effect current water quality. Council can only assess this application on its merits and any future applications for similar proposals would be assessed on their individual merits (if lodged by other sporting groups/associations), however duplication and proliferation is to be avoided.

It is considered that this issue does not warrant refusal of this application and/or amendment via condition.

- **Not in keeping with the character of John Fisher Park**

*The submissions raised concern that the proposal was unsympathetic to the natural surroundings of the public open space.*

Comment: John Fisher Park has natural areas and features such as Greendale Creek with associated bird life, trees etc. John Fisher Park also has many managed environmental areas such as ovals, pathways, netball courts (both grassed and hard), basketball courts and ancillary facilities such as grandstands, amenities, carparks. It is considered the installation of a modest size scoreboard screened by existing trees will not significantly detract from the character and amenity of the park and its users.

It is considered that this issue does not warrant refusal of this application and/or amendment via condition.

- **Not in the public interest or in keeping with the Plan of Management**

*The submissions raised concern that the use of the sign on weekends was not in the interest of local residents and those who use the park the majority of the time and that the proposal was not in keeping with the Plan of Management for John Fisher Park.*

Comment: The notification of this application resulted in thirty-six (36) submissions, with thirty-one (31) of these submissions being in support of the application and noting the benefits to the sporting groups using Weldon Oval.

The John Fisher Park and Abbott Road Land Plan of Management adopted November 2001 states:-

*"John Fisher Park and Abbott Road Land has both organised and informal uses. Netball, softball, rugby league, touch football, cricket, soccer, hockey, baseball, little athletics, and Australian Rules are all catered for within the park. The park also offers the opportunity for unleashed dog exercise, an increasingly restricted activity."*

Additionally, John Fisher Park is intended for multiple user groups and purposes including:-

- General Community Use
- Park
- Sportsground
- Natural Area: Wetland
- Natural Area: Watercourse

Given the above, it is considered that the proposal is consistent with the plan of management and that this issue does not warrant refusal and/or further amendment via condition.

- **Potential for use beyond the Development Application**

*The submissions raised concern that the electronic scoreboard could be used for uses other than as a scoreboard i.e. advertising.*

Comment: Specific condition(s) have been included to ensure the scoreboard is not used for the purposes beyond the scope of the consent. The conditions are as follows: -

**"Hours of Operation**

*The hours of operation of the scoreboard are to be restricted to when Weldon Oval is being used for organised sporting purposes.*

*Reason: To ensure the amenity of the surrounding locality is maintained. (DACHPGOG1)*

**Advertising**

*The scoreboard is not to be used for advertising purposes, including third-party advertising.*

*Reason: To ensure the amenity of the surrounding locality is maintained. (DACHPGOG2)"*

It is considered that this issue does not warrant refusal of this application subject to the conditions applied above.

- **Potential for vandalism**

*Concern has been raised that the scoreboard could be a target for vandalism when not in use.*

Comment: The application was accompanied the following statement:-

*"In a location without 24 hour monitoring a security shutter is recommended. This shutter is completely automatic and will open as soon as the screen is turned on and close when the screen is shutdown. It will stop tampering and vandalism and is available in several colors."*

A condition will be applied that a security shutter is to be installed to prevent vandalism or tampering with the scoreboard (similar to that shown in the SEE). A suitable colour is to be used to blend in with the trees forming the background.

It is considered that this issue does not warrant refusal of this application subject to the conditions applied above.

- **Increase traffic**

*The submission raised concern that the proposal could further increase the traffic congestion experienced during weekend sports.*

Comment: The proposed scoreboard is to be used only in association with organised sporting events/activities on Weldon Oval. It is envisaged that the existing traffic and parking situation(s) experienced in Curl Curl will remain unaltered by the proposal.

It is considered that this issue does not warrant refusal of this application and/or amendment via condition.

- **Loud speaker system**

*Issues were raised in relation to amplified audio system if installed with the scoreboard.*

Comment: The scoreboard will have an in-built audio system as stated within the "LED Scoreboard Specifications 2017 AFL NSW/Act" submitted with the development application.

A condition will be included that no audio/sound levels are to exceed 5dB(A) over the ambient background levels when measured at the nearest residential property(s) and that an adjustable noise functionality be provided.

It is considered that this issue does not warrant refusal of this application subject to condition (s).

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	The site is located in an area nominated as Class 4 Acid Sulfate soils. The development proposes a depth for the slab being no greater than 200mm and accordingly there will be no disturbance to the possible acid sulfate soils at lower levels.  Approval - no conditions.
Environmental Health (Industrial)	Approval subject to conditions.
Landscape Officer	The proposed electronic scoreboard in terms of landscape outcomes is supported in this location, minimising the visual and physical impact



Internal Referral Body	Comments
	to the natural environment.  Council's Landscape section has considered this development against the intended outcomes of WLEP RE1 Public Recreation Zone, and a number of the controls relevant to the site including D9 Building Bulk, D10 Building Colours and Materials, D14 Site Facilities, E1 Preservation of Trees or Bushland Vegetation, E6 Retaining unique environmental features and E7 Development on land adjoining public open space.
NECC (Development Engineering)	Development Engineer has no objection to the application.
NECC (Riparian Lands and Creeks)	No objection to approval with no additional conditions from a Waterway and Riparian Lands perspective. However, as required in the Owners Consent letter from Council, the applicant and all contractors must comply with the requirements of the Environmental Management Plan available from <a href="https://yoursay.northernbeaches.nsw.gov.au/12388/documents/23004">https://yoursay.northernbeaches.nsw.gov.au/12388/documents/23004</a> .
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is not considered to increase flood risk. No flood-related objections.
Parks, reserves, beaches, foreshore	Approval subject to conditions.
Property Management and Commercial	Property support the application subject to conditions. <ul style="list-style-type: none"> <li>• An agreement to be put in place for the usage of the power from Council's building. This will need to be split into the user groups.</li> <li>• Ongoing maintenance, repair and operating costs being met by Manly Bombers JAFC and other user groups (in accordance with Owners Consent letter)</li> <li>• Conditions around the use of the scoreboard for advertising purposes. e.g Permit only during games, no permit advertisement.</li> <li>• Usage of the scoreboard for clubs that have an agreement to use field e.g. hiring, leasing/licencing the use of the field.</li> </ul>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	Approval subject to conditions.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and

Council Policies have been considered in the merit assessment of this application.

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

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

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

#### **SEPP 19 - Bushland in Urban Areas**

The provisions of the SEPP require that a person shall not disturb bushland zoned or reserved for public open space purposes without the consent authority considering the aims and objectives of the SEPP.

In this regard, consideration is given as follows:

(1) The general aim of this Policy is to protect and preserve bushland within the urban areas referred to in Schedule 1 because of:

- (a) its value to the community as part of the natural heritage,
- (b) its aesthetic value, and
- (c) its value as a recreational, educational and scientific resource.

(2) The specific aims of this policy are:

- (a) to protect the remnants of plant communities which were once characteristic of land now within an urban area,
- (b) to retain bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long term,
- (c) to protect rare and endangered flora and fauna species,
- (d) to protect habitats for native flora and fauna,
- (e) to protect wildlife corridors and vegetation links with other nearby bushland,
- (f) to protect bushland as a natural stabiliser of the soil surface,
- (g) to protect bushland for its scenic values, and to retain the unique visual identity of the landscape,
- (h) to protect significant geological features,
- (i) to protect existing landforms, such as natural drainage lines, watercourses and foreshores,
- (j) to protect archaeological relics,
- (k) to protect the recreational potential of bushland,
- (l) to protect the educational potential of bushland,
- (m) to maintain bushland in locations which are readily accessible to the community, and
- (n) to promote the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation."

#### **Comment:**

The design, use and location of the proposal is unlikely to impact or disturb the adjoining bushland or surrounding public open space.

Based on the above, it is considered that the development would result in consistency with the aims of

the plan.

#### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for recreation purposes for a significant period of time. The proposal will utilise a large concrete slab at the base which will hold the scoreboard in position which require minimal excavation and sit mainly above ground.

Given above 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 recreation land use.

#### **SEPP 71 - Coastal Protection**

##### **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

##### ***10 Development on certain land within coastal wetlands and littoral rainforests area***

*"(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) the carrying out of any of the following:*
  - (i) earthworks (including the depositing of material on land),*
  - (ii) constructing a levee,*
  - (iii) draining the land,*
  - (iv) environmental protection works,*
- (d) any other development."*

##### Comment:

Not applicable to the site.

##### **11 Development on land in proximity to coastal wetlands or littoral rainforest**

*"(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest."*

Comment:

Not applicable to the site.

## 12 Development on land within the coastal vulnerability area

*"Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development:*
  - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazard."*

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. Not applicable.

## 13 Development on land within the coastal environment area

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

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

*"(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*



*(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*  
*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact."*

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

#### 14 Development on land within the coastal use area

"(1)

*(a) has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

*(b) is satisfied that:*

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development."*

Comment:

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

#### SEPP (Infrastructure) 2007

##### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	Nil	5.02m*	Yes

\* 4.72m for the electronic scoreboard and posts and 0.3m for the slab.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 5 Miscellaneous provisions	Yes
5.5 Development within the coastal zone	Yes
Part 6 Additional Local Provisions	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

**Warringah Development Control Plan**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Easements		
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D3 Noise	Yes	Yes
D7 Views	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches Council Contributions Plan 2018**

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

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

In summary, a detailed assessment has been carried out in relation to the following issues:

#### **John Fisher Park and Abbott Road Land Plan of Management**

##### **Aims of this plan**

- *"Identify and assess the reserve's values and uses;*
- *Define the reserve's role within its Local Government Area and regional context;*
- *Identify and assess key issues affecting the resource base;*
- *Develop an understanding of the resource at an organisational level;*
- *Set a vision for the park spanning the next 15 – 30 years;*
- *Establish management strategies and their resourcing implications;*
- *Assign directions and priorities in a strategic plan (5 years); and*
- *Develop a landscape master plan."*

##### **Objectives of this plan**

- *"To provide a sound basis for the future management of John Fisher Park and Abbott Road Land, guiding the major strategies and actions that are needed to achieve the vision for John Fisher Park and Abbott Road Land.*
- *To manage John Fisher Park and Abbott Road Land in accordance with ecologically sustainable development principles.*
- *For a participatory style of management to be encouraged in all aspects of park operations so as to develop a sense of ownership between the community and the park.*
- *To be consistent with and contribute to Council's overall management plan.*
- *To incorporate Curl Curl Lagoon Rehabilitation Study recommendations and other relevant studies*



into the plan."

### **Action Plan**

- "To formulate management strategies (i.e. desired outcomes);
- To ensure consistency with core objectives for community land categories;
- To develop means of achievement (i.e. management actions);
- To provide means of assessment (of the actions);
- To assign priorities for each of the performance targets; and
- To develop a Master Plan and capital works program for implementation."

**Comment:** The proposal will assist current users of Weldon Oval which is used for many sporting activities such as Australian Rules Football in the winter months and Cricket in the summer. It is considered that the proposed scoreboard will be consistent with the aims, objectives and actions of the John Fisher Park and Abbott Road Land Plan of Management.

### **Public Submissions**

During the notification and assessment of this application, a total of thirty-six (36) submissions were received, thirty-one (31) which were in support and five (5) raising objections. Issues raised were as follows:-

- Overdevelopment
- Cumulative impact of development
- Not in keeping with the character of John Fisher Park
- Not in the public interest
- Potential for vandalism
- Potential for use beyond the Development Application
- Increased traffic
- Loud speaker system

### **Background to the Current Application**

It is noted that this is the second application lodged by the Manly Bombers Junior AFL Club Inc. for a proposed electronic scoreboard at Weldon Oval. The first application (DA2018/0468) proposed the scoreboard in the north-western corner which was considered to be inconsistent with the environs of the park and the impacts on natural features could not be supported for these reasons.

### **Determining the Suitability of the New Location**

A site inspection with the applicant and their planning consultant was undertaken after the initial application was withdrawn and it was established that the current proposed location was more suitable due to its proximity to other sports infrastructure such as futsal courts, cricket nets, basketball court, grandstand and other amenities infrastructure.

### **Conclusions on New Proposal**

Coupled with the minimal impacts on trees and the fact that the scoreboard would be largely screened by existing trees surrounding Weldon Oval, it is considered that the proposal is consistent with objectives of the RE1 Public Recreation zone of Warringah Local Environmental Plan 2011 and the John Fisher Park and Abbot Road Land Plan of Management.

A review of issues raised within the residents submissions has been undertaken and do not warrant refusal of the application subject to general and specific conditions to ensure protection of the natural environment and maintenance of the amenity of surrounding residents and other users of Weldon Oval, John Fisher Park and Abbott Road Land.

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1716 for Construction of an electronic scoreboard on land at Lot 75 DP 456141, 70 / 0 Stirgess Avenue, CURL CURL, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Location Map		Sellick Consultants
S000-01	18 September 2018	Sellick Consultants
S100-01	18 September 2018	Sellick Consultants
S1	2 August 2018	Calare Civil
S2	2 August 2018	Calare Civil
171987_B	18 August 2018	Total Surveying Solutions

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	12 September 2018	Alliance Geotechnical

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

1. Provision of a security shutter for the scoreboard to protect against vandalism

2. The security shutter being a suitable colour such as green (or similar colour which harmonises with the surrounding parkland)

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 and to protect the scoreboard from vandalism.

### 3. Prescribed Conditions

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

#### 4. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

### 6. Soil and Water Management Program

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

### 7. Working on Reserves Permit

Works (undertaken by principal contractors working without Council supervision) on land under Council's care, control and management require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit.

Reason: Public Safety and the protection of Council infrastructure. (DACHPCPC1)

### 8. Tree Protection Plan

A Project Arborist with a minimum AQF Level 5 qualification in Arboriculture shall prepare a Tree Protection Plan to guide all tree protection measures, excavation and construction works,

The Tree protection Plan shall indicate the following information:

- Layout of the approved development
- Location of trees identified for retention
- Extent of canopy spread
- Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- General tree protection measures
- Recommended location for utility services
- Recommended location of footings

The Tree Protection Plan is to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

Reason: to ensure compliance with the requirement to retain and protect significant planting on the site.

9. **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.

10. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

11. **Waste Management Plan**

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**



12. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or land under Council's care, control and management as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACHPDPC2)

13. **Project Arborist**

A Project Arborist with a minimum AQF Level 5 qualification in Arboriculture is to be appointed prior to commencement of works.

The Project Arborist is to oversee all tree protection measures and works adjacent to the existing trees in the vicinity of the construction works, as determined by the Project Arborist to satisfy AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4.

All works in the vicinity of these trees shall be conducted under the supervision of the Project Arborist, including all excavation works for footings and utility services, and all aerial works near the canopies of existing trees.

All tree protection measures shall be place before work commences on the site, and shall be maintained in good condition during the construction period.

Reason: to ensure protection of vegetation is provided and maintained.

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

14. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

15. **Tree and vegetation protection**

A) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site, as nominated on the Survey Plan, excluding exempt trees and palms under the relevant planning instruments of legislation,
- ii) all other trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,

iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,  
iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,  
v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,  
vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,  
vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,  
viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,  
ix) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

Reason: to retain and protect significant planting on development and adjoining sites.

16. **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 Northern Beaches 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)

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

17. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist, shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees provide.

18. **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)

19. **Waste Management Confirmation**

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

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

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

20. **Hours of Operation**

The hours of operation of the scoreboard are to be restricted to when Weldon Oval is being used for organised sports purposes.

Reason: To ensure the amenity of the surrounding locality is maintained. (DACHPGOG1)

21. **Advertising**

The scoreboard is not to be used for advertising purposes, including third-party advertising.

Reason: To ensure the amenity of the surrounding locality is maintained and compliance with the terms of the consent. (DACHPGOG2)

22. **Lighting**

All lighting from the scoreboard must not detrimentally impact upon the amenity of other premises and adjacent dwellings and must comply with Australian Standard AS 4282:1997 Control of the obtrusive effects of outdoor lighting. Illumination of the scoreboard must be positioned so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

Reason: To protect the amenity of adjoining properties. (DACHPGOG5)

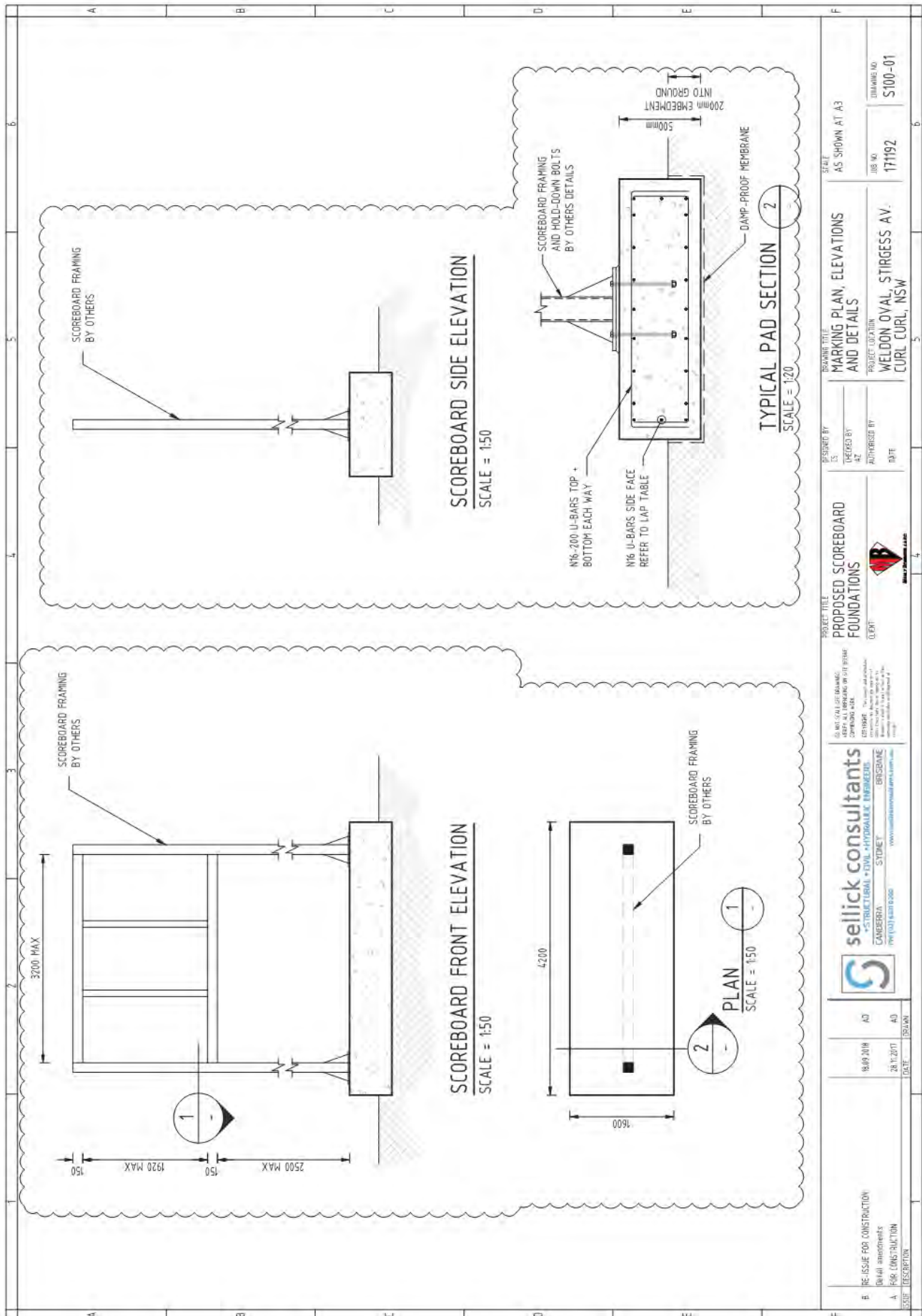
23. **Noise Levels - Amplified audio**

Audio/sound levels are not to exceed 5dB(A) over the ambient background levels when measured from the nearest residential property(s) from Weldon Oval. (DACPLGOG1)

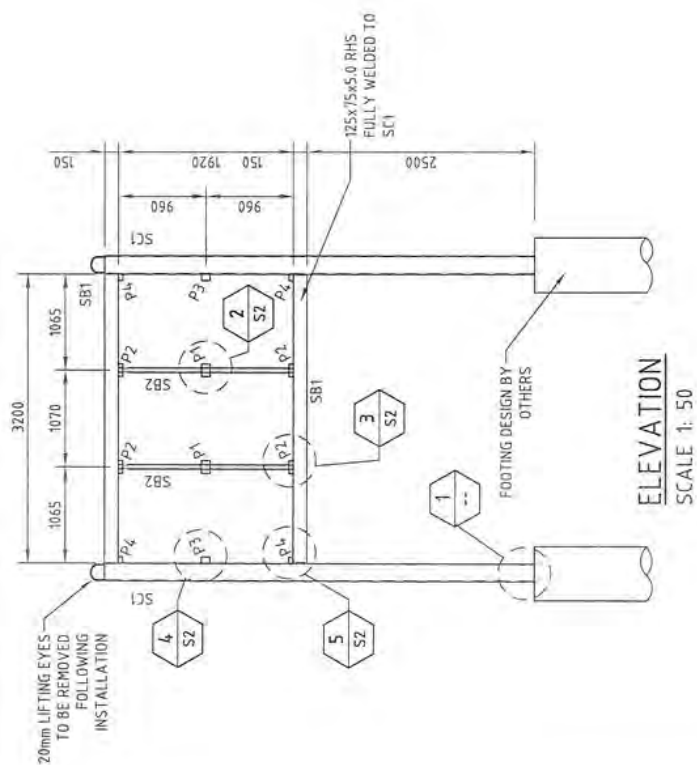
24. **Maintenance, repair and operating costs**

Ongoing maintenance, repair and operating costs being met by Manly Bombers JAFC and other user groups.

Reason: Associated costs of maintaining the scoreboard. (DACPLGOG2)







ELEVATION  
SCALE 1: 50

STEELWORK SCHEDULE		
MEMBER	SIZE	COMMENT
SC1	200x100x5.0 RHS	STEEL COLUMN
SB1	200x100x5.0 RHS	STEEL BEAM
SB2	50x4.0 SHS	STEEL BEAM
P1	14.0x90x8	STEEL PLATE
P2	14.0x50x8	STEEL PLATE
P3	70x90x8	STEEL PLATE
P4	70x50x8	STEEL PLATE

Amendment	Date	Description
A	19-01-18	ORIGINAL ISSUE
B	13-02-18	AMENDMENT HOLD DOWN BOLTS
C	02-08-18	RE-DRAWING ISSUE

PLLOT INFO: S391T3701197M (dms) 1197M Gen. DATE: Aug 07 2016 - 22:45:16

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Ply Ltd and may not be used for any other purpose than that for which this  
drawing is supplied. Any other use, copying or reproduction of all or any part

LED SCREENS AUSTRALIA

PROCESSED IN THE SUPERMARKET

WELDON OVAL, STIRGESS AVENUE

CURL CURL NSW

STRUCTURAL DETAILS SHEET 1 OF 2

The doctor and the infection clinic lie in the vicinity of Palace 23.

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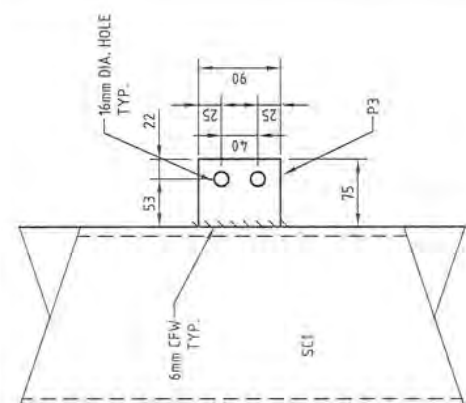
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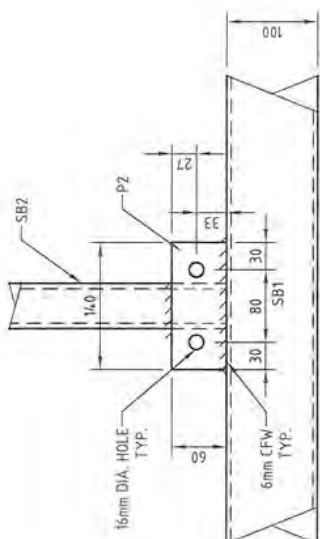
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Phone: (202) 633-2343 Fax: (202) 633-8219

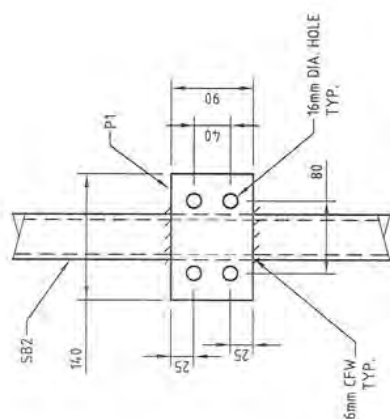
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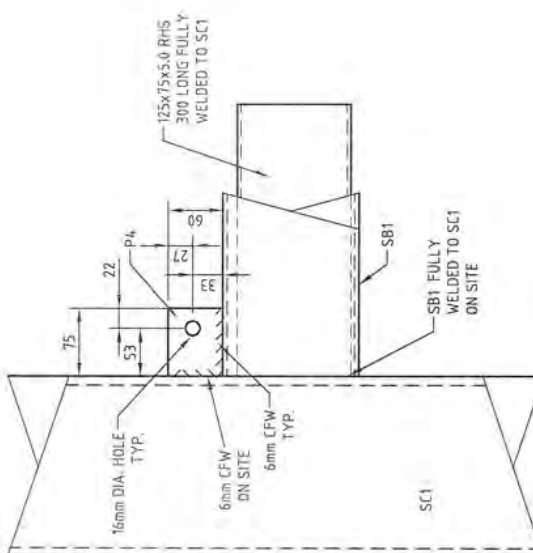
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SCALE 1 : 5



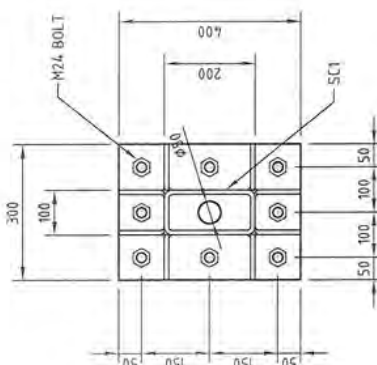
DETAIL  
SCALE 1 : 5



DETAIL  $\frac{2}{S1}$   
SCALE 1 : 5



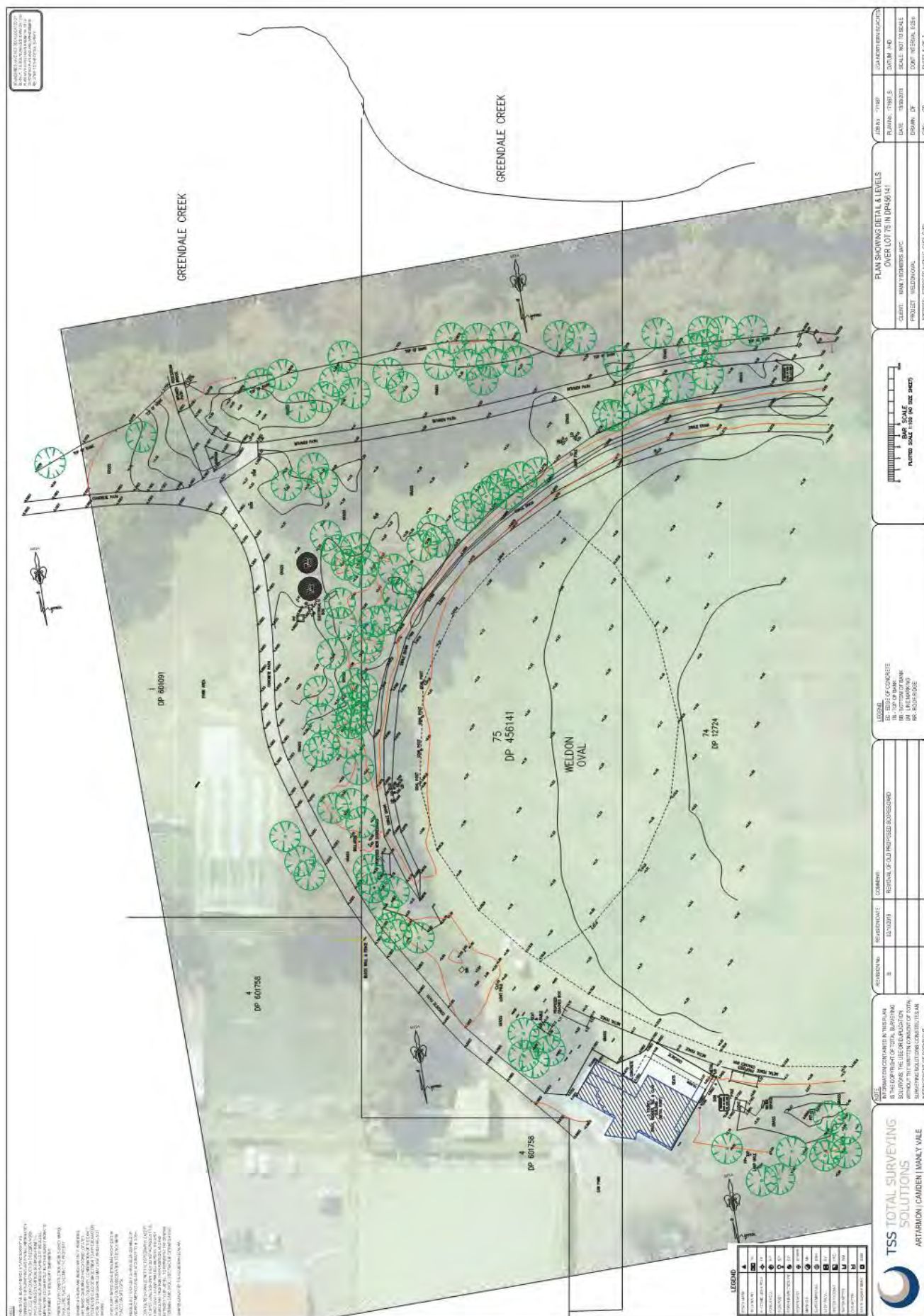
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**BASE PLATE DETAIL**

SCALE 1:10

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## 5.0 PLANNING PROPOSALS

<b>ITEM 5.1</b>	<b>PEX2018/0008 - WANDELLA ROAD, ALLAMBIE HEIGHTS - MANLY WARRINGAH MEMORIAL PARK REZONING</b>
<b>REPORTING OFFICER</b>	<b>Neil Cocks</b>
<b>TRIM FILE REF</b>	<b>2019/050783</b>
<b>ATTACHMENTS</b>	<b>1 Draft Planning Proposal for submission to the Department of Planning &amp; Environment</b>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel for a public hearing and Panel recommendation to submit a Planning Proposal to the Department of Planning and Environment to rezone certain land in the vicinity of “Mermaid Pool” from Low Density Residential (R2) to Public Recreation (RE1) under Warringah LEP 2011 and to omit residential development standards and controls that would no longer be relevant for land zoned for Public Recreation then be referred to the Council for determination.

### SUMMARY

Council resolved to rezone two parcels of land in the vicinity of “Mermaid Pool” from Low Density Residential (R2) to Public Recreation (RE1) at its Ordinary Meeting on 27 November 2018:

- Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close.

In preparing a Planning Proposal to submit to the Department of Planning and Environment for a Gateway determination, Council identified a further two allotments in the vicinity which should also be rezoned in the same manner:

- Lot 7371 DP1165577 located to the rear of properties south of Blamey St and Bate Avenue Allambie.
- Part unmade road at the southern end of Wandella Road, King Street, Manly Vale and east of the Manly Water Laboratory (Research Station).

It is also proposed to remove development standards for height and minimum lot size for subdivision for this land given residential development will no longer be permitted.

Council’s Environment and Climate Change Division supports the proposal based on the sites’ ecological and scientific values, cultural values (listed Aboriginal Places) and aesthetic and community values. This view is supported by a range of previous studies, investigations and environmental map data.

Crown Land Office staff have acknowledged the merits of the Planning Proposal but have recommended consultation with the Metropolitan Local Aboriginal Land Council as the lands are subject to claims under the *Aboriginal Land Rights Act 1983*.

It is anticipated that the Department of Planning and Environment will require consultation with the Crown Land Office, Metropolitan Local Aboriginal Land Council and local community stakeholders as a condition of any Gateway approval.





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**RECOMMENDATION OF MANAGER STRATEGIC AND PLACE PLANNING**

That:

- A. Council submit the attached Planning Proposal to the Department of Planning and Environment for a Gateway Determination to rezone the following parcels of land from Low Density Residential (R2) to Public Recreation (RE1) and to remove height and minimum allotment size controls from the land:
- Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale;
  - Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close;
  - Lot 7371 DP1165577, Allambie, south of Blamey Street; and
  - Part unmade road at the southern end of Wandella Road, King Street, Manly Vale.
- B. Council prepare and exhibit consequential amendments to Warringah DCP 2011 to remove residential development controls, including setback and minimum landscaped area controls, from this land.
-

## REPORT

### BACKGROUND

At its Ordinary Meeting on 27 November 2018 Council considered a Notice of Motion (65/2018) in relation to the zoning of various parcels of land around Manly Warringah Memorial Park. As part of Council's resolution (360/18) Council resolved as follows:

That:

B. Council prepare a Planning Proposal to rezone two lots owned by the Crown in the vicinity of King Street and Wandella Rd from Low Density Residential (R2) to Public Recreation (RE1) under Warringah LEP 2011. The two lots are identified as:

- a. Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- b. Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close.

During the preparation of the Planning Proposal a further 2 parcels have also been identified as warranting the same rezoning and are recommended for inclusion into the Planning Proposal:

- Lot 7371 DP1165577 located to the rear of properties south of Blamey St and Bate Avenue Allambie.
- Part unmade road at the southern end of Wandella Road, King Street, Manly Vale and east of the Manly Water Laboratory (Research Station).

Both these parcels are Crown land in the vicinity of the riparian corridor and zoned Low Density Residential (R2).

The Crown Lands Office and Council's Natural Environment and Climate Change Division have been consulted regarding the inclusion of the parcels in the Planning Proposal and have indicated their support for the proposal.

Figure 1 shows the location of the four parcels of land to be included in the Planning Proposal.

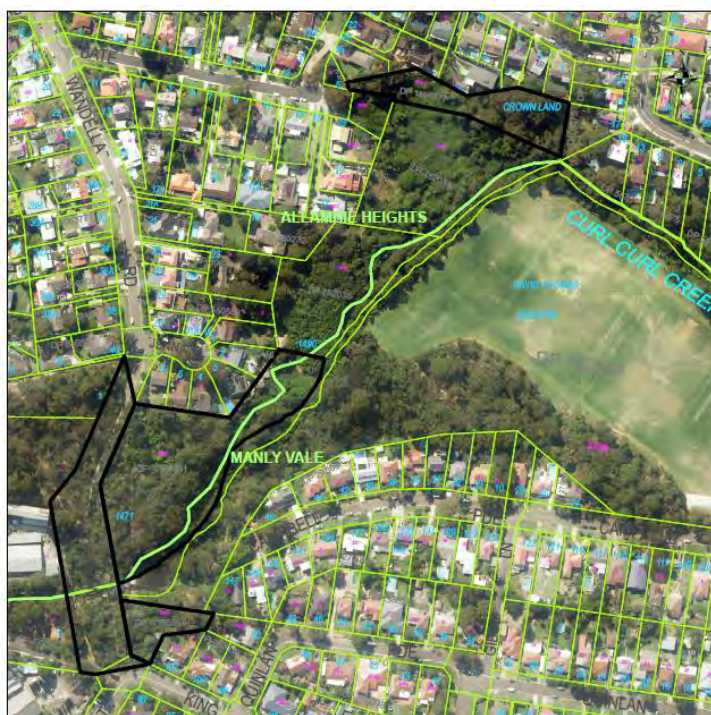


Figure 1: Location of rezoning sites

## CONTEXT

The subject lots are located within David Thomas Reserve and surrounding bushland in the vicinity of Manly Creek and Mermaid Pool. The land is part of a creek-line corridor from Manly Dam to Manly Lagoon. While the land is bounded by low density residential development to the north and south, the subject lots and surrounding bushland provide the only vegetative link from Manly Dam to the coast.

The subject lots are zoned R2 Low Density Residential under Warringah LEP 2011 but are included in numerous local and state ecological studies and databases which support the proposed RE1 Public Recreation zoning. Council's Natural Environment and Climate Change Division has identified the following relevant policies and studies:

- Local Habitat Strategy (Warringah Council 2007)
- Warringah Creek Management Study 2000
- Mapping of Native Vegetation, and Waterways and Riparian Lands Warringah DCP
- Biodiversity Values Mapping by Office of Environment and Heritage
- Manly Creek/Mermaid's Pool Restoration Plan (Total Earth Care 2003).

Figure 2 shows the current zoning of the parcels of land and figure 3 shows the proposed zoning of the parcels.

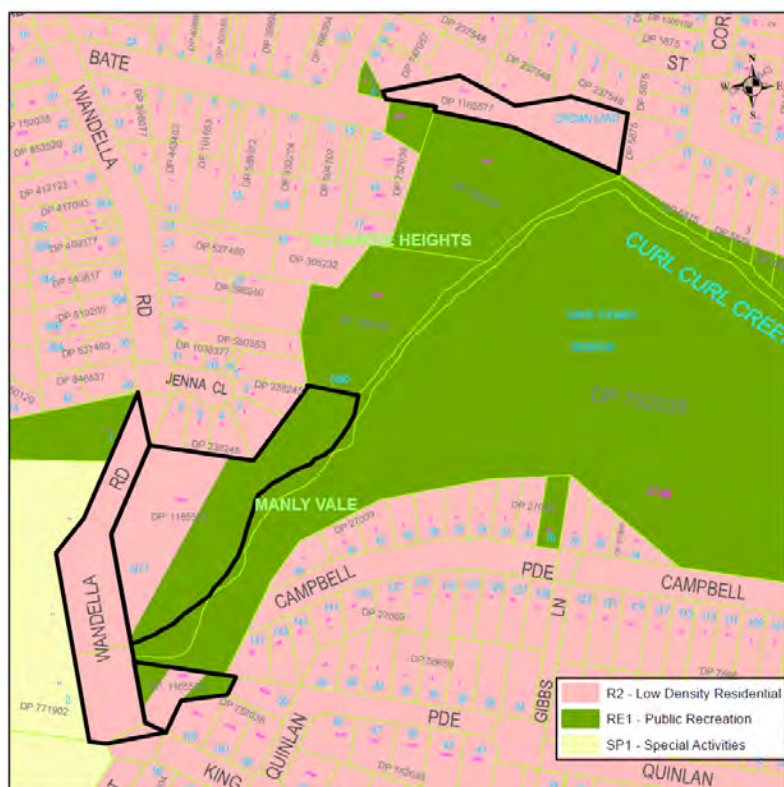


Figure 2: Current zoning under Warringah LEP 2011



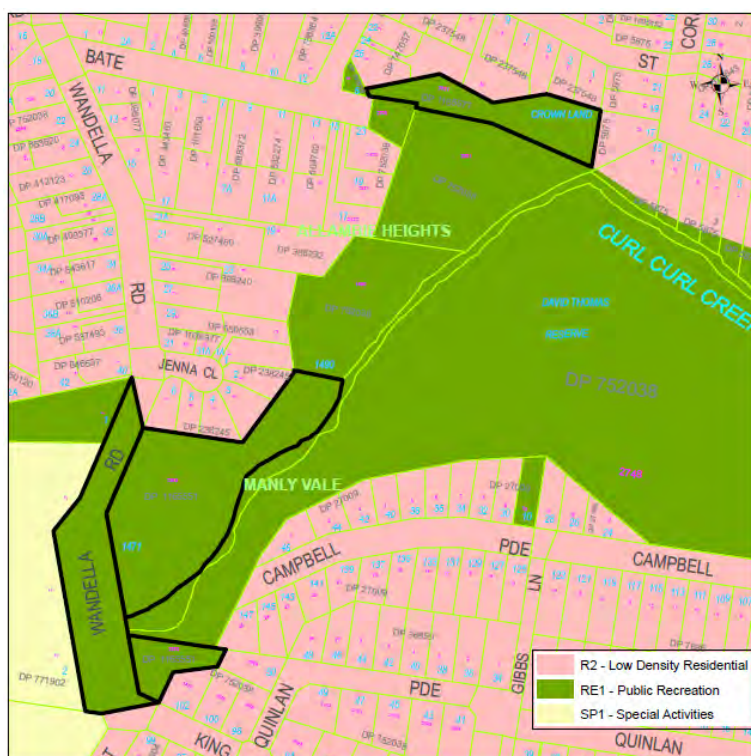


Figure 3: Proposed zoning under Warringah LEP 2011

## PLANNING PROPOSAL

The Planning Proposal (Attachment 1) has been drafted in accordance with the NSW Department of Planning and Environment's Planning Proposals: A guide to preparing planning proposals (2016).

Part 1 of Council's Planning Proposal sets out the Objectives and intended zoning outcomes. In summary, the objectives or intended outcome is to provide planning provisions for certain Crown Land parcels within the riparian corridor of Manly Creek, downstream of Manly Dam, Manly Vale. The land is to be zoned for public open space and recreational purposes and provide for a range of recreational settings, activities and compatible land uses. The planning provisions will better protect and enhance the natural environment and the values of the land.

Part 2 of Council's Planning Proposal provides a detailed explanation of provisions. The Planning Proposal seeks to amend Warringah LEP 2011 by Zoning Map amendments which rezone certain lands from Low Density Residential (R2) to Public Recreation (RE1). It is also proposed that certain residential development standards for height and minimum lot size for subdivision are removed for the subject parcels given residential development will no longer be permitted on the land.

Similarly, it is proposed that a range of residential development controls, including setback and minimum landscaped area controls, are removed from the Warringah DCP for this land.

Part 3 of Council's Planning Proposal justifies the need for the Planning Proposal and identifies that the Planning Proposal is the best means of achieving the objectives or intended outcomes. The Planning Proposal is supported by the objectives and actions contained in the Sydney Region Plan and North District Plan and related strategies. The Planning Proposal is also consistent with Council's local strategies as well as applicable State Environment Planning Policies and Ministerial Directions. In particular, critical habitat or threatened species, populations, or ecological communities, or their habitats, will be positively impacted by the proposal.

There are no likely detrimental environmental, social or economic impacts resulting from the Planning Proposal.

## CONSULTATION

Public exhibition of the Planning Proposal will take place following receipt of any Gateway Determination from the Department of Planning and Environment. The Gateway Determination will prescribe the minimum requirements for consultation including the exhibition period and government agency consultation requirements. Council would usually undertake consultation as follows:

- Manly Daily advertisement of the Planning Proposal at the commencement and midway through the exhibition
- Electronic copies of the exhibition material on Council's website
- Hard copies of the exhibition material at Council's Dee Why, Manly and Mona Vale Customer Service Centres
- An email to registered community members who have listed their interest on Council's Community Engagement Register.

The views of State and Commonwealth public authorities would be addressed in consultations undertaken in accordance with the Gateway Determination.

### NSW Department of Industry - Lands and Water

Council has consulted the NSW Department of Industry - Lands and Water - Regional Services (Crown Lands Office) in the preparation of the Planning Proposal.

The Crown Lands Office generally confirmed the merits of the Planning Proposal but noted that the lands were subject to Aboriginal Land claims and encouraged consultation with the Metropolitan Local Aboriginal Land Council (MLALC)

Council's Property Assets Team has also advised that part of the land is subject to the Crown Land Negotiation Program involving Crown Lands, Council and MLALC.

Whilst the Department of Planning and Environment has advised that 'there is no restriction on a planning proposal to rezone land proceeding where the relevant land is subject to a pending land claim', given the possible relationship of the Planning Proposal with these other projects, Council has indicated that the Planning Proposal will be consulted with the Metropolitan Local Aboriginal Land Council.

Other community consultation recommended in the Planning Proposal includes the local environmental conservation group 'Save Manly Dam Catchment Committee' which has been actively involved with the subject land since 2002, including the restoration of Mermaid Pool. This Committee advocates for the establishment of a 'small bird habitat corridor' for the locality and is a relevant community stakeholder in relation to the Planning Proposal.

## TIMING

It is anticipated that the Planning Proposal will be completed in 6 – 12 months from the date of Council's approval to proceed. Following the issue of a Gateway determination, Council will be required to formally exhibit the Planning Proposal for 28 days. The matter will be reported back to Council for final consideration following that exhibition.

## FINANCIAL CONSIDERATIONS

The Planning Proposal process will be undertaken within the existing Strategic and Place Planning budget.

**SOCIAL CONSIDERATIONS**

The Planning Proposal supports social considerations in relation to rezoning certain land which is well known locally for its beauty and use for public recreation activities including bush walking, and picnics. The local community are invested in the protection and restoration of bushland around Mermaid Pool since a major clean-up of the site in 2002. The site has a long history of human-use and enjoyment for recreational activities. The area also contains listed Aboriginal Places.

**ENVIRONMENTAL CONSIDERATIONS**

The Planning Proposal supports environmental considerations in relation to rezoning certain land for public open space or recreational purposes and to provide for a range of recreational settings, activities and land uses that are compatible with the values of the land. The proposal will also better protect and enhance the natural environment and the values of the land.

**GOVERNANCE AND RISK CONSIDERATIONS**

Rezoning the riparian lands in public ownership from a residential zone to a public recreational zone will reduce potential risks to Council in terms of its regulatory obligations for the management of land use *zones consistent with the values associated with the land under the Local Government Act 1993 and Environmental Planning and Assessment Act 1979.*



## **PLANNING PROPOSAL**

Amendments to  
Warringah Local Environmental Plan 2011

### **MANLY CREEK RIPARIAN LANDS (in the vicinity of “Mermaid Pool”, Manly Vale)**

February 2019  
(submission for  
Gateway  
Determination)



## Contents

<b>Part 1 – Intended Outcomes .....</b>	<b>Error! Bookmark not defined.</b>
<b>Part 2 – Explanation of Provisions .....</b>	<b>Error! Bookmark not defined.</b>
<b>Part 3 – Justification .....</b>	<b>Error! Bookmark not defined.</b>
<b>Part 4 – Maps .....</b>	<b>Error! Bookmark not defined.</b>
<b>Part 5 – Community Consultation.....</b>	<b>Error! Bookmark not defined.</b>
<b>Part 6 – Project Timeline.....</b>	<b>Error! Bookmark not defined.</b>

## Part 1 – Intended Outcomes

The intended outcome of the Planning Proposal is to rezone certain Crown Land parcels within the riparian corridor of Manly Creek, downstream of Manly Dam, Manly Vale from Low Density Residential R2 to Public Recreation RE1 to provide for a range of recreational settings, activities and land uses that are compatible with the values of the land. The proposal will also better protect and enhance the natural environment and the values of the land.

It is also proposed that residential building height and minimum allotment size controls be removed from the land as residential uses will no longer be permitted under the RE1 zone.

## Part 2 – Explanation of Provisions

The proposal seeks to amend Warringah LEP 2011 as follows:

Amend Zoning Map (LZN\_004) to rezone certain land from Low Density Residential (R2) to Public Recreation (RE1) comprising the following land:

- Part Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- Part Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close, Allambie
- Lot 7371 DP1165577
- Part unmade road at the southern end of Wandella Road, King Street, Manly Vale

The effect of the rezoning will be that the subject lots will be zoned Public Recreation (RE1) in their entirety (note: some of the above land parcels are currently zoned part Low Density Residential (R2) and part Public Recreation (RE1)).

Some minor consequential amendments to the LEP are also proposed to accompany the rezoning, removing residential development standards for height and minimum lot size from the subject land parcels.

In this regard it is proposed to remove the subject land from the following LEP Maps:

- WLEP2011 Map HoB\_00 (Height of Building Map)
- WLEP2011 Map LZN\_00 (Minimum Lot Size Map)

## The Land

The subject land parcels are contained within David Thomas Reserve and surrounding bushland located in the suburbs of Allambie Heights and Manly Vale below Manly Dam. The land is bounded by low density residential development to the north and south. The land is part of the riparian corridor of Manly Creek.

This creek line corridor of vegetation on and adjoining the subject lots directly connects Manly Dam in the west to Millers Reserve and Warringah Golf Club in the west, before discharging into Manly Lagoon. In this regard the land contributes significantly to an important vegetative link from Manly Dam to the coast and has been included in several local and state ecological studies and databases detailed in this Planning Proposal.



Figure 1 – Aerial Photo of locality

The subject land parcels and bushland form part of a place fondly known by the local community as the 'Mermaid Pool'. The subject land parcels are in the vicinity of this riparian pool with associated waterfall and rock escarpments. This land is the subject of an ongoing community restoration project which gained recognition and impetus under the national Clean Up Australia Day campaign in 2001/2002 and the "Return of the Mermaids" project.

At this time over 4 tonnes of waste was removed from the creek including old ovens, car parts, trolleys and building material. From this event ongoing bush-care volunteers meet monthly to continue regeneration of this community valued place. Other events and workshops run by



'Save Manly Dam Catchment Committee' include educational programs, nesting box installation, drain stencilling, lobbying and advocacy. Council also currently manages and funds a bush regeneration volunteer program at the Mermaid Pool and bush regeneration contracts in the adjacent David Thomas Reserve.

### **The Zones**

The existing zone to be omitted in relation to the subject lands is as follows:

#### **Zone R2 Low Density Residential (existing zone)**

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

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

##### **2 Permitted without consent**

Home-based child care; Home occupations

##### **3 Permitted with consent**

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Veterinary hospitals

##### **4 Prohibited**

Any development not specified in item 2 or 3



Zone RE1 Public Recreation (proposed zone)

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Environmental facilities; Environmental protection works; Roads

3 Permitted with consent

Boat building and repair facilities; Boat sheds; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Community facilities; Emergency services facilities; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Water recreation structures

**4 Prohibited**

Any development not specified in item 2 or 3



*Figure 3 – Proposed Zoning*

**Related Provisions in the Warringah LEP (Heritage and Land Slip Risk).**

Other provisions associated with the land under Warringah LEP 2011 include Heritage and Land Slip Risk.

Councils Heritage Advisor has reviewed the Planning Proposal and provided the following comments:

*The land is within the vicinity of a number of local heritage items and a heritage conservation area listed in Schedule 5 of Warringah Local Environmental Plan 2011, as can be seen on attached map, they being:*

- *Item 1144 - Manly Hydraulics Laboratory, 110b King Street, Manly Vale Item 184 - Manly Dam, King Street, Manly Vale Conservation Area C9 - Manly Dam and Surrounds Conservation Area*
- *Manly Dam is also listed as a State Heritage item under the NSW Heritage Act (Database No. 5051428). The extent of this State listing can be seen attached, which generally corresponds to local Item 184.*

*The rezoning of these lots to RE1 will have no adverse impact upon the heritage items in the vicinity nor the Manly Dam and surrounding Conservation Area.*

The Warringah LEP maps the subject land as 'Area B – Flanking Slopes' in terms of landslip risk. Consideration is required to be given to risk associated with landslides and their impact on both property and life when assessing applications for development. Furthermore, such development must not cause significant detrimental impacts because of stormwater discharge from the development site or impact on or affect the existing subsurface flow conditions.

The Planning Proposal is consistent with the existing provisions as applicable to the land to be rezoned.



## Part 3 – Justification

### Section A – Need for the Planning Proposal

#### 1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal results from a resolution of Council at its Ordinary Meeting dated 27 November 2018. At this time Council considered Notice of Motion No 65/2018 regarding a variety of land parcels for rezoning in and around Manly Warringah Memorial Park.

Council's resolution regarding parcels of land owned by Sydney Water and the Crown in the vicinity of Wakehurst Parkway, Seaforth is to be subject to separate Planning Proposal.

Part B of the Council's Resolution was as follows:

B. Council prepare a Planning Proposal to rezone two lots owned by the Crown in the vicinity of King Street and Wandella Road from Low Density Residential (R2) to Public Recreation (RE1) under the Warringah LEP 2011. The two lots are identified as:

- Part Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- Part Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close, Allambie

In this regard a further 2 parcels of are also sought to be incorporated into the Planning Proposal as follows:

- Lot 7371 DP1165577
- Part unmade road at the southern end of Wandella Road, King Street, Manly Vale

A number of existing ecological studies data supports the current Planning Proposal:

- Connected Corridors for Biodiversity project by Southern Sydney Regional Organisation of Councils in December 2016
- Local Habitat Strategy by former Warringah Council in 2007
- Biodiversity Values Map by Office of Environment and Heritage (OEH) in 2018
- Sydney Metropolitan Catchment Management Authority v3 Mapping, OEH 2016
- Warringah Creek Management Study 2000, former Warringah Council
- Native Vegetation DCP Mapping, former Warringah Council
- BioNet threatened species records, OEH 2018

Other existing site-specific and locality information include:

- Manly Creek/Mermaid's Pool Restoration Plan (Total Earth Care 2003)
- Manly Dam ongoing comprehensive species list project (Northern Beaches Council 2018)
- Biodiversity Assessment of nearby Sydney Water land (Sydney Water 2018)

All of the above studies and databases are further detailed in this report in Part 3B – Relationship to Strategic Planning Framework.

Council is also in the process of commissioning a Biological study from independent ecological consultants to provide a full species inventory, determine and map native vegetation, undertake a habitat assessment and targeted surveys for threatened species and provide an independent assessment of the area's function as a wildlife corridor.

The project is expected to be completed by July 2019, and will further inform and support the rezoning planning proposal for various lots currently zoned R2 contained within Manly Creek Riparian Lands, near Mermaid Pool Manly Vale.

**2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The Planning Proposal to rezone the land to RE1 Public Recreation is the best means of achieving the objectives to maintain the use of the land for public open space and recreational purposes and to better protect and enhance the natural environment and the values of the land.

In 2016 the Manly Lagoon Catchment Coordinating Committee sought to have the land rezoned to environmental protection (E1 or E2). Warringah Council subsequently committed to a review of the zoning due to the environmental significance of land, with the Mayor of Warringah seeking support for the rezoning from Member for Manly and the Minister for Lands and Water. Whilst environmental protection zones in the LEP provide a higher level of environmental protection, the extent of the Manly Warringah Memorial Park, the Mermaid Pool and much of the riparian corridor is zoned RE1 Public Recreation. The RE1 Public Recreation is therefore considered the most appropriate means of achieving the intended outcomes of the Planning Proposal.

**Section B – Relationship to strategic planning framework****3. Is the Planning Proposal consistent with the objective and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?***The Greater Sydney Regional Plan*

The Planning Proposal has been reviewed against relevant outcomes of the Greater Sydney Regional Plan “A Metropolis of Three Cities – connecting people” published on 18 March 2018. The Plan identifies a number of strategic directions and specific policy settings regarding transport, housing growth, employment and centres.

The Planning Proposal is consistent with a number of general goals of the Regional Plan and satisfies a range of objectives as follows:

- Objective 25 - The coast and waterways are protected and healthier
- Objective 27 - Biodiversity is protected, urban bushland and remnant vegetation is enhanced
- Objective 28 – Scenic and cultural landscapes are protected
- Objective 30 – Urban Tree Canopy is increased
- Objective 31 – Public open space is accessible, protected and enhanced
- Objective 32 – The Green Grid links parks, open spaces, bushland and walking and cycling paths

*North District Plan*

The Planning Proposal supports the North District Plan vision for ‘A city in its Landscape’ and Directions ‘Valuing green spaces and landscape’.

The Planning Proposal is consistent with a number of Planning Priorities of the North District Plan as follows:

- Planning Priority N15 – Protecting and improving the health and enjoyment of Sydney Harbour and Waterways
- Planning Priority N16 – Protecting and enhancing bushland and biodiversity
- Planning Priority N17 – Protecting and enhancing scenic and cultural landscapes
- Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid Connections
- Planning Priority N20 – Delivering high quality open space

**4. Is the Planning Proposal consistent with a council’s local strategy or other local strategic plan?**

A review has been undertaken of the Planning Proposal against certain policies and plans of Northern Beaches Council as follows:

Northern Beaches Draft Community Strategic Plan 2017-2028 ‘SHAPE 2028’

The Northern Beaches Community Strategic Plan was adopted by the Northern Beaches Council in June 2018 following 2 stages of engagement and drafting in September/October 2016 (developing community issues, priorities and visions) and in March/April 2017 (developing draft goals and strategies to achieve the vision).

The Plan is built around themes of community, place, environment and leadership. The objectives and intended outcomes of the Planning Proposal are supported by the Community Strategic Plan.

#### Warringah DCP Native Vegetation, and Waterways and Riparian Lands Mapping

The subject lots are identified in the Warringah DCP 2011 as predominantly "Native Vegetation" and to a lesser extent "Waterways and Riparian Lands". The DCP outlines Objectives relating to this land and states that these objectives must be satisfied by technical studies for certain development as follows:

In relation to land identified on the DCP Native Vegetation Map (WDCP2011 Section E5)

- To preserve and enhance the area's amenity, whilst protecting human life and property.
- To improve air quality, prevent soil erosion; assist in improving water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.
- To provide natural habitat for local wildlife, maintain natural shade profiles and provide psychological & social benefits.
- Promote the retention of native vegetation in parcels of a size, condition and configuration which will as far as possible enable local plant and animal communities to survive in the long term.
- To maintain the amount, local occurrence and diversity of native vegetation in the area

In relation to land identified on the DCP Waterway or Riparian Land Map (WDCP2011 Section E8)

- Protect, maintain and enhance the ecology and biodiversity of waterways and riparian land.
- Encourage development to be located outside waterways and riparian land.
- Avoid impacts that will result in an adverse change in watercourse or riparian land condition.
- Minimise risk to life and property from stream bank erosion and flooding by incorporating appropriate controls and mitigation measures.
- Maintain and improve access, amenity and scenic quality of waterways and riparian lands.
- Development on waterways and riparian lands shall aim to return Group B and Group C creeks to a Group A standard (as described in Warringah Creek Management Study, 2004) through appropriate siting and development of development.



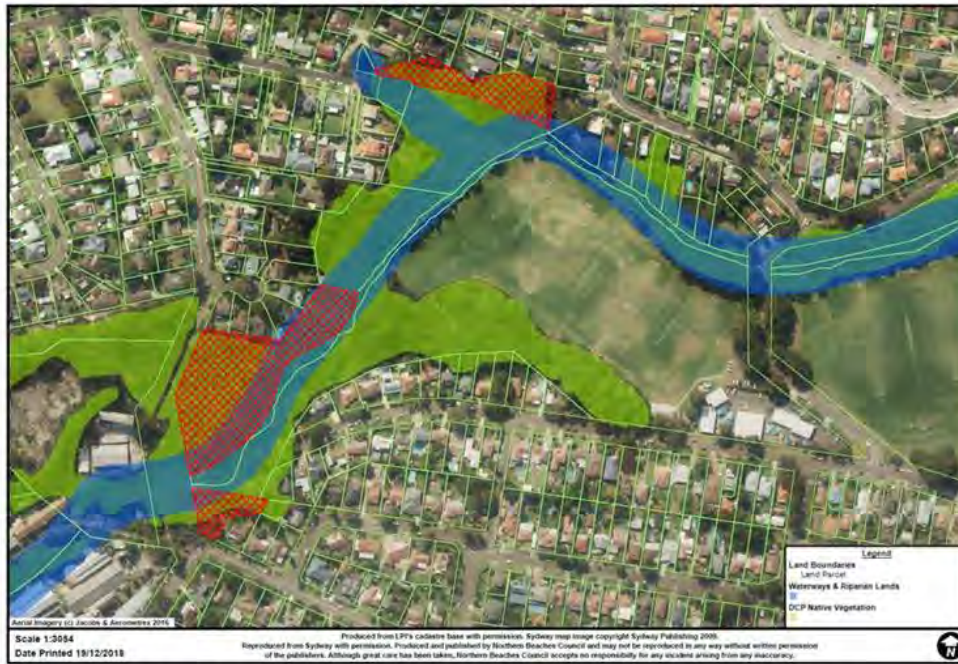


Figure 4 – Native Vegetation and Waterways & Riparian Lands DCP mapping

#### Local Habitat Strategy (Warringah Council 2007)

This strategy outlines the state of habitat in Warringah and suggests actions Council can take, in partnership with the community, to preserve, protect and restore habitat areas. The Strategy identifies "Local Habitat" which was defined as any area which provides food, shelter and opportunities to breed for native plants and animals, within the former Warringah LGA.

The objectives of this strategy are as follows:

- Local habitat is recognised, maintained and improved throughout Warringah
- Warringah's community values habitat and is actively involved in its protection and improvement

The subject lots are mapped as "existing vegetation" within this strategy (See Figure 5).

The subject lots and surrounding areas, particularly around Mermaid Pools, have undergone significant restoration fuelled by volunteers within the community. In this regard the Strategy objectives are being satisfied in relation to the subject lots. The Biodiversity Study being undertaken in conjunction with the Planning Proposal will provide a more detailed and updated species list and habitat assessment for the subject lots and surrounding land to further establish the value of this habitat for local native species.





Connected Corridors for Biodiversity project by Southern Sydney Regional Organisation of Councils in December 2016

This project provides Council with tools for habitat corridor mapping across Sydney and identifies the subject lots as 'Priority Habitat'. The main aim of the Connected Corridors for Biodiversity project was to create tools to be used by Councils to facilitate increased habitat connectivity. This included a preparation of a habitat corridor map.

The subject lots and surrounding land are mapped as "Priority Habitats" within the Connected Corridors for Biodiversity project by Southern Sydney Regional Organisation of Councils in December 2016. See Figure 7.



Figure 7 – Biodiversity Corridor linking Manly Dam to the coast (SSROC 2016), approx. location of subject lots shown in red.

The Sydney Metropolitan Catchment Management Authority V3 mapping (OEH 2016)

The Sydney Metropolitan Catchment Management Authority map some areas of the subject lots and surrounding land as being made up of 3 Plant Community Types (PCT) (Figure 8).

- PCT 1250 - S\_DSF09: Coastal Sandstone Gully Forest
- PCT 1783 - S\_DSF11: Sydney North Exposed Sandstone Woodland
- PCT 1824 - S\_HL08: Coastal Sandstone Heath-Mallee

Coastal Sandstone Gully Forest (PCT1250, S\_DSF09) is known to support at least five (5) rare plant species (*Angophora crassifolia*, *Darwinia procera*, *Eucalyptus luehmanniana*, *Hibbertia nitida* and *Lomandra brevis*), and fourteen (14) species rare in northern Sydney (*Amyema pendulum*, *Blechnum minus*, *Deyeuxia decipiens*, *Eucalyptus capitellata*, *E. scias*, *Gahnia radula*, *Juncus pallidus*, *Lepidosperma elatius*, *Lycopodiella cernua*, *Ophioglossum lusitanicum*, *Prostanthera denticulata*, *Utricularia australis*, *U. uliginosa* and *Xanthorrhoea minor*).

The majority of the bushland within the subject lots and surrounding land have not been mapped as a native PCT however the Biodiversity Study being undertaken with the Planning Proposal will determine and map PCTs across the area.



Figure 8 – SMCMA V3 mapping (OEH 2016)

#### Manly Creek/Mermaid's Pool Restoration Plan (Total Earth Care 2003)

In 2003, Total Earth Care Pty Ltd was commissioned by Warringah Council to prepare a Restoration Plan for the Mermaid's Pool reach of Manly Creek. The Study Area encompassed all publicly owned land on both sides of Manly Creek between the Manly Dam wall (to the west) and Condamine Street (to the east), excluding the playing fields within David Thomas Reserve and Millers Reserve. This study included a flora and fauna field survey, an assessment of habitat, a discussion of threats to biodiversity, and recommended bushland restoration methods.

The primary recommendation of the Plan is that a comprehensive and ongoing biotic survey be undertaken so that the bushland management recommendations are amended periodically to ensure the study area is appropriately managed. This plan also suggested that the species lists provided in the Plan should be included in the Manly Dam Reserve species list. Council's Bushland and Biodiversity team advises the plans and actions associated with this Plan will assist in integrating the management of these contiguous bushland areas. The Planning Proposal, with the associated Biodiversity Study will fulfil the primary recommendation of this project.

#### Manly Dam species list project (Northern Beaches Council 2018)

This ongoing project lists species recorded within Manly Dam. The list currently contains as many as 97 bird species, 23 reptile species, 9 amphibian species, 13 mammal species, 6 fish species, and 320 flora species. Two threatened mammal species previously recorded are now locally extinct, the *phascolarctos cinereus* Koala and *dasyurus maculatus* Spotted-tailed Quoll.

#### Biodiversity Assessment on nearby Sydney Water land (Sydney Water 2018)

In 2018, Sydney Water undertook a comprehensive survey on their land adjacent the Manly Dam wall, nearby to the subject lots. This survey identified an additional threatened species occurring including *chalinolobus dwyeri* Large-eared pied bat (Vulnerable under the BC Act 2016 and the EPBC Act 1999), which has not been recorded within 5 km of the site in the NSW BioNet database.

The subject lots and surrounding land contain suitable potential breeding habitat for the *chalinolobus dwyeri* Large-eared pied bat, which is listed as a SAIL under the BC Act. "Habitat" for bat species is defined by OEHL as, all areas of potential habitat on the subject land where the species is determined to be present. Potential habitat for this species is defined by OEHL as "Potential breeding habitat is PCTs associated with the species within 100m of rocky areas



containing caves, or overhangs or crevices, cliffs or escarpments, or old mines, tunnels, culverts, derelict concrete buildings. Surveys must be undertaken as per the Threatened Bat Survey Guide to confirm breeding habitat". The study also notes the potential presence of 2 other threatened bat species.

Council's Bushland and Biodiversity team advise this project demonstrates that previously unrecorded threatened species are still being recorded within the locality and that further biodiversity surveys are required to determine whether threatened species or species habitat are located on the land.

#### Manly Warringah War Memorial Park Plan of Management

While this Plan of Management does not apply to the subject Crown land for rezoning, it is relevant in that it states that 'Bushland linkages need to be protected and enhanced to enable movement of flora and fauna between reserves in Warringah' (p61). In this regard the subject land parcels are recognised as important strategic Bushland linkages in the vicinity of, and connected with Manly Warringah War Memorial Park.

#### Other Local Reports and Investigation

Council has been advised of Community investigations and support for the establishment of a small bird habitat corridor comprising the Mermaid Pool locality and outlined by Greater Sydney Landcare Network (and Save Manly Dam Catchment Committee). These strategic initiatives are supported by the Greater Manly Residents Forum, Birdlife Australia, Humaine Society International and STEP Inc. Current investigations support the suitability of the proposed corridor given the large areas of dense undisturbed vegetation, connectivity with surrounding reserves, and refuge from other predation and other impacts on the fringe of residential areas.

A Species Impact Statement by Kleinfelder (for Manly Vale Public School) identified small birds of significance (Eastern Spinebill, Superb Fairy Wren, Red Brownd Finch, Spotted Pardalote, New Holland Honey Eater, White Brownd Scrub Wren). Further independent surveys identified Scarlet Honey Eater, Little Wattlebird, Brown Thornbill & Black Faced Cuckoo Shrike. Upstream at Manly Dam Reserve over 80 bird species have been recorded.

### **5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

The Planning Proposal is consistent with applicable State Environmental Planning Policies as shown in the following Table 1.

**Table 1. Compliance with State Environmental Planning Policies (SEPPs)**

SEPPs (as at September 2017)		Applicable	Consistent
1	Development Standards	NO	N/A
14	Coastal Wetlands	NO	N/A
19	Bushland in Urban Areas	YES	YES
21	Caravan Parks	NO	N/A
26	Littoral Rainforests	NO	N/A
30	Intensive Agriculture	NO	N/A
33	Hazardous and Offensive Development	NO	N/A
36	Manufactured Home Estates	NO	N/A
44	Koala Habitat Protection	NO	N/A
47	Moore Park Showground	NO	N/A
50	Canal Estate Development	NO	N/A

52	Farm Dams and Other Works in Land and Water Management Plan Areas	NO	N/A
55	Remediation of Land	NO	N/A
62	Sustainable Aquaculture	NO	N/A
64	Advertising and Signage	NO	N/A
65	Design Quality of Residential Apartment Development	NO	N/A
70	Affordable Housing (Revised Schemes)	NO	N/A
	Coastal Management	NO	N/A
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	NO	N/A
	(Affordable Rental Housing) 2009	NO	N/A
	(Building Sustainability Index: BASIX) 2004	NO	N/A
	(Exempt and Complying Development Codes) 2008	NO	N/A
	(Housing for Seniors or People with a Disability) 2004	NO	N/A
	(Infrastructure) 2007	YES	YES
	(Integration and Repeals) 2016	NO	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	NO	N/A
	(Kurnell Peninsula) 1989	NO	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	NO	N/A
	(Miscellaneous Consent Provisions) 2007	NO	N/A
	(Penrith Lakes Scheme) 1989	NO	N/A
	(Rural Lands) 2008	NO	N/A
	(State and Regional Development) 2011	NO	N/A
	(State Significant Precincts) 2005	NO	N/A
	(Sydney Drinking Water Catchment) 2011	NO	N/A
	(Sydney Region Growth Centres) 2006	NO	N/A
	(Three Ports) 2013	NO	N/A
	(Urban Renewal) 2010	NO	N/A
	(Western Sydney Employment Area) 2009	NO	N/A
	(Western Sydney Parklands) 2009	NO	N/A

## 6. Is the planning proposal consistent with applicable Ministerial Directions?

Applicable Directions are summarised at Attachment 1 and comments on each of the applicable directions is provided in Table 2 below. The following comments are provided regarding where the Planning Proposal may be inconsistent with the terms of any direction, and any such inconsistencies are addressed below as follows:

### Direction 3.1 Residential Zones

This direction applies as the Planning Proposal affects land within an existing residential zone i.e. Zone R2 Low Density Residential.

Under clause 3.1(1) of the Direction, the objectives of this direction are:

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,
- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- (c) to minimise the impact of residential development on the environment and resource lands.

Under clause 3.1(4) & (5) of the Direction, the Planning Proposal must:

- (4) include provisions that encourage the provision of housing that will:
  - (a) broaden the choice of building types and locations available in the housing market, and
  - (b) make more efficient use of existing infrastructure and services, and

- (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and
- (d) be of good design.
- (5) in relation to land to which this direction applies:
  - (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
  - (b) not contain provisions which will reduce the permissible residential density of land.

The Planning Proposal is inconsistent with the above requirements as the proposed rezoning will not provide for residential development on the subject land. In this regard, a planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- (a) justified by a strategy which:
  - (i) gives consideration to the objective of this direction, and
  - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
  - (iii) is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- (c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) of minor significance.

The provisions of the Planning Proposal that are inconsistent are considered to be of minor significance for the following reasons:

- While the land is subject to an existing residential zone, the Planning Proposal supports and fully justifies a future zone that is not a residential zone in which residential development is not permitted or proposed to be permitted
- The Planning Proposal is confined to 4 parcels of Crown Land which comprises part of a wider Open Space Reserve for public purposes.
- The provisions of a variety and choice of housing types and the existing and future housing needs will not be effected by the Planning Proposal
- The environmental studies and strategies identified in this report provide detailed support for the proposed non-residential zoning of the land
- The Planning Proposal seeks to minimise the impact of residential development on the environment by rezoning the land to Zone RE1 Public Recreation, consistent with the remainder of the Public Reserve and consistent with the ecological, scientific, cultural and aesthetic values of the land.

#### Direction 6.2 - Reserving Land for Public Purposes

This direction applies as the Planning Proposal seeks to create a new zone requiring the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

Under clause 6.2(1) of the Direction, the objectives of this direction are:

- (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and
- (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

Under clause 6.2(4) of the Direction, the Planning Proposal must:

- (a) not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

Other requirements apply at paragraphs (5)-(7) in respect of when a Minister or public authority may request that Council reserve land for a public purpose and in other circumstances where the land is to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991.

The Planning Proposal seeks to rezone certain Crown Land parcels from a residential zone to Zone RE1 Public Recreation. It has been prepared with the preliminary support of the Regional Crown Lands Office as detailed in the report. The Planning Proposal does not involve the reservation of land and does not involve changes to the LEP Land Acquisition Map. Preliminary advice from the Department of Planning and Environment states that statutory consultation with the Crown Land Office would likely be a condition of any Gateway Determination.

**Table 2: Ministerial (Local Planning) Directions – Summary of Applicable Directions**

<b>Ministerial Direction</b>	<b>Comment</b>
<b>2 Environment and Heritage</b>	
<b>2.1 Environment Protection Zones</b>	
The objective of this direction is to protect and conserve environmentally sensitive areas.	The Planning Proposal seeks to rezone certain lands which will facilitate the protection and conservation of environmentally sensitive areas and does not reduce any environmental protection standards that apply to the land.
<b>2.3 Heritage Conservation</b>	
The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	While the Planning Proposal applies to certain lands which are listed as heritage significant, the proposed rezoning is not considered to impact on the heritage significance of any listed heritage item as detailed in the Planning Proposal.
<b>3. Housing, Infrastructure and Urban Development</b>	
<b>3.1 Residential Zones</b>	
The objectives of this direction are to: a) encourage a variety of choice of housing types to provide for existing and future housing needs, b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and c) To minimise the impact of residential development on the environment and resource lands.	Inconsistency with the terms of this Direction is addressed in accordance with the requirements of the Direction above in detail.
<b>3.4 Integrating Land Use and Transport</b>	
The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:	This direction applies as the planning proposal will alter zones or provisions relating to urban land, including land zoned for residential purposes. In this regard the planning proposal is consistent with the



<p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	<p>aims, objectives and principles of Improving Transport Choice – Guidelines for planning and development (DUAP 2001).</p>
<b>4. Hazard and Risk</b>	
<b>4.1 Acid Sulfate Soils</b>	
<p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p>	<p>While the Planning Proposal applies to certain lands contained on LEP Acid Sulfate Soils Planning Maps, the existing provisions adequately regulate works and are consistent with the Acid Sulfate Soils Planning Guidelines.</p>
<b>4.3 Flood Prone Land</b>	
<p>The objectives of this direction are:</p> <p>(a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>While the Planning Proposal partly applies to certain lands identified as Flood Prone Land, the existing provisions adequately regulate works and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. Water management facilities may be designed and constructed in accordance with these requirements more readily on larger sites identified in the planning proposal.</p>
<b>4.4 Planning for Bushfire Protection</b>	
<p>The objectives of this direction are:</p> <p>(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and</p> <p>(b) to encourage sound management of bush fire prone areas.</p>	<p>Appropriate consideration is made of land mapped as bushfire prone land across the LGA.</p>
<b>6. Local Plan Making</b>	
<b>6.1 Approval and Referral Requirements</b>	
<p>The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p>	<p>The Planning Proposal is consistent with the terms of this direction as follows:</p> <p>a) provisions that require the concurrence, consultation or referral of DAs to a Minister or public authority are minimised</p> <p>(b) no provisions are contained in the Planning Proposal requiring concurrence, consultation or referral of a Minister or public authority without approval prior to undertaking consultation.</p>

	(c) no development is identified as designated development.
<b>6.2 Reserving Land for Public Purposes</b>	
The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Approval requirements of the relevant public authority and Department Secretary under the terms of this Direction are addressed above in detail.
<b>6.3 Site Specific Provisions</b>	
The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls.	The Planning Proposal does not seek to allow a particular development proposal under the terms of the Direction.
<b>7 Metropolitan Planning</b>	
<b>7.1 Implementation of A Plan for Growing Sydney</b>	
The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.	The Planning Proposal is consistent with the NSW Government's Greater Sydney Regional Plan "A Metropolis of Three Cities – connecting people" published on 18 March 2018, as outlined in Part 3, Section B of this report.

## **7. Other Legislation under the Strategic Planning Framework**

### Biodiversity Conservation Act 2016

Biodiversity Values Mapping by the Office of Environment and Heritage (OEH) in 2018 under the Biodiversity Conservation Act 2016 acts as one of the thresholds for entry into the Biodiversity Offsets Scheme. This map is published by the OEH under the Biodiversity Conservation Regulation 2017. This mapping identifies 'Biodiversity Value' within some parts of the subject lots due to the presence of species with potential for 'serious and irreversible impacts on biodiversity values under section 6.5 (2) of the Act'.

Lot 7369 DP 1165551 is mapped as having "Biodiversity Value" on the Biodiversity Values Map due to the presence of potential habitat for *prostanthera marifolia* Seaforth Mintbush. Habitat for this species is currently only known from the northern Sydney suburb of Seaforth and has a very highly restricted distribution within the Sydney Basin Bioregion.

*prostanthera marifolia*, Seaforth Mintbush has been identified as a species where there is potential for serious and irreversible impacts because of the very small population (principle 2) and its very limited distribution (principle 3). To date no individuals have been recorded within the lot. The upcoming Biodiversity Study will include targeted surveys to investigate and map suitable habitat at a site-scale and determine presence/absence of the species.

### Aboriginal Land Rights Act 1983

The Planning Proposal comprises certain lands subject to undetermined land claims under the Aboriginal Land Rights Act 1983 (see extract of provision below). Having regard to these interests, the Crown Lands Office and Department of Planning and Environment have been advised during the drafting of the Planning Proposal that consultations with the Metropolitan Local Aboriginal Land Council will be undertaken during Community Consultation /Public Exhibition.

The Department of Planning and Environment have advised that 'there is no restriction on a planning proposal to rezone land proceeding where the relevant land is subject to a pending land claim'.

### 36 *Claims to Crown lands*

(1) *In this section, except in so far as the context or subject-matter otherwise indicates or requires:*

*claimable Crown lands means lands vested in Her Majesty that, when a claim is made for the lands under this Division:*

(a) *are able to be lawfully sold or leased, or are reserved or dedicated for any purpose, under the Crown Lands Consolidation Act 1913 or the Western Lands Act 1901,*

(b) *are not lawfully used or occupied,*

(b1) *do not comprise lands which, in the opinion of a **Crown Lands Minister**, are needed or are likely to be needed as residential lands,*

(c) *are not needed, nor likely to be needed, for an essential public purpose, and*

(d) *do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act, and*

(e) *do not comprise lands that are the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act) (other than an approved determination that no native title exists in the lands).*

## Section C – Environmental, social and economic impact

### 8. **Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No adverse effects on critical habitat or threatened species, populations or ecological communities, or their habitats are likely as a result of the proposal.

The proposed rezoning of certain lands will introduce new zone objectives and land use permissibility for the land that will provide for a range of recreational settings, activities and compatible land uses that will better address the local flora and fauna which characterise the land. The planning provisions will also better protect and enhance the natural environment and the values of the land. The likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats may be identified on the land will warrant further ecological study identified in the Planning Proposal.

Council's Bushland and Biodiversity Team review of Office of Environment & Heritage datasets of threatened species, populations in the vicinity (BioNet 10 x 10 km search - report generated on 18/12/2018 4:23 PM), returned 99 threatened and migratory species over 3,458 records. Since 2008, thirty-nine (39) of these species have been recorded in the area with 2,714 records.

The most abundant threatened species recorded within the locality is the *Prostanthera marifolia* Seaforth Mintbush, which is listed as Critically Endangered under both the NSW Biodiversity Conservation Act 2016 (BC Act 2016) and Commonwealth Environment Protection & Biodiversity Conservation Act 1999 (EPBC Act 1999), and the *Cercartetus nanus* Eastern Pygmy-possum, *Ninox strenua* Powerful Owl, *Varanus rosenbergi* Rosenberg's Goanna and *Pseudophryne australis* Red-crowned Toadlet, all listed as Vulnerable under the NSW BC Act 2016.

The Biodiversity Study being prepared in conjunction with the Planning Proposal will identify the presence or high likelihood of any threatened species currently utilising the subject lots, as well as map important habitat and corridors for all local native species.

**9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

Council's Bushland & Biodiversity and Coast & Catchments teams have assisted in the preparation of the Planning Proposal and confirm that the likely environmental effects of the planning proposal will be to better protect manage and restore public land with ecological, scientific, cultural or aesthetic values.

The studies and mapping outlined and discussed in this Planning Proposal provide evidence that the subject lots are highly likely to contain habitat for local native species including threatened species, and are also likely to function as an important wildlife corridor, particularly for local native species including a range of bird species.

Council's Natural Environment and Climate Change Division advise as follows In relation to the proposed Zone (RE1) Objectives for the subject land:

- Objective 1: To enable land to be used for public open space or recreational purposes.

*Response:* The local community in conjunction with Save Manly Dam Catchment Committee have been working to protect the bushland around Mermaid Pool since 2002. The Mermaid Pool Volunteers meet regularly on the 4th Saturday of every month.

The area is well known locally for its beauty and natural resources, and is already heavily used for public recreation activities including bush walking, and picnics. This connects well with adjacent land for public recreation, including Manly Dam and David Thomas Reserve facilities.

The site has a long history of human-use and enjoyment for recreational activities. The area contains two (2) listed Aboriginal Places. The rezoning of the land will ensure the continuation of these activities at the site.

- Objective 2: To provide a range of recreational settings and activities and compatible land uses.

*Response:* As well as providing a range of recreational activities listed above, the subject lots and surrounding land provide a range of opportunities for educational activities such as community engagement programs, school educational programs, and the continuation of ongoing volunteer bush regeneration.

- Objective 3: To protect and enhance the natural environment for recreational purposes.

*Response:* As stated above, this land is well known for its beauty and natural resources, with stunning waterfalls, waterholes and sandstone cliff-faces in an otherwise urban landscape. The subject lots form part of a locally significant environmental feature and heritage site which should be protected and conserved, to be enjoyed by many future generations.

- Objective 4: To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.

*Response:* The subject land has important ecological, scientific, cultural and aesthetic value. Ecologically, this land provides potential and known habitat for hundreds of local native species. Scientifically, this land provides potential habitat for state and Commonwealth listed threatened species, including the Critically Endangered *Prostanthera marifolia* Seaforth Mintbush.



Culturally, this land contains two (2) Aboriginal Places. Aesthetically, this land provides stunning natural land forms including waterfalls, and sandstone cliffs and escarpments.

- Objective 5: To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

*Response:* From an ecological perspective, any development, except those permissible within RE1 zoning, may impact or otherwise have an adverse effect on the ecological, scientific, cultural and aesthetic values listed above and described throughout this referral.

#### The Biodiversity Study

A more detailed study is proposed to be undertaken by ecological consultants in conjunction with the Planning Proposal to assist with the future environmental management of the land. This additional study is being prepared by suitably qualified ecological consultants.

The objectives of the study are as follows:

- Determine and map the NSW Plant Community Types (PCTs) on all vegetated areas;
- Undertake a comprehensive field survey including complete flora and fauna inventory, targeting threatened flora and fauna as well as small cryptic birds and introduced species, in accordance with relevant government guidelines and including the most up-to-date survey methods;
- Record and map important habitat features and wildlife corridors, including known threatened species and small bird habitat, and;
- Report on findings and provide general recommendations to improve biodiversity values in the future.

The project is expected to be completed by July 2019.

#### **10. Has the Planning Proposal adequately addressed any social and economic effects?**

The Planning Proposal will well ensure social and economic effects are addressed in the zoning of certain lands for Public Recreation (RE1).

#### Aboriginal Heritage Office Comments

Comments received from the Aboriginal Heritage Office in relation to the Planning Proposal are as follows:

"Recorded Aboriginal rock art sites exist within the locality of the proposed rezoning ranging from paintings in excellent condition to those faded with time, damaged by graffiti and vandalism and obscured by vegetation. Each individual site is considered to be of high significance by the Aboriginal community. Overall, they have national and international significance due to their age (some sites dated over 6000 years, and many have occupation evidence going back at least 4000 years old), the style and variety of art, their level of preservation in the context of Australia's biggest city, the representative variety of different overlapping site types, and their association with the place where Europeans first settled Aboriginal land.

These sites in this location are important to the custodians, the Metropolitan Local Aboriginal Land Council (MLALC), to local Aboriginal people and to Aboriginal communities across Australia where they symbolise the survival of Aboriginal culture even where the impacts of invasion have been the longest and hardest felt. This heritage is also of increasing importance

to the wider public. Local residents have grown up with the sites and many have undertaken Sites Awareness training to learn more. There are many local people involved in reconciliation issues who appreciate the Aboriginal heritage of their local area and are active in trying to protect it. Visitors from Australia and internationally value the heritage and appreciate the opportunity to see at first hand Aboriginal heritage in Sydney, not just 'outback'.

No rock art sites are currently specifically listed on heritage registers. This is not due to the paucity of significant rock art sites but due to historical neglect of Indigenous heritage in this context and a general policy of keeping such sites low profile."

#### **Section D – State and Commonwealth interests**

##### **11. Is there adequate public infrastructure for the planning proposal?**

Yes, the Proposed Development is supported by adequate infrastructure.

##### **12. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

The Planning Proposal is being prepared in accordance with consultation guidelines and provisions prepared by the Department of Environment and Planning and all statutory consultation will occur in accordance with the requirements of any future Gateway determination.

##### NSW Department of Industry - Lands and Water

Prior to Gateway determination, Council consulted with NSW Department of Industry - Lands and Water - Regional Services (Crown Lands Office). They advised in correspondence dated 15 January 2019 that "The resolution of Northern Beaches Council to rezone R2 land to RE1 land seems worthwhile." Other comments included:

- Lot 7371 DP1165577 - 'this land is a relatively steep strip of R2 land at back of properties arguably unusable as R2 - recently subject of Crown land weed control work. Worth rezoning to RE1.'
- 'Unmade southern end of Wandella Rd affords a vegetated curtilage to the Mermaid Pool. Desirably, this road can be added to RE1 land to help protect the Mermaid Pool.'

The Department is also consulting with Council regarding a range of other projects including the Crown Land Negotiation Program. Councils Property Assets Team has advised that the lands under the Planning Proposal are also being considered in these negotiations. All necessary consultations are to proceed under the statutory provisions and processes of the Planning Proposal.

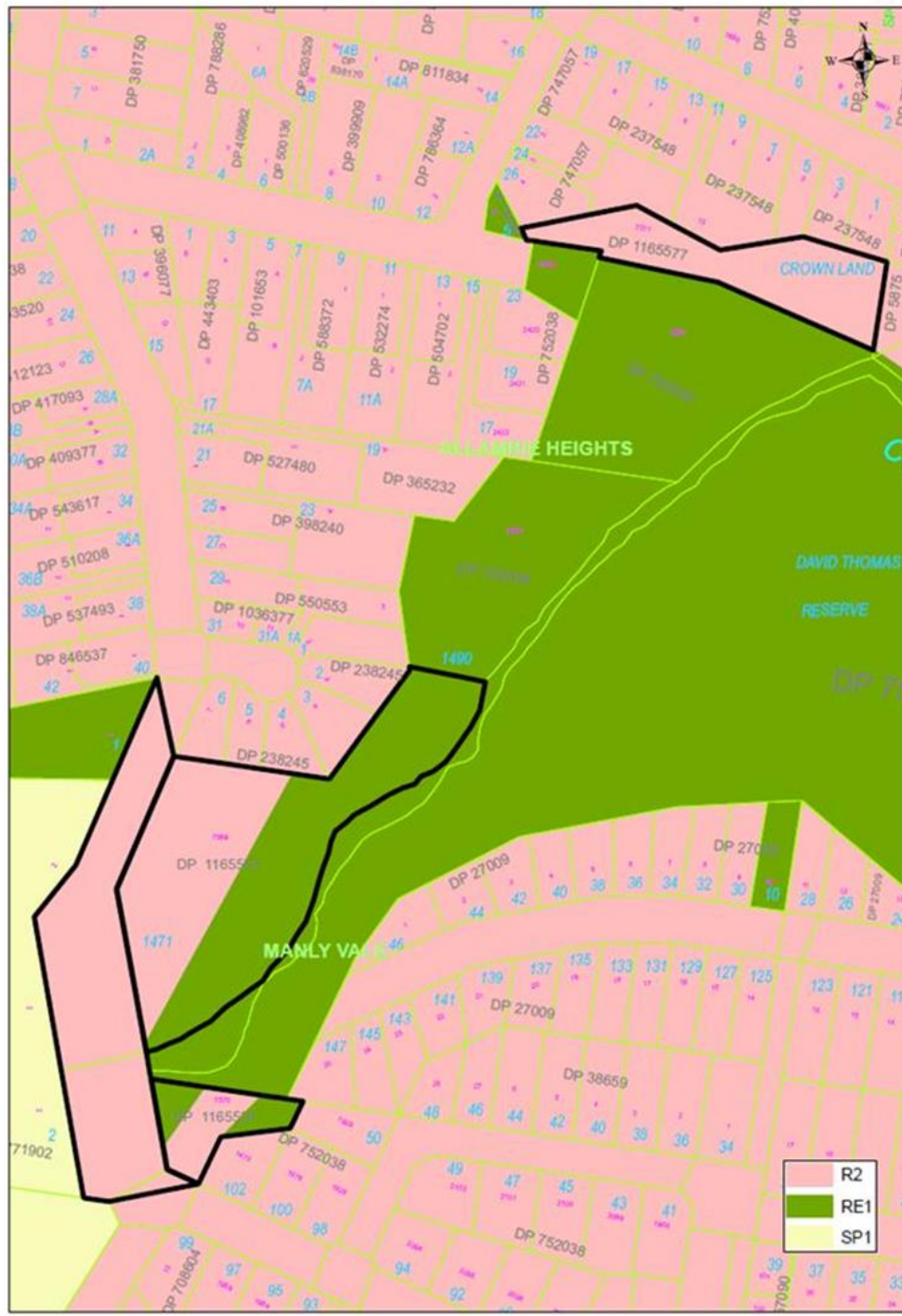
##### Department of Planning and Environment (Region Team)

Council has consulted with the Department of Planning and Environment (Region Team). The Department advises 'there is no restriction on a planning proposal to rezone land proceeding where the relevant land is subject to a pending land claim under the Aboriginal Land Rights Act.' (see Section B.7 of this report). The Department confirmed that any future Gateway would likely require consultation with Crown Lands and the relevant Metropolitan Local Aboriginal Land Council.



## Part 4 – Maps

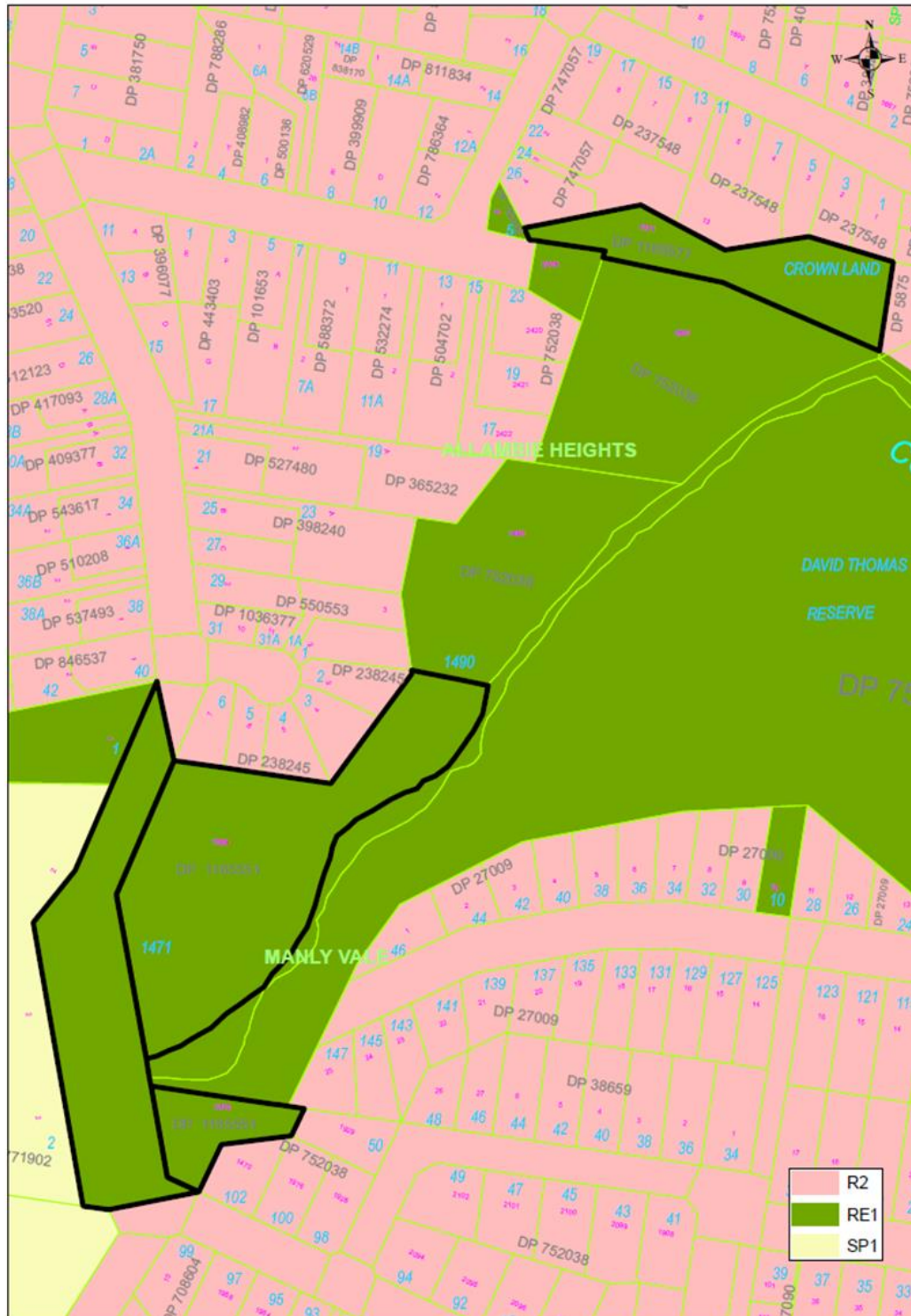
### Existing Mapping – Zoning – WLEP2011 Map LZN 00







Proposed Mapping Amendment – WLEP2011 Map LZN 00





Existing Mapping – WLEP2011 Map HoB 00 (Height of Building)



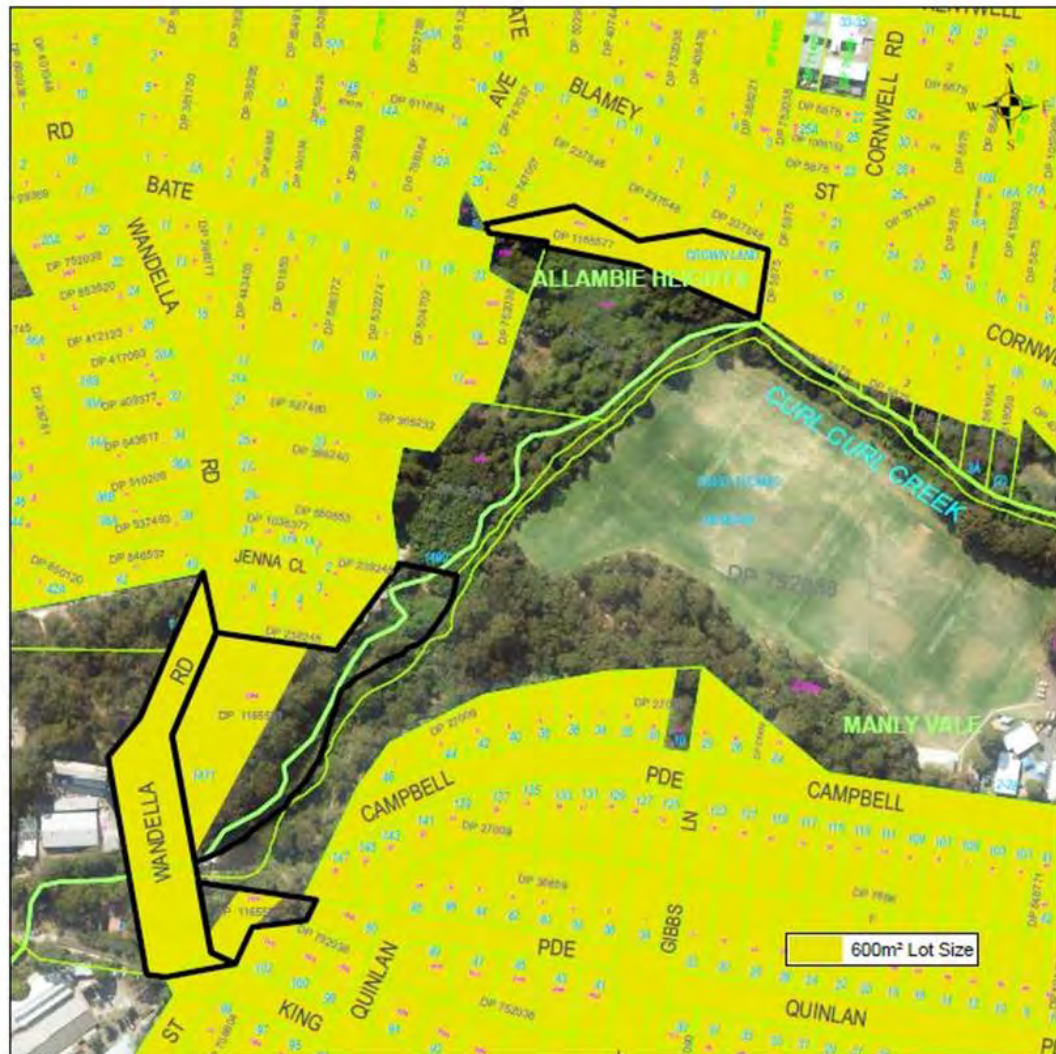
Proposed Mapping Amendment – WLEP2011 Map HoB 00 (Height of Building)







Existing Mapping Amendment – WLEP2011 Map LZN 00 (Minimum Lot Size)



Proposed Mapping Amendment – WLEP2011 Map LZN 00 (Minimum Lot Size)





## Part 5 – Community Consultation

Council will place the Planning Proposal on public exhibition in accordance with future Gateway Determination and consistent with Council's Community Engagement Policy including:

- A public notice in the Manly Daily notifying of the public exhibition;
- Letters to key stakeholders;
- Hard copies of the exhibition material at Council's offices; and
- Electronic copies of the exhibition material on Council's website.

The Gateway determination will confirm the public consultation that must be undertaken.

In particular, the community consultation for the Planning Proposal will include direct consultation with at least the following State Agencies, other Agencies and Community Groups

Department of Industry – Lands and Water: The subject lots are Crown Land parcels and preliminary consultations in the drafting of the Planning Proposal provide some indicative support for the proposal in that the proposal 'seems worthwhile'. However more detailed statutory consultation is intended under conditions of any Gateway Determination.

Metropolitan Local Aboriginal Land Council: Council is aware of current land negotiations under the Aboriginal Land Rights Act in relation to the land subject to the Planning Proposal (see Section B.7 of this report). The Metropolitan Local Aboriginal Land Council will be consulted in relation their interests in over the land.

Save Manly Dam Catchment Committee: This environmental conservation group have been actively involved with the subject land since 2002, including the restoration of Mermaid Pool. This Committee advocates for the establishment of a 'small bird habitat corridor' for the locality and is a relevant community stakeholder in relation to the Planning Proposal.

## **Part 6 – Project Timeline**

<b>Task</b>	<b>Anticipated timeframe</b>
Referral to Department of Planning & Environment for Gateway determination	March 2019
Issue of Gateway determination	April 2019
Government agency consultation (if required)	April 2019
Public exhibition period	May 2019
Consideration of submissions	June 2019
Detailed Biodiversity Study complete	June 2019
Report to Council to determine Planning Proposal	July 2019
Submit Planning Proposal to the Department of Planning & Environment and Parliamentary Counsel for LEP drafting and publication	August 2019

## Attachment 1 – Ministerial directions

Directions		Applicable	Consistent
<b>1</b>	<b>Employment and Resources</b>		
1.1	Business and Industrial Zones	NO	N/A
1.2	Rural Zones	NO	N/A
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	NO	N/A
<b>2</b>	<b>Environment and Heritage</b>		
2.1	Environment Protection Zones	YES	YES
2.2	Coastal Protection	YES	YES
2.3	Heritage Conservation	YES	YES
2.4	Recreation Vehicle Areas	NO	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	NO	N/A
<b>3</b>	<b>Housing, Infrastructure and Urban Development</b>		
3.1	Residential Zones	NO	N/A
3.2	Caravan Parks and Manufactured Home Estates	NO	N/A
3.3	Home Occupations	NO	N/A
3.4	Integrating Land Use and Transport	NO	N/A
3.5	Development Near Licensed Aerodromes	NO	N/A
3.6	Shooting Ranges	NO	N/A
<b>4</b>	<b>Hazard and Risk</b>		
4.1	Acid Sulfate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	YES
4.4	Planning for Bushfire Protection	YES	YES
<b>5</b>	<b>Regional Planning</b>		
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	NO	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	NO	N/A
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	NO	N/A
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A
5.9	North West Rail Link Corridor Strategy	NO	N/A
5.1	Implementation of Regional Plans	NO	N/A
<b>6</b>	<b>Local Plan Making</b>		
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	YES	YES
6.3	Site Specific Provisions	YES	YES
<b>7</b>	<b>Metropolitan Planning</b>		
7.1	Implementation of A Plan for Growing Sydney	YES	YES
7.2	Implementation of Greater Macarthur Land Release Investigation	NO	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	NO	NO
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	NO	NO
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	NO
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	NO
7.7	Implementation of Glenfield to Macarthur Urban Renewal	NO	NO

	Corridor		
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