

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 3 APRIL 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

Peter Biscoe	Chair
Steve Kennedy	Urban Design Expert
Brian Kirk	Town Planner
Phil Jacombs	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 3 April 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1:00pm**

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 6 MARCH 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 6 March 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 **DA2018/2040 - BLACKBUTTS ROAD, FRENCHS FOREST -
INSTALLATION OF AN ELECTRONIC SCOREBOARD IN
ASSOCIATION WITH AN EXISTING RECREATION FACILITY
(LIONEL WATTS RESERVE)**

REPORTING OFFICER **Steve Findlay**

TRIM FILE REF **2019/170730**

ATTACHMENTS **1 Assessment Report**
 2 Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is the Council.

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. DA2018/2040 for installation of an electronic scoreboard in association with an existing recreation facility (Lionel Watts Reserve) at Lot 2 DP 595183, Blackbutts Road, Frenchs Forest subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2040
Responsible Officer:	Phil Lane
Land to be developed (Address):	Part Lot 2 DP 595183, 0 Blackbutts Road FRENCHS FOREST NSW 2086
Proposed Development:	Installation of an electronic scoreboard in association with an existing recreation facility (Lionel Watts Reserve)
Zoning:	Warringah LEP2011 - Land zoned RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Forest Lions AFL Club
Application lodged:	21/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Community facility
Notified:	08/01/2019 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 85,000.00

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.

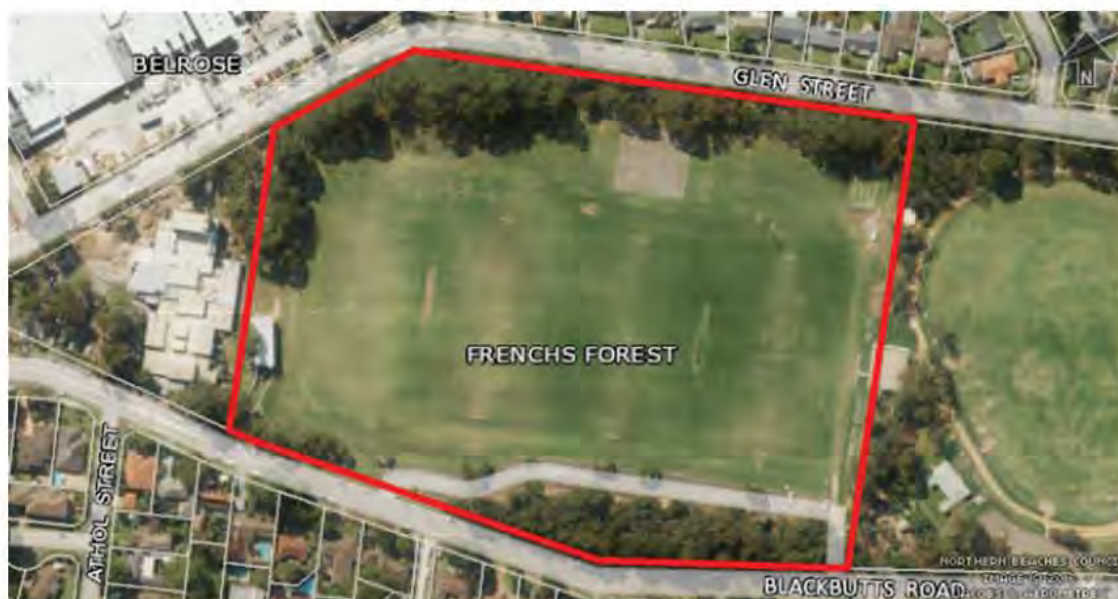
SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Part Lot 2 DP 595183 , 0 Blackbutts Road FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>Lionel Watts Reserve is sited within an urban area of Frenchs Forest, with Blackbutts Road to the south and Glen Street to the north.</p> <p>Lionel Watts Reserve consists of one allotment (Lot 2 in DP595183) with the Frenchs Forest Showground located on the eastern side on the adjoining allotment and Belrose Library, Glen Street Theatre and Gym Facilities located on the western side on the other adjoining allotment.</p> <p>Lionel Watts Reserve is accessed via vehicle from Blackbutts Road and the electronic scoreboard will be located at the north-eastern corner of the new synthetic playing fields adjacent to the cricket nets under construction and light pole number 3.</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>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwellings, shop top housing and Glenrose Shopping Centre to the north, the Frenchs Forest Showground located on the eastern side and Belrose Library, Glen Street Theatre and Gym Facilities to the western side.</p>

Map:



SITE HISTORY

DA2006/0991 - Application for a Water Tank for the watering of Lionel Watts Oval was approved in 2006.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to install an electronic scoreboard on the northern side of Lionel Watts Reserve (near the proposed cricket nets and synthetic playing fields currently under construction - adjacent to Light Pole No. 3).

The scoreboard is to display the scores and relevant information for the sporting activities carried out on the fields.

The scoreboard has the following dimensions:

- Height : 5.73m
- Width : 5.76m
- Depth : 0.2m
- Slab : 28sqm (7m x 4m x 0.6m)
- Scoreboard Area : 14.0sqm (4.48m wide x 2.88m 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 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&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&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&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&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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 Matters for Consideration'	Comments
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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	Approval subject to conditions.
Property Management and Commercial	This is an application for the construction of an electronic scoreboard on the subject site. Property has no issues with the proposal as submitted, subject to the following conditions.

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.

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 proposed development is consistent 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 proposed ancillary scoreboard to the current recreational 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	Complies
Height of Buildings:	Nil	5.73m*	Yes

* 5.58m for the electronic scoreboard and posts and 0.15m for the slab above ground level (slab depth - 0.6m).

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 6 Additional Local Provisions	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 Easements	Yes	Yes
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
D6 Access to Sunlight	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	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

Sportsgrounds Plan of Management and the Urban Bushland Reserve Plan of Management for Collaroy Escarpment, Lionel Watts Reserve & Frenchs Forest Showground

The following (relevant) objectives of the Sportsgrounds Plan of Management are:

- *"Establish organisational priorities for the provision of assets and services through an Open Space and Recreation Plan which includes a hierarchy to guide provision of public open space and recreation facilities;*
- *Manage open space and recreation facilities to ensure appeal, safety and accessibility;*
- *Discourage alienation of public open space;*
- *Provide recreational facilities to meet the changing needs of the community;*
- *Ensure community involvement in planning of recreation facilities."*

The core objectives for management of community land categorised as a sportsground are:

- *" To encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games, and*
- *To ensure that such activities are managed having regard to any adverse impact on nearby residences."*

Comment: The proposal will aid in the conduct of sports and related activities on Lionel Watts Reserve which is used for Australian Rules Football and Soccer (Football) in the winter months and cricket in the summer months. It is considered that the proposed scoreboard will be consistent with the aims, objectives and actions of the Sportsgrounds Plan of Management and the Urban Bushland Reserve Plan of Management for Collaroy Escarpment, Lionel Watts Reserve & Frenchs Forest Showground.

Conclusion on Proposal

The scoreboard is situated well into the reserve, will largely be screened by existing trees from both Glen Street and Blackbutts Road and is a structure that is ordinarily ancillary to the sporting activities carried out on the reserve in the modern era. The proposal is consistent with the objectives of the RE1 Public Recreation zone under the Warringah Local Environmental Plan 2011 and the Sportsgrounds Plan of Management and the Urban Bushland Reserve Plan of Management for Collaroy Escarpment, Lionel Watts Reserve & Frenchs Forest Showground.

The location, size, height, character and external appearance of the scoreboard (both when in use and when not in use) is suitable and appropriate within the context of the open space reserve and will not detrimentally impact the amenity of adjoining and nearby residents. Additionally, the proposal will not negatively impact other users of the reserve.

Given the above, it is considered that the proposal is satisfactory and is recommended for approval subject to conditions.

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 DA2018/2040 for Installation of an electronic scoreboard in association with an existing recreation facility (Lionel Watts Reserve) on land at Part Lot 2 DP 595183, 0 Blackbutts Road, FRENCHS FOREST, 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
Scoreboard		REES Electrical
Site Analysis	10 May 2018	Phillips/Marler
Scoreboard Location	2 November 2018	P.S.
Large Full Colour Scoreboard	28 September 2018	
Lionel Watts Reserve Synthetic Playing Fields		LD Eng/Tuff Turf

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:

- Provision of a security shutter for the scoreboard to protect against vandalism. The security shutter shall be a suitable colour that harmonises with the surrounding parkland setting.

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

Reason: To ensure an appropriate visual amenity 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.

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).

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

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

6. 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)

7. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

8. **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 for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o 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.

9. **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

10. **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)

11. **Electricity Source**

If the scoreboard is to connect to a Council asset for the supply of power, an agreement shall be made for the usage of the power between Council and the relevant user group.

Reason: To protect Council's assets. (DACHPDPC2)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Waste Management During Development**

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

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

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

13. **Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

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

14. **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 reserve amenity. (DACHPFPOC1)

15. **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

16. **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. (DACHPGOG1)

17. **Ongoing Maintenance**

Ongoing maintenance, repair and operating costs shall be met by Forest Lions AFL Club

Reason: To ensure adequate protection of Council's asset is maintained. (DACHPGOG1)

18. **Hours of Operation**

The hours of operation of the scoreboard are to be restricted to when Lionel Watts Reserve is being used for sports purposes.

Reason: To ensure the amenity of the surrounding locality is maintained. (DACHPGOG2)

19. **Use of the scoreboard**

Usage of the scoreboard shall only be by clubs/groups who have a formal arrangement with Council, including those hiring, leasing or licencing the use of the field.

Reason: To appropriately regulate the use of the scoreboard. (DACHPGOG2)

20. **Noise Levels - Amplified audio**

Audio/sound levels are not to exceed 5dB(A) over the ambient background levels when measured at the boundary of the nearest residential properties.

Reason: To maintain the acoustic amenity within the immediate area (DACPLGOG1)

21. **Lighting**

Lighting from the scoreboard shall not detrimentally impact upon the amenity of other premises and nearby dwellings and must comply with Australian Standard AS 4282:1997 Control of the Obtrusive Effects of Outdoor Lighting. Illumination of the scoreboard must be adjustable in intensity to ensure no nuisance to nearby residential properties.

Reason: To protect the amenity of nearby residents. (DACHPGOG5)







ITEM 3.2

**MOD2018/0604 - 1184-1186 PITTWATER ROAD, NARRABEEN -
MODIFICATION OF DEVELOPMENT CONSENT DA2008/1216
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
EXISTING RESIDENTIAL FLAT BUILDING AND STRATA
SUBDIVISION**

REPORTING OFFICER

Anna Williams

TRIM FILE REF

2019/170929

ATTACHMENTS

- 1 Assessment Report**
- 2 Plans**

PURPOSE

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

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. MOD2018/0604 for modification of Development Consent DA2008/1216 granted for alterations and additions to an existing residential flat building and strata subdivision at Lot 6 DP 659074, 1184-1186 Pittwater Road, Narrabeen subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0604
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 6 DP 659074, 1184 - 1186 Pittwater Road NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2008/1216 granted for alterations and additions to an existing residential flat building and strata subdivision
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Robert Keith Wiggins Jann Denise Wiggins Yadev Holdings Pty Ltd
Applicant:	Yadev Holdings Pty Ltd
Application lodged:	12/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	21/11/2018 to 08/12/2018
Advertised:	24/11/2018
Submissions Received:	0
Recommendation:	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

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential

SITE DESCRIPTION

Property Description:	Lot 6 DP 659074 , 1184 - 1186 Pittwater Road NARRABEEN NSW 2101
Detailed Site Description:	<p>The site is known as Lot 6, DP 659074, Nos. 1184 and 1186 Pittwater Road, Narrabeen and is located on the south-eastern corner of the intersection of Pittwater Road and Clarke Street.</p> <p>The site is zoned as R2 Low Density under WLEP 2011 and identified as being within the 'Coastal Zone' as defined by the Coastal Protection Act 1979. The site is affected by the 'Zone of Reduced Foundation Capacity', the 'Zone of Slope Adjustment' and the 'Zone of Wave Impact', as shown on Council's Collaroy / Narrabeen / Fishermans Beach Hazard Line Maps.</p> <p>The site is irregular in shape, with a total area of the site is 1,577m². The site has two street frontages being; Pittwater Road to the west and Clarke Street to the north. The eastern boundary of the site adjoins Narrabeen Beach.</p> <p>The site currently accommodates a two storey brick and tile building with a pitched metal which was originally constructed in the early 19th century and has been extensively modified over time.</p> <p>The subject site contains a heritage item 125 listed under Schedule 5 Warringah Local Environmental Plan 2011, being the 'house'.</p> <p>The 'Conservation Management Plan' (CMP) submitted with the original application, prepared by Graham Brooks and Associates, indicates the building was originally used as a 'Coffee Palace' which contained a grocery store and accommodation. The building has since been converted into a residential flat building containing 12 dwellings. The site also accommodates a single storey corner shop (circa 1962) trading as "Cherry Blossom" which is located on the corner</p>

of Pittwater Road and Clarke Street.

Currently, vehicular access to the site is gained via a 3m wide crossover from Pittwater Road which is located adjacent to the southern boundary. On-site car parking is limited to the short driveway which is capable of parking 2 to 4 vehicles in an informal arrangement.

Landscaped open space is currently provided within the building's setbacks to the eastern, western and southern boundaries. The landscaped area is predominately occupied by lawn with some trees located within the front setback to Pittwater Road.

The surrounding development is characterised by a mix of residential flat buildings, attached dwellings and detached dwellings. A single dwelling is located on the northern side of Clarke Street. Adjoining this dwelling, further north, is a residential flat building. A two storey attached dual occupancy development is located on the adjoining site to the south. One dwelling is located on the ground floor of this building and the other on the first floor. A vacant shop and single storey dwellings are located opposite the site, on the western side of Pittwater Road.

Map:



SITE HISTORY

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

DA2008/1216: Consent granted for "Demolition of part of an existing heritage building and construction of alterations and additions to create five (5) residential units with basement carparking and strata

subdivision" on 15 April 2009. The consent was subject to Deferred Commencement, for matters related to conservation management. The consent was activated on 16 September 2009.

MOD2014/0068: Consent to S96(2) modification granted on 9 July 2014. This modification consisted of the:

- relocation of the approved basement carpark from the front (west) portion of the site to the rear (east) portion of the site;
- provision of a revetment sea wall located adjacent to the rear (east) portion of the site to prevent coastal erosion; and
- relocation to the basement access stairs to suit the modification.

CC2014/0468: A construction certificate (CC) was issued on 10 September 2014. This CC related to the seawall on the eastern boundary of the site. This seawall has been constructed, with an Interim Occupation Certificate issued for the seawall on 20 October 2016. Given that the CC was issued prior to the lapse date of the operative consent (16 September 2014), consent DA2008/1216 has physically commenced on the site.

PROPOSED DEVELOPMENT IN DETAIL

The application is for a modification to existing consent DA2008/1216, pursuant to Section 4.55 (2) of the Environmental Planning & Assessment Act 1979.

The modifications in detail consist of:

- Extending the eastern setback of the ground and 1st floor of Units 2, 4 and 5 by approximately 3m;
- Corresponding increase in the floor area of Units 2, 4 and 5 of between 32m² and 52m²;
- Enlarging the basement area adjoining the Pittwater Road frontage by approximately 117m², for storage area;
- Partial deletion of the rear path leading to the rear stairs; and
- Staging of works into three (3) components.

The 3 stages of the works will now relate to:

- Stage 1: Seaward protective works / landscaping.
- Stage 2: Construction of southern portion of basement and Unit 5; and
- Stage 3: Construction of northern portion of basement and Units 1 to 4.

The modification has been motivated by the revised Coastline Hazard building lines established in Clause 6.5 of the *Warringah Local Environmental Plan 2011*. These building lines have moved further to the east on the site, in contrast to the lines that applied under the previous *Warringah Local Environmental Plan 2000*, under which the original consent was assessed.

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 DA2008/1216, 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 DA2008/1216.
(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 DA2008/1216 did require concurrence from the Director-General (Planning & Environment), in relation to the then State policy, <i>State Environmental Planning Policy No. 10 – Retention of Low-Cost Rental Accommodation</i> . However, this policy was revoked on 30 July 2009. Hence concurrence is no longer required.
(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, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011.
(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.	No submissions were received in relation to this application.

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 96 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	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, permits Council to request additional information and therefore consider the number of days taken in this assessment in light of this clause within the Regulations. However, no additional information was requested.</p> <p><u>Clause 92</u> of the EP&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&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 in the original consent.</p> <p><u>Clause 98</u> of the EP&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>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&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 in the original consent.</p> <p>Clause 143A of the EP&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 was not relevant to the original 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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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

Section 106 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered.

Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment: Development Consent DA2008/1216 for Demolition of part of an existing heritage building and construction of alterations and additions to create five (5) residential units with basement carparking and strata subdivision was lawfully approved prior to WLEP 2011 coming into force, in particular the consent became operative on 16 September 2009.

Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment: As detailed above, the building was lawfully approved prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment: As detailed previously, Development Consent DA2008/1216 became operative on 16 September 2009. Also, the development consent will lapse on 16 September 2014.

Conclusion

The use has been approved under a previous EPI (WLEP 2000) and therefore, as the development consent has not lapsed, the modification to the development consent is lawful under the existing use right provisions of the Environmental planning and Assessment Act, 1979.

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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	As the proposed modification does not differ significantly from the approved development it is supported without condition. The coastal engineering comments as provided by Royal HaskoningDHV (dated 9 October 2018) are noted. In particular the necessity for the work related to the coastal protection works as approved in Mod2014/0604 to be completed. All works related to coastal protection at this property are to be completed in accordance with the approved design

Internal Referral Body	Comments		
	and conditions of consent for Mod2014/0604.		
	The proposed modification has been assessed to comply with the Coastal Management Act 2016 and SEPP Coastal Management 2018. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.		
Parks, reserves, beaches, foreshore	Council's Parks Reserves Beaches and Foreshore unit has no objection to the proposed modification.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to heritage as the subject property is a heritage item		
	Item I25 - House at 1184-1186 Pittwater Road		
	Details of heritage items affected		
	Details of the item as contained within the Warringah heritage inventory are as:		
	<u>Statement of Significance</u> A rare example of a late Victorian residence, which although altered retains important original fabric. Historically the building provides evidence of 19th century development and the importance of beach-side leisure accommodation.		
	<u>Physical Description</u> Two storey residential building being used as 8 flats. Rendered masonry walls & roughcast piers to verandah. Hipped tiled roof with skillion corrugated iron roof to 1st floor verandah (infilled). Original joinery details. Timber sash windows on ground level with half-round heads; original 4 panel doors with half-round fanlights; rendered mouldings around windows & doors.Substantially modified.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	No		

Internal Referral Body	Comments
	<p>Consideration of Application</p> <p>The proposal seeks consent for the modification of an approved application for demolition works with alterations and additions to an existing heritage building to create a residential flat building with underground car parking. The proposal has been modified before with one modification moving the underground car park from under the existing heritage building to the rear yard of the property. This proposal seeks to create new basement storage for the apartments under the existing heritage building by extending the existing basement under the south western corner of the building to the north and east.</p> <p>Heritage notes the proposed additional basement area is to be constructed through the removal of the bulk of the building asides from the external walls which are proposed to be supported during construction through external propping structures. This would allow for the installation of piles and the construction of the basement storage area before the reconstruction of the building would occur. Heritage would prefer that the basement storage areas were moved from this area in a similar fashion to Mod2014/0068 where the car park was moved outside the existing building's footprint. This would reduce the risk of damage to significant heritage fabric during demolition and construction.</p> <p>However Heritage can support the basement storage works subject to the property being properly braced and retained during demolition construction works. The proposed alterations to the eastern extension of the building are considered to be of little impact to the heritage significance of the item and are acceptable to Heritage.</p> <p>Overall Heritage raises no objections to the proposal and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? Yes - A CMP was provided as part of the original DA in 2006 Has a CMP been provided? Yes - A CMP was provided as part of the original DA in 2006 Is a Heritage Impact Statement required? Yes - A Revised statement was provided Has a Heritage Impact Statement been provided? Yes - A Revised statement was provided</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

External Referral Body	Comments
	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 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined the application relates to a modification to a consent for the erection of a three storey residential flat 'housing' development plus basement car parking for the provisions of five (5) self-contained dwellings.

The proposed modifications will involve the provision of additional floor space on the ground and 1st floors of Units 2, 4 and 5, by extending the building outwards by 3 metres towards the eastern boundary.

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

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer

at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment: The proposed modification retains the vernacular of the approved development, which was carefully designed to respond to the attributes of the site in particular: the existing heritage building; the corner allotment; and the coastal location. In summary, the adequate context of the approved design is retained by the proposed modification and this Principle is achieved.

Principle 2: Built Form and Scale

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

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

Comment: The built form and scale of the proposed modification, in the context of the existing approval and the surrounding streetscape, represents an outcome that is consistent with Principle 2.

Principle 3: Density

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

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

community facilities and the environment.

Comment: The increased floor area for Units 2, 4 and 5 (ranging between 32m² and 52m²) will retain and enhance the existing approved internal amenity, which was found to be consistent with the principles of SEPP 65 in the original assessment of the proposal. The proposed modification is hence consistent with this Principle.

Principle 4: Sustainability

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

Comment: Amended BASIX certificates have been provided with the application. In summary, the modified units will provide an acceptable level of sustainable performance and the proposed modification is consistent with this Principle.

Principle 5: Landscape

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

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

Comment: Sufficient landscaped open space is provided on the site to achieve the objectives of this Principle.

Principle 6: Amenity

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

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

Comment: The additions to units 2, 4 and 5 will not result in any additional impact on the amenity of adjoining neighbours, in regard to solar access, privacy or internal amenity. The proposed modification is therefore consistent with this principle.

Principle 7: Safety

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

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

Comment: The building will in effect be extended outwards by 3 metres, with all the existing openings and balconies retained in their existing configuration. In this regard, there will be no loss of the potential for passive surveillance of the adjoining areas of the public domain and this Principle is satisfied.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment: The increase in unit sizes will not significantly effect the existing configuration of the apartments and their layout within the entire approved development. In this regard, this Principle is achieved.

Principle 9: Aesthetics

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

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

Comment: The proposed modification will not change the approved palette of materials, colours and finishes used in the development. The application is hence consistent with this Principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Complies.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Complies.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security?	Complies.

	Is the amenity of the public domain retained and enhanced?													
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	Private open space on the site is estimated at 48%. This is consistent with this criteria.												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Deep soils areas on the site are estimated at 587m ² or 37%.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The setback from the boundary on the south (side) elevation is 2.1m, which is short of the recommended 3m.</p> <p>In effect, the proposed modification represents no change to the existing approved setback. Hence, this criteria is considered to be reasonably satisfied, despite being short of the minimum setback.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

	<i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i>	
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	No change is proposed to the originally approved pedestrian access points.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	No change is proposed to the originally approved vehicular access points.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	The subject site is not located in either of the locations specified in this requirement.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. A maximum of 15% of apartments in a building receive no direct sunlight between 	<p>The proposed modification to Units 2, 4 and 5 will not compromise the achievement of this requirement.</p> <p>The proposed modification to Units 2, 4 and 5 will not</p>

	9 am and 3 pm at mid winter.	compromise the achievement of this requirement.												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	The proposed modification to Units 2, 4 and 5 will not compromise the achievement of this requirement.												
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	The proposed modification to Units 2, 4 and 5 will not compromise the achievement of this requirement.												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	The existing approved units already achieve this requirement.
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	The existing approved units already achieve this requirement.		
	Apartment type	Minimum internal area												
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													
<p>The minimum internal areas include only one</p>														

	<p>bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>																
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	The existing approved units already achieve this requirement.															
	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	Complies.															
	<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	Complies.															
	<p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p>	Complies.															
	<p>Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.</p>	Complies.															
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	Complies.															
	<p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Complies.															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>The relocated balconies will comply with these requirements.</p> <p>No private open space is provided for the units on the ground level, which is common open space. This is consistent with the original approval, which</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															

		took effect prior to inception of the ADG.								
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Not applicable - there are less than eight (8) in the approved development.								
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable - the approved building is less than 10 stories in height.								
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Complies.								
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²
Dwelling Type	Storage size volume									
Studio apartments	4m ²									
1 bedroom apartments	6m ²									
2 bedroom apartments	8m ²									
3+ bedroom apartments	10m ²									
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Complies.								
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Complies.								
Configuration										
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	No change is proposed in this regard.								
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Complies.								
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The building facade to Pittwater Road will remain unchanged. In regard to the Clarke Street frontage, the extension of the building will retain visual interest and is consistent with this requirement.								
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.	No change is proposed in this regard.								

	Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.																																				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	A reduction in the area of approved landscaped open space is proposed, however the amount retained is consistent with the existing site conditions and context.																																			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Not applicable.																																			
	<table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>		Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm	
	Plant type		Definition	Soil Volume	Soil Depth	Soil Area																															
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	Shrubs				500-600mm																																
	Ground Cover				300-450mm																																
	Turf				200mm																																
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Not applicable - this requirement took effect after the original consent was granted.																																			
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable - this requirement took effect after the original consent was granted.																																			

Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Not applicable.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Not applicable.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Complies.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Complies.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	This information was provided in the original application.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	This information was provided in the original application.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

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

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

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

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

Comment: The proposed modification has demonstrated compliance with the relevant provisions of the ADG.

SEPP 71 - Coastal Protection

The site is situated within the Coastal Zone under State Environmental Planning Policy 71 - Coastal Protection (SEPP 71). Clause 7 of SEPP 71 states that the matters for consideration set out in Clause 8 must be taken into consideration by a consent authority when it determines a development application to carry out development on land to which the policy relates. An assessment of the matters for consideration under Clause 8 has been carried out by Council's Natural Environment (Coastal) Officer and is detailed under the referral section of the report.

In summary, Council's Coast and Catchment Officer has no objection to the proposed modification, with no recommended conditions.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A327593, A327606, A327612, A327615, and A327617 dated 6 September 2018). The certificates indicate that the development will achieve the sustainability requirements of the SEPP.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.3m	6.4m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.5 Development within the coastal zone	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone R2 Low Density Residential

As detailed under the Existing Use Rights section of the report, the proposal is permissible under the Existing Use Rights provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved*	Proposed	Complies
B1 Wall height	7.2m	9.2 maximum (within the existing building footprint) 6.3m (additions to the east and south of the heritage building)	No change	Yes (no change)
B3 Side Boundary Envelope	4m (east)	No breach	No change	Yes
	4m (south)	Breach of 0.6-1m (height) x 15.5m (length)	No breach proposed on the extended area of the building	Yes
B5 Side Boundary Setbacks	0.9m (east)	22.7m (building)	19.6m (building)	Yes
	0.9m (south)	2.13m (building)	No change	Yes
B7 Front Boundary Setbacks	6.5m (Pittwater Road)	11.6m (basement)	8.9m (basement)	Yes
	3.5m (Clarke Street)	Nil (basement)	No change	Yes (no change)

B9 Rear Boundary Setbacks	N/A (corner allotment)	N/A	N/A	/A
D1 Landscaped Open Space and Bushland Setting	40%	829m ² or 52.6%	763m ² or 48%	Yes

* in accordance with most recent modification, MOD2014/0068

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	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

Section 7.12 contributions were levied on the Development 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

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. Mod2018/0604 for Modification of Development Consent DA2008/1216 granted for alterations and additions to an existing residential flat building and strata subdivision on land at Lot 6 DP 659074, 1184 - 1186 Pittwater Road, NARRABEEN, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 01 - O	5 October 2018	Bonus + Associates
DA 02 - R	12 March 2018	Bonus + Associates
DA 03 - S	5 October 2018	Bonus + Associates
DA 04 - L	12 March 2018	Bonus + Associates
DA 05 - K	12 March 2018	Bonus + Associates
DA 06 - N	12 March 2018	Bonus + Associates
DA 07 - S	24 September 2018	Bonus + Associates
DA 08 - O	12 March 2018	Bonus + Associates
DA 17- B	5 October 2018	Bonus + Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
BASIX Certificate A327593	6 September 2018	Building Sustainability Assessments
BASIX Certificate A327606	6 September 2018	Building Sustainability Assessments
BASIX Certificate A327612	6 September 2018	Building Sustainability Assessments
BASIX Certificate A327615	6 September 2018	Building Sustainability Assessments
BASIX Certificate A327617	6 September 2018	Building Sustainability Assessments

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

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



ITEM 3.3

**MOD2019/0054 - 128 PITTWATER ROAD, MANLY -
MODIFICATION OF DEVELOPMENT CONSENT DA0274/2017
GRANTED FOR ALTERATIONS AND ADDITIONS TO THE
EXISTING DWELLING**

REPORTING OFFICER**Rodney Piggott****TRIM FILE REF****2019/170991****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.

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. MOD2019/0054 for modification of Development Consent DA0274/2017 granted for alterations and additions to the existing dwelling at Lot 1 DP 74239, 128 Pittwater Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0054
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 1 DP 74239, 128 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0274/2017 granted for alterations and additions to the existing dwelling
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Thomas Keith Sawyer
Applicant:	Thomas Keith Sawyer
Application lodged:	15/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/02/2019 to 11/03/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	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

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 1 DP 74239 , 128 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The subject property is commonly known as 128 Pittwater Road Manly and legally known as Lot 1 in DP 74239. The site is located on the eastern side of Pittwater Road. The property is rectangular in shape and has a frontage of 6.095m to Pittwater Road, an average depth of 35.35m and an overall site area of 215.4m². The property is currently under construction for the development approved in DA274/2017 which was a two storey dwelling with no vehicular access. The property is generally level.</p> <p>The surrounding area predominantly consists of residential accommodation including one and two storey dwelling houses and semi-detached dwellings.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's

records has revealed the following relevant history:

DA274/2017 - Alterations and additions to the existing dwelling. Approved 4 April 2018 subject to the following condition:

ANS01B

Windows W6, W7, W8 and W9 shall have a minimum sill height of 1.6 metres.

Reason: To protect the privacy of adjoining properties.

PROPOSED DEVELOPMENT IN DETAIL

The proposal modification is for the deletion of condition ANS01B which reads as follows:

“ANS01B

Windows W6, W7, W8 and W9 shall have a minimum sill height of 1.6metres.

Reason: To protect the privacy of adjoining premises”

This condition was not proposed by the assessment officer but was imposed by the Northern Beaches Local Planning Panel.

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 DA274/2017, 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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are

Section 4.55 (2) - Other Modifications	Comments
originally granted and before that consent as originally granted was modified (if at all), and	substantially the same as those already approved under DA274/2017.
(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 DA274/2017 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, Manly Local Environmental Plan 2013 and Manly 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 96 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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&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.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&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&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&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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&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&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 in the original consent.</p> <p><u>Clause 143A</u> of the EP&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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental</p>

Section 4.15 'Matters for Consideration'	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	Further to a review of available documents, The application is a S.96, substantially the same as the originally approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA. Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required. Proposal is acceptable without conditions. Kind Regards Zoran Popovic Heritage Adviser

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.

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)

Nil

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

The modifications will not impact any principal development standards.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 215.4sqm	Requirement	Approved	Proposed	Complies
4.1.4.2 Side Setbacks and Secondary Street Frontages	Windows: 3m	0.9m	0.9m	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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 property to the north is constructed with a solid brick wall with minimal side boundary setback and no southern facing windows. As such the proposed windows W6, W7, W8, and W9 will not result in any direct viewing of the habitable rooms of this property. These windows are also directly adjacent to the building to the north and will not provide any significant view of the rear private open space of the property to the north. Furthermore, the windows are to bedrooms an ensuite and a parents retreat with the main living areas being downstairs. These rooms are typically lower use rooms and will not generate significant overlooking of the neighbouring property.

For the above reasons it is considered that windows W6, W7, W8, and W9 will not result in any unreasonable impacts on the privacy of the adjoining property.

With regard to the future development of the neighbouring property at 130 Pittwater Road, the proposed development provides sufficient areas to allow this property to provide windows that are offset to the proposed windows. This elevation will also be south facing, reducing the likelihood/desire to have large windows facing the subject site. Any future development application for 130 Pittwater Road will be subject to a separate assessment that will consider any privacy impacts.

The condition ANS01B is therefore recommended to be deleted.

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 original proposed development is adequately designed to maintain the privacy of the neighbouring properties without compromising access to light and air. The proposal will achieve a balanced outlook from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will maintain the sites existing awareness of 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.

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

Description of non-compliance

The Manly DCP 2013 requires all new windows be setback a minimum of 3m from the side boundary. The windows subject to this application are setback 900mm from the side boundary.

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 modification will not impact the development as viewed 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:

The proposal is considered to ensure and enhance the amenity for the following reasons:

- As discussed in clause 3.4.2 Privacy and Security of the Manly DCP 2013 the development will not result in any unreasonable impacts on the privacy of the property to the north.
- The modifications will not impact solar access of the development site or the adjoining properties.
- The modifications will not impact the views or vistas of the development site or the adjoining properties.
- The modifications will not impact the streetscape or traffic conditions within the street

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

Comment:

The proposed flexibility is satisfactory in this circumstance

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed modifications will not impact the natural features of the site.

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

Comment:

The development is not located within a bushfire prone area.

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.

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 approval to Modification Application No. Mod2019/0054 for Modification of Development Consent DA0274/2017 granted for alterations and additions to the existing dwelling on land at Lot 1 DP 74239, 128 Pittwater Road, MANLY, subject to the conditions printed below:

A. Delete Condition ANS01B to read as follows:

DELETED

ITEM 3.4**DA2018/1773 - 16/7 THE CRESCENT, MANLY - ALTERATIONS
AND ADDITIONS TO AN EXISTING RESIDENTIAL FLAT
BUILDING****REPORTING OFFICER****Anna Williams****TRIM FILE REF****2019/170951****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% or non-numerical development standards.

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. DA2018/1773 for alterations and additions to an existing residential flat building at Lot 16 SP 70727, 16/7 The Crescent, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1773
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 16 SP 70727, 16 / 7 The Crescent MANLY NSW 2095
Proposed Development:	Alterations and Additions to an existing residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Neil David Stewart
Applicant:	Tom Mark Henry
Application lodged:	01/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/11/2018 to 29/11/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 11,827.00

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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 16 SP 70727 , 16 / 7 The Crescent MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the south-eastern side of The Crescent.</p> <p>The site is irregular in shape with a frontage of 9.15m along The Crescent and a depth of 38.76m. The site has a dual frontage of 15.265m to Commonwealth Parade. The site has an area of 466.6m².</p> <p>The site is located within the R1 General Residential zone and accommodates an existing residential flat building.</p> <p>The site 4.36m from front (northwest) to rear (southeast).</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings, dual occupancies 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 includes the replacement of existing glazing to Unit No. 16.

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	Manly 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&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&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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&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&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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&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&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&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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the	The site is considered suitable for the proposed

Section 4.15 Matters for Consideration'	Comments
site for the development	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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	Further to a review of the available documents and site visit, The site of proposed development is a listed heritage item in its own right. The works, albeit structural, are essentially maintenance and necessary for the ongoing keeping of the building. Based on the above, I have no objections to this proposal from heritage perspective. Kind Regards, Zoran Popovic Heritage Adviser
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.

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)

Nil

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	15.935m	44.9%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings

Requirement:	11m
Proposed:	15.935m
Percentage variation to requirement:	44.9%

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:

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.

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:

- *"It is our belief that the current fixed glazing that formed part of an earlier renovation under DA345/2000 is inadequate as it has not taken into consideration the Westerly aspect and thus the extreme heat that comes with the afternoon sun. The proposed louvres would promote natural cross-ventilation through the site reducing the need for manual cooling and thus reducing the environment impact and increasing the wellness of it's occupants.*
- *The objective of the proposal is to better foster the physical welfare of the occupants by responding to the environmental constraints as well as the limitations of the previous design through a passive, sustainable solution, one that does not adversely affect the character or heritage of Manly or its population."*

The proposed works will not materially alter the appearance of the existing building, but will improve the internal amenity for the occupants and reduce the need for air conditioning/cooling. Notwithstanding the non-compliance, the proposal is not considered to result in any unreasonable visual or amenity impacts on the surrounding area or properties.

In this regard, the applicant's written request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying 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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The proposal maintains the existing building height and roof form.

b) to control the bulk and scale of buildings,

Comment:

The proposal adds no bulk to the existing building.

c) to minimise disruption to the following:

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

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

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

Comment:

The proposed works will result in no impact on views to, from and between public space and residential development.

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

Comment:

The proposal will result in no additional overshadowing.

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

Comment:

N/A

Zone objectives

The underlying objectives of the R1 General Residential zone are:

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal retains the existing residential use.

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the existing housing type and density.

It is considered that the development satisfies this objective.

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

Comment:

N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular 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.

5.10 Heritage conservation

The proposed works are for the maintenance of the building and Council's Heritage Officer raised no objection to the proposal.

6.1 Acid sulfate soils

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

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

No excavation is proposed.

6.2 Earthworks

No excavation is proposed.

6.9 Foreshore scenic protection area

The proposal is for the replacement of existing glazing and will result in no unreasonable impact on visual aesthetic amenity of views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

There are no development controls under Part 4 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	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
3.7 Stormwater Management	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

The proposed works are for the maintenance of the building and Council's Heritage Officer raised no objection to the proposal.

3.4.2 Privacy and Security

The proposal is for the replacement of existing glazing and will not result in any unreasonable privacy impacts.

4.4.5 Earthworks (Excavation and Filling)

No excavation is proposed.

5.4.1 Foreshore Scenic Protection Area

The proposal is for the replacement of existing glazing and will result in no unreasonable impact on visual aesthetic amenity of views to and from Sydney Harbour.

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 DA2018/1773 for Alterations and Additions to an existing residential flat building on land at Lot 16 SP 70727, 16 / 7 The Crescent, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A03 Floor Plan	7 March 2019	Tom Mark Henry
E01 Elevations	7 March 2019	Tom Mark Henry

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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 \$1,000 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).

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



Unit 16, 7 Commonwealth Parade, Manly NSW 2095

1. **THEORY**

NAME	DATE	TIME
1. NAME	1. DATE	1. TIME
2. NAME	2. DATE	2. TIME
3. NAME	3. DATE	3. TIME
4. NAME	4. DATE	4. TIME
5. NAME	5. DATE	5. TIME
6. NAME	6. DATE	6. TIME
7. NAME	7. DATE	7. TIME
8. NAME	8. DATE	8. TIME
9. NAME	9. DATE	9. TIME
10. NAME	10. DATE	10. TIME

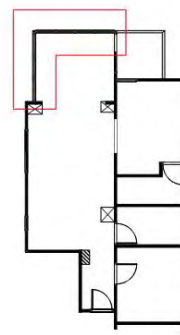


01 REAR BUILDING ELEVATION

Existing Facade to The Crescent



02 REAR BUILDING ELEVATION
A02 Proposed Facade to The Crescent



03 REFERENCE PLAN
Rear Building Windows
Scale 1 : 200

[illegible]

TOM MARK HENRY.

Date 29.01.2019

CLAUSE 4.6 VARIATION REQUEST STATEMENT

RE: Email received from Northern Beaches Council Planner Adam Croft dated 17.01.2019 regarding DA2018/1773 for alterations and additions to an existing apartment at 16/7 Commonwealth Parade, Manly.

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INTRODUCTION

The proposal under Development Application (DA2018/1773) seeks approval to amend the existing fixed clear glazing to the existing rear windows of Unit 16, 7 Commonwealth Parade, Manly which face onto The Crescent. The Clause 4.6 variation request seeks to demonstrate why the proposal should be granted an exemption by demonstrating there are sufficient environmental planning grounds to justify the departure from the Development Standards.

THE PROPOSAL

There are two separate items that make up the proposal, they are outlined below:

- The existing middle section of clear glazing to The Crescent façade of the building to unit 16 (only) to be changed to clear operable glazed louvres
- The existing swing door to the balcony be changed to a sliding door in which the framing will mimic the existing framing and the frosted glazing will remain as per the existing door

The existing windows from inside the apartment are shown in Fig. 1.0 along with a rendered Elevation of the exterior of the building showing the proposed new louvres (Figure 2.0) in relation to the context of the overall building.



Figure 1.0: Internal view of existing windows overlooking The Crescent



Figure 2.0: Rear building elevation showing proposed louvres

ASSESSMENT IN RELATION TO DEVELOPMENT STANDARDS

Item 3 of the email states; *If the proposed works exceed 11m, a Clause 4.6 Variation Request justifying the non-compliance with the height of buildings development standard is also required.*

Manly LEP 2013

building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Upon further investigation the height of the proposed works does fall outside of the permissible 11 metre height control of the area as outlined in the *Manly Height of Buildings Map*. The proposed works sit within an approximate range of RL 13 495 and RL 15 225 as shown in Fig. 3.0 and Fig. 3.1.

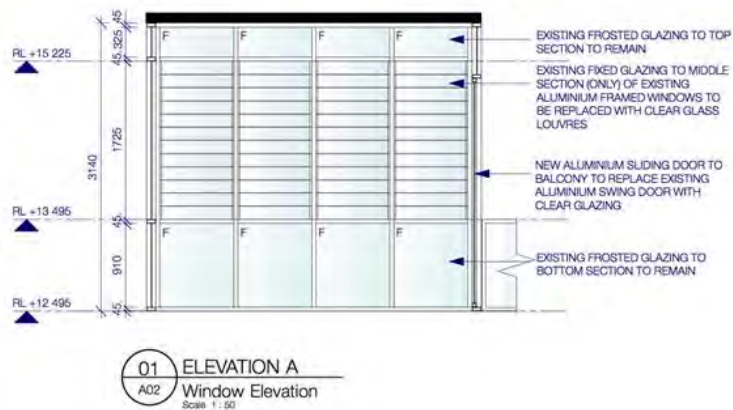


Figure 3.0: Internal Elevation showing proposed louvres with RL's

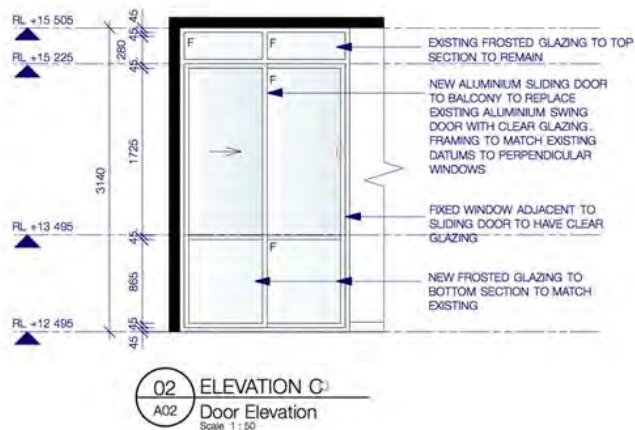


Figure 3.1: Internal Elevation showing proposed sliding door with RL's

We are seeking exemption to the Development Standards based on the below;

- *The Clause 4.6 variation request seeks exemption to Development Standards on the grounds that complying with development standards is unreasonable with regard to the develop standard being abandoned by the council's decision to grant previous development consent*

The initial modification was undertaken as part of the refurbishment determined on 20/11/2000 (DA 345/2000). As part of the refurbishment the original balconies to the rear of the building were enclosed with new fixed glazed aluminium windows and a swing door opening onto a small balcony. Development Consent was granted even though the initial proposal fell outside of the height restrictions for the area.

We believe exemption should be granted on the basis that previous council approval was given to refurbish the site resulting in the enclosure of the balcony area and therefore we are working within already approved, existing fabric and thus seek exemption based on the fact that exemption has already previously been granted for this building.

ENVIRONMENTAL PLANNING

It is our belief that the current fixed glazing that formed part of an earlier renovation under DA345/2000 is inadequate as it has not taken into consideration the Westerly aspect and thus the extreme heat that comes with the afternoon sun. The proposed louvres would promote natural cross-ventilation through the site reducing the need for manual cooling and thus reducing the environment impact and increasing the wellness of it's occupants.

The objective of the proposal is to better foster the physical welfare of the occupants by responding to the environmental constraints as well as the limitations of the previous design through a passive, sustainable solution, one that does not adversely affect the character or heritage of Manly or its population.

The proposal meets, or has no impact on the Objectives of 4.1 Residential Development Controls from the Manly DCP for R1 Zoned areas as well as the Manly LEP (2013) objectives in relation to residential development clause 1.2(2)(b). With this said the objectives of the proposal would be unobtainable if the need for compliance was upheld and therefore deemed unnecessary in relation to this application.

CONCLUSION

It is considered that this Clause 4.6 variation request has demonstrated that upholding the development standards in this instance would be detrimental to the objectives of the proposal and is deemed unnecessary on the grounds that previous consent has been granted and that the proposal only seeks to make changes within the previously approved fabric of the building.

We are seeking councils support to execute the proposal based on these grounds.

Yours sincerely,

Pia Watson
Senior Interior Designer

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M +61 404 638 166

E pia@tommarkhenry.studio

ITEM 3.5	DA2018/1293 - 727 PITTWATER ROAD, DEE WHY - ALTERATIONS AND ADDITIONS TO AN EXISTING COMMERCIAL BUILDING AND USE AS A BOARDING HOUSE WITH 26 ROOMS
REPORTING OFFICER	Anna Williams
TRIM FILE REF	2019/171010
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2018/1293 for alterations and additions to an existing commercial building and use as a boarding house with 26 rooms at Lot 9 Sec 1 DP 9125, 727 Pittwater Road, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1293
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 9 DP 9125, 727 Pittwater Road DEE WHY NSW 2099
Proposed Development:	Alterations and Additions to an existing commercial building and use as a Boarding House with 26 rooms
Zoning:	Warringah LEP2011 - Land zoned B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	727 Pittwater Road Dee Why Pty Ltd
Applicant:	Michael William Williamson 727 Pittwater Road Dee Why Pty Ltd
Application lodged:	01/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/08/2018 to 02/09/2018
Advertised:	11/08/2018
Submissions Received:	10
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,679,500.00

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
 Warringah Development Control Plan - A.5 Objectives
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D10 Building Colours and Materials
 Warringah Development Control Plan - D20 Safety and Security
 Warringah Development Control Plan - Area 10 Civic Centre

SITE DESCRIPTION

Property Description:	Lot 9 DP 9125 , 727 Pittwater Road DEE WHY NSW 2099
Detailed Site Description:	<p>The site consists of a single allotment located on the north-western side of Pittwater Road at the intersection with Kingsway and is legally described as Lot 9 in Deposited Plan 9125.</p> <p>The site is an irregular shaped lot with a two-street frontage, being Pittwater Road (south-eastern alignment) and Kingsway (north-eastern alignment). The site has an approximate total area of 597m².</p> <p>Presently the site accommodates a vacant three (3) storey with basement mixed use building. The site was previously occupied as a medical centre with approximately ten (10) consulting rooms on the ground and first floor levels and a residential unit on the second floor.</p> <p>The site is approximately 45m deep long (east-west) by about 15m wide with a wedged boundary to the west. It slopes down moderately eastwards from about RL23.45m at the south-western corner, to about RL16.81m at the north-eastern corner of the site.</p>

Map:



SITE HISTORY

Development Application No. DA2018/1293 was lodged with Council on 6 August 2018. On 12 October 2018, a Class 1 Appeal was lodged for deemed refusal of the application.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development proposes alterations and additions to an existing mixed use building to accommodate a twenty-five (25) room boarding house plus on-site manager accommodation. The proposed boarding house will accommodate up to 46 people including an on-site manager.

The proposed boarding house will provide for the following:

Basement level (RL 17.800)

- Existing driveway access retained from Kingsway
- Five (5) parking spaces retained
- Waste storage room
- Motorcycle parking for ten (10) motorcycles
- Parking for five (5) bicycles

Ground Level (RL19.500)

- Main pedestrian entry from Pittwater Road
- Units 1, 2 and 3 (double rooms)

Upper Ground Floor Level (RL 20.110)

- Units 4, 5 and 6 (double rooms)
- Communal kitchen, Communal Living 1 and Communal Living 2
- Laundry
- Parking for eight (8) bicycles

Level 01 (RL 22.555)

- Unit 7 (single room), units 8, 9, 10 and 11 (double rooms)

Upper Level 01 (RL23.165)

- Units 12, 13, and 14 (double rooms)

Level 02 (RL 25.195)

- Units 15, 16 (identified as on-site Managers residence and includes a 15.71m² east facing balcony), and 17 (double rooms)

Upper Level 02 (RL25.805)

- Units 18, 19 (including a 4.12m² north facing balcony) and 20 (all double rooms)

Level 03 (RL 28.55)

- Units 21 (including a 3.2m² east facing balcony), 22, 23 (double rooms)

Upper Level 03 (RL 31.405)

- Units 24, 25 and 26 (double rooms)

The existing vehicular access to the site from Kingsway will be retained on the north-eastern side of the property.

The proposed will provide a total of five (5) car parking spaces, within the basement.

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	<p>Dee Why Town Centre Masterplan</p> <p>The Dee Why Town Centre (DYTC) Masterplan was adopted by Council on 6 August 2013 and serves as the basis for a future amendment to WLEP 2011 which will cover the Town Centre area (except for "Site A" and "Site B"). The amendment will also be accompanied by DCP controls that will provide further guidance on desired outcomes for the Dee Why Town Centre.</p> <p>Council at its meeting held on 25 September 2018 resolved to forward a revised Planning Proposal to the Minister of Planning and Environment. These amendments to WLEP 2011 are still with the Department of Planning Parliamentary Counsel who have communicated they have some issues with the drafting of parts of the amendment.</p> <p>Therefore, while the changes to WLEP 2011 have the status of a publicly exhibited Draft Local Environmental Plan under Section 4.15 of the EPA Act, 1979 they are not considered to be imminent and certain. The current application is assessed on the basis of the current planning controls under WLEP 2011.</p>
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&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&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&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&A Regulation 2000 requires the consent authority</p>

Section 4.15 Matters for Consideration'	Comments
	<p>to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent should the application be approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter would be addressed via a condition of consent should the application be approved.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter would be addressed via a condition of consent should the application be approved.</p> <p><u>Clause 98</u> of the EP&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&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) Environmental Impact 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) Social Impact The use of the development as a boarding house will not in itself result in a detrimental social impact given boarding houses are permissible in the zone and the residents of the boarding house would reside there in accordance with a Plan of Management and their lease agreements. Overall, the proposal will not have a detrimental social impact.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for a boarding house development. However, the intensity of the proposal in its current form is considered an over-development of the site given the significant lack of parking on site and landscaped open space.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>Notification of the proposed development resulted in nine (9) submissions.</p> <p>See discussion on "Notification & Submissions Received" in this report.</p>
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Front Boundary Setbacks, Side Boundary Setbacks, Side Boundary Envelope, Landscaped Open Space, Parking

Section 4.15 Matters for Consideration'	Comments
	Facilities, Private Open Space and Privacy and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 10 submission/s from:

Name:	Address:
Mr Andrew Leigh Wiles	23 / 27 Dee Why Parade DEE WHY NSW 2099
John Dixon Asquith	47 / 4 - 16 Kingsway DEE WHY NSW 2099
Mr Douglas Clancy McFarlane	10 / 4 - 16 Kingsway DEE WHY NSW 2099
Ms Sarah Jane Oaten	79 Fuller Street COLLAROY PLATEAU NSW 2097
Mr Stanley Terence Boland	
Mr Joseph Peter Mabley Mrs Anita Richards	68 / 4 - 16 Kingsway DEE WHY NSW 2099
Ms Joanne Louise Lindsay	8 / 2 Kingsway DEE WHY NSW 2099
Mr David William Elwers	7 / 4 Fielding Street COLLAROY NSW 2097
Renato Baccari De Godoy	7 / 2 Kingsway DEE WHY NSW 2099
Mr Brian Michael Baxter Ms Barbara Ann Crandall	51 / 4 - 16 Kingsway DEE WHY NSW 2099

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

- **Oppose the change of use of the building. A business can easily be established there to help the community.**

Comment:

The proposal for a boarding house is permissible with consent within the B4 Mixed Use zone under WLEP 2011. Further, the use as a boarding house is permissible with consent pursuant to Clause 26 of SEPP ARH. This issue does not hold determining weight.

- **Compromises and devalues surrounding property. Massive increase in population density in Dee Why.**

Comment:

Property values are not a relevant consideration under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 (as amended). This issue does not warrant refusal of the application.

- **Does not provide adequate parking. The following concerns are raised:**

-Justifying the existing parking for the proposed development instead of designing parking to suit the requirements of the development.

-Developer will always argue for absolute minimum of parking as it is the least profitable.

-SEPP requires 0.5 spaces per room which is already a lowered rate of parking.

-Of the 5 spaces, Applicant acknowledges 2 of them are restricted. Does not mention that 2 are low clearance spaces with a structural beam running through them.

-Existing on street parking is insufficient so further traffic and parking nuisance as people look for parking.

Comment:

The application states that five (5) parking spaces are provided with the development. This issue is dealt with in detail within the assessment against SEPP ARH and also clause C3 Parking Facilities. The parking proposed will result in spaces 1 and 2 being compromised due to head clearances and space 5 inaccessible due to restricted access. This results in only 2 compliant spaces.

In accordance with the requirements of SEPP ARH, the development should provide 12 spaces for boarding rooms and one (1) space for the onsite manager. The proposed parking is short by eight (8) spaces if the existing spaces are included. If the existing three (3) restricted spaces are excluded, then the development is short eleven (11) spaces.

The NSW Department of Planning and Environment on 1 June 2018 amended the SEPP ARH, increasing the car parking standard for boarding houses to respond to community concerns regarding the impacts of on-street car parking as a result of boarding house developments. These parking standards are lower than for other housing types reflecting the accessibility to other forms of transport of these areas where boarding houses are permissible. Due to a broad variety of residents utilising this form of development, increasing car ownership by residents has been experienced causing impacts on the availability of on-street parking for neighbours.

A comparison provided of parking availability for other boarding houses within the locality approved with the previous parking requirements under SEPP ARH is considered irrelevant given that ten (10) of the twenty one (21) sites listed were approved under a different Local Environment Plan (ie Manly LEP) and one of the sites listed within the former Warringah LGA has no consent as a boarding house. The current parking requirements of the SEPP should be applied to meet current societal requirements.

The public benefit of providing affordable rental accommodation on this site does not outweigh the concerns in relation to the impact on neighbouring properties and the surrounding street network due to insufficient parking to support the development and substantive reliance on on-street parking.

The proposed parking is considered unacceptable and forms a reason for refusal.

- **Private outdoor open space**

No private outdoor open space

Comment:

The proposal includes an area measuring 27m² of "open space" within the rear north-west corner of the site. While numerically this area complies with the minimum requirement under SEPP ARH for 20m² with a minimum dimension of 3m, in reality this space is disfunctional and inappropriate for this purpose.

The area identified is triangular in shape and physically located 1.8m higher than the pedestrian path accessed from the communal living area. To access this space, you need to walk up 10 stairs or use a mechanical lift.

The location of the private open space is right on the boundary with the neighbouring property at No. 2 Kingsway offering no separation to address privacy or noise. Further, this area is directly adjacent to the only ventilation windows to Units 5, 6, 14, 20 and 26 impacting the internal amenity of these rooms.

The development is considered lacking in relation to the form and location of private open space. This issue is listed as a reason for refusal.

- **Impact on residents**

Impact on nearby residents enjoyment of their properties. Risk to school children passing this location. Loss of privacy.

-People currently living in the building look into our living room and smoke on their balcony 2-3 metres from our balcony.

Comment:

There is no evidence to suggest that a boarding house will result in increased risk to the safety of school children passing the site. In relation to other impacts on adjoining residents, concerns are raised in terms of bulk and scale and noise impacts due to the non-compliance with side setback and side boundary envelope controls. These issues are dealt with in further details within Part D8 and Part G of WDCP 2011 and are listed as reasons for refusal.

- **Boarding house residents**

-Does not identify who the potential residents will be. Is it a youth hostel? A drug and alcohol rehab centre? A halfway house?

-Increase of transient populations with less regard for their surroundings. Existing backpackers living in the property leave bikes chained to trees, shopping trolleys, scooters in the council parking spaces for extended times and campervans on Kingsway.

- Will rooms contain bunk beds increasing the number of people from 26 to 104?

Comment:

A variety of persons are likely to reside in the boarding house. The occupants will most likely represent a cross section of the community. There is no evidence to suggest that boarding house resident will be more likely to be responsible for adverse social impacts in the area. Further, were the application to be approved, a Plan of Management (PoM) for the operation of the boarding house would form part of the consent. This PoM would address residents behaviour (including smoking, noise, visitors, occupancy of boarding rooms, use of outdoor

areas, drugs and alcohol) and require agreement with the 'House Rules' to ensure the amenity and safety of the area is not adversely impacted.

In the event that resident behaviour disturbs local amenity or raises safety concerns, the Boarding House Manager will be responsible for implementing the PoM and addressing the agreed House Rules in accordance with their lease agreement. Beyond this, it would be appropriate for the Police to be notified.

Boarding houses are designed for minimum three month stays and are not backpacker or hostel accommodation. A minimum three month stay could be enforced as a condition of consent should the application be approved. The application seeks consent for 25 boarding rooms plus an on-site managers unit. Twenty (20) of these units are able to accommodate two people and five (5) are single rooms. The total maximum occupancy would be forty five (45) boarding residents and up to two (2) people in the on-site managers unit. There is no ability for the boarding rooms to contain any more beds than those approved. This issue does not warrant refusal of the application.

- **Location of Boarding House**

Development is in the wrong location. Should be in Cromer or Beacon Hill. Shouldn't be on a busy, noisy road like Pittwater Road.

Comment:

SEPP ARH does not exclude land within the B4 Mixed Use zone being used for the purpose of a boarding house. This issue does not hold determining weight.

- **Loss of outlook across the top of the existing building of scenic features and greenery.**

Comment:

While the proposed additional floor will increase the maximum ridge height from RL30.080 to RL31.66 with an overall height measured at 14.2m, due to the orientation of the building at No. 2 Kingsway relative to the subject site, it is considered unlikely that the proposed additions will impact on any outlook from this property.



Building Orientation - Sight lines (white dotted line) from the front balcony of No. 2 Kingsway are limited to the south due to the building at No. 1 Dee Why Parade on the southern side of Pittwater Road. (Source: Northern Beaches Council GIS).

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MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application proposes to redevelop an existing four storey commercial building into a five-storey boarding house building. As part of the redevelopment work, it is proposed to construct an additional storey and undertake internal/external alterations to suit the function and use of a boarding house development. The building requires upgrading to comply with requirements for this use and therefore the Building Code of Australia.</p> <p>Accordingly there are No objections to the proposal subject to conditions to ensure the required building upgrade works are satisfactory to meet the end use and an effective BCA compliant 'Alternate Solution' is applied.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>An assessment of the acoustic report dated 28/05/2018 prepared by Acoustic Logic has been undertaken for this development. Mechanical plant noise was not assessed in this acoustic report as plant selections were not determined at the time of preparing the report. Therefore an acoustic review condition will be applied to this development prior to CC.</p> <p>An assessment was also undertaken of the Boarding House Management Plan dated July 2018 which identifies control measures for complaints, occupancy and social behaviours.</p> <p>A condition for compliance with this management plan will be applied.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.</p>
NECC (Development Engineering)	<p>The proposal does not result in a significant increase in the building footprint and therefore the proposal will not result in an increase of stormwater runoff. No onsite stormwater detention system is required to manage stormwater runoff for this proposal. Given the above, Development Engineers raise no objections subject to conditions.</p> <p>It is noted that Council's Traffic Engineers have recommended refusal. If any plans a</p>

Internal Referral Body	Comments
	amended to address Council's Traffic Engineers' concerns, these plans to be referred to Development Engineers for consideration. Revised comments and/or conditions may need to be re-issued by Development Engineer upon review of the revised plans
NECC (Stormwater and Floodplain Engineering – Flood risk)	The property lies outside any flood risk precinct and flood-related development controls do not apply.
Strategic and Place Planning	<p>The application was referred to Strategic and Place Planning to gain some insight into the status of amendments to Warringah Local Environmental Plan 2011 which include the Dee Why Town Centre.</p> <p>The draft amendment to the LEP would include a 3m height increase which would benefit the subject site. The amendment is currently with the Department of Planning Parliamentary Counsel. The Department have identified some concerns with the part of the amendment and are not satisfied at this stage with the full amendment.</p> <p>A decision on this process is not considered imminent or certain.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>This application has been referred for heritage comment as it is in the vicinity of a number of local heritage items and a proposed State heritage precinct.</p> <p>The local heritage items are Item 150 - Dee Why Public Library and Item 1137 - Civic Centre Landscaping, which are both listed in Schedule 5 of Warringah Local Environmental Plan 2011.</p> <p>The adjoining proposed State precinct listing is for the Dee Why Civic Precinct, which is currently with the Minister for Heritage for gazettal.</p>
	Details of heritage items affected
	<p>Details of these heritage items in the vicinity, as described in the Warringah Heritage Inventory, are:</p> <p>Item 150 - Dee Why Public Library</p> <p>Statement of Significance A representative example of 20th Century brutalist architecture. Displays a high degree of aesthetic & technical integrity. Socially the building is important due to association with architects, Edwards, Madigan & Torzillio & due to its landmark quality.</p> <p>Physical Description Building of face brickwork and off-form concrete, stepped across site to take</p>

Internal Referral Body	Comments																					
	<p>advantage of changes in level. Strong horizontal design with no ornamentation or fenestration. Extensive use of skylights under flat or skillion roofs.</p> <p>Item I137 - Civic Centre Landscaping</p> <p>Statement of Significance</p> <p>This landscaping is an early design of the prominent Australian landscape architect Bruce Mackenzie and represents his then innovative ideas of preserving and using a sites natural landscape and flora. The site is an important landscape of its time and is of high social significance at a local level to the surrounding community, as an area of native bushland. It provides a native bushland setting for the Dee Why Public Library, a rare example of a late 20th century Brutalist style public building.</p> <p>Physical Description</p> <p>A landscaped area, consisting of mostly local native plant material which was based on the sites natural landscape character and flora. It incorporates the natural features of the site, e.g. rock outcrops.</p> <p>Details of the proposed State heritage precinct can be seen at https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5055679</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td>NOTE: Adjoins a proposed State heritage precinct</td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td>NOTE: Adjoins buildings on the AIA Register - Dee Why Library and Dee Why Civic Centre</td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <p>Consideration of Application</p> <p>This application is for the conversion of the existing building for use as a boarding house, using essentially the same footprint with the addition of an extra storey on top of the building.</p> <p>This building, although designed by Edwards, Madigan, Torzillo & Briggs (the same architects as the Dee Why Library and Dee Why Civic Centre), is not listed as a local heritage item. It is also not included within the curtilage of the proposed State heritage precinct for the Dee Why Civic Precinct. Therefore, these heritage comments relate to the impact of the proposal on the local heritage items in the vicinity and the adjoining proposed State heritage precinct.</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No	NOTE: Adjoins a proposed State heritage precinct	National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No	NOTE: Adjoins buildings on the AIA Register - Dee Why Library and Dee Why Civic Centre	Other	No	
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Other	No																					

Internal Referral Body	Comments
	<p>The application is supported by a Heritage Impact Statement (HIS) by URBIS, dated 27 June 2018. This document has been reviewed, and while the conclusions are largely agreed with, it is noted that the HIS contains a number of inaccuracies and does not address the impact of the proposal on the current proposed State heritage precinct for the Dee Why Civic Precinct. Mention is made of a previous State listing proposal which was deferred in 2008, but the HIS does not specifically address impact on the current State listing proposal, which was endorsed by the Heritage Council on 6 September 2017 and is with the Minister for Heritage awaiting gazettal.</p> <p>In relation to the two local heritage items in the vicinity, this proposal does not have any impact upon the physical fabric of these items (Dee Why Library and Civic Landscaping) and the view of the Library building from the site is obscured by vegetation. Therefore, it is considered that this proposal will not have an adverse impact upon the heritage significance of these two local heritage items in the vicinity.</p> <p>The curtilage of the proposed State precinct includes the Dee Why Library and Civic Centre building as well as the landscaping in between these buildings and to the west of these buildings. The eastern precinct boundary is located approximately 5 metres from the rear boundary of the subject property.</p> <p>As mentioned, the proposal does not impact upon the Dee Why Library and Civic Landscaping, however does impact upon views of the Civic Centre building, which has been identified as a building of State heritage significance, as part of this proposed State heritage precinct. This impact is a result of the additional storey being added to the building, thereby increasing its height. This impact has not been directly assessed as part of the submitted HIS.</p> <p>The Visual Assessment Report by Richard Lamb and Associates, dated July 2018, has been reviewed. Its conclusion that the proposal will cause minor or negligible visual impacts on public and private domain views, is largely agreed with. The additional floor proposed will further obscure the view of the eastern facade of the Civic Centre building, when viewed from Dee Why Parade. The existing building already largely obscures this view from this viewpoint and it is considered that the amount of view lost by the extra height will not adversely affect the heritage significance of the Civic Centre building. A full view of the eastern facade of this building can be seen from the Council carpark, and the extra height proposed by this application will not affect this view.</p> <p>In relation to the design of the addition, I concur with the Urban Design comments dated 12 September 2018, regarding design, building colours and materials. The design, materials and colours of the addition will affect its impact upon the Brutalist architectural style of the building itself, as well as the visual prominence of the top-floor addition and its impact on views to and from the State significant Civic Centre building.</p> <p>From a heritage viewpoint, retention and re-purposing of this Brutalist building is a</p>

Internal Referral Body	Comments
	<p>better outcome for the heritage significance of the buildings and landscaping within the adjacent Dee Why Civic Precinct, than a demolition and re-build, particularly as it is a building of the same architectural style and era (Brutalist) and by the same architects (Edwards, Madigan, Torzillo & Briggs).</p> <p>Therefore, no objections are raised to this application on heritage grounds, subject to resolution, to the satisfaction of Council's Urban Designer, of the design, colours and materials of the top-floor addition to the building.</p> <p>Consider against the provisions of CL5.10 of WLEP. Is a Conservation Management Plan (CMP) Required? NO Has a CMP been provided? N/A Is a Heritage Impact Statement required? YES Has a Heritage Impact Statement been provided? YES</p>
Strategic and Place Planning (Urban Design)	<p>The proposal in its current form cannot be supported for the following reasons:</p> <p>1. SEPP Affordable Rental Housing (ARHSEPP) 2009</p> <p><i>Clause 30 (1) (a) Communal Living Area</i> <i>If a boarding house has five or more boarding rooms, at least one communal living room will be provided, . . .</i></p> <p>RESPONSE The provision of the communal living area at ground level meets the required control under the ARHSEPP. Options that include an additional communal room on level 2 to service the two upper floors would provide additional communal amenity to the upper level residents.</p> <p><i>Clause 30 A – Character of Local Area (See below).</i></p> <p>2. Built Form Controls:</p> <p><i>WLEP 2011</i> <i>Aims of the LEP in relation to residential development, are to:</i> <i>(d) (i) protect and enhance the residential use and amenity of existing residential environments, and</i> <i>(ii) promote development that is compatible with neighbouring development in terms bulk, scale and appearance, and</i> <i>(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah.</i> <i>(f) (i) achieve development outcomes of quality urban design, and</i> <i>(iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment,</i> .</p> <p>RESPONSE</p>

Internal Referral Body	Comments
	<p>The adaptive re-use of the building is supported however further exploration of the detailed resolution of the upper level is required.</p> <p>The existing building and proposed adaptive re-use is considered in regard to the mass and bulk, particular architectural language and the following responses to built form acknowledging the heritage context, connections to history and typology of the built form to respond accordingly.</p> <p><i>4.3 Height of Buildings</i> <i>Reconfiguration of the roof form, whilst retaining the concept of addressing existing geometries, should be explored to bring the building height within the 13 metre height control.</i></p> <p><i>7.5 Design excellence within Dee Why Town Centre</i> <i>In determining whether development exhibits design excellence, the consent authority must have regard to the following matters:</i></p> <ul style="list-style-type: none"> <i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i> <i>(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,</i> <i>(c) whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resources, energy and water efficiency,</i> <i>(d) whether satisfactory arrangements have been made to ensure that the proposed design is carried through to the completion of the development concerned,</i> <i>(e) whether the configuration and design of communal access and communal recreational areas within the residential elements of development incorporate exemplary and innovative treatments and will promote a socially effective urban village atmosphere.</i> <p>RESPONSE</p> <p>Options testing the material resolution of the screening to the upper storey, perspectives demonstrating exploration of alternative material finishes and colours should be demonstrated through visualisations rendering comparative analysis of view corridor and context impacts.</p> <p>The prominence of the building in its context places additional emphasis on the refinement to achieve a high level of architectural design, material selection and detailing with an appropriate response to the context.</p> <p>WDCP 2011</p> <p><i>B3 Side Boundary Envelope</i> <i>Objectives</i></p> <ul style="list-style-type: none"> <i>• To ensure that development does not become visually dominant by virtue of its height and bulk.</i> <i>• To ensure adequate light, solar access and privacy by providing spatial separation between buildings.</i> <i>• To ensure that development responds to the topography of the site.</i> <p><i>Requirements</i></p>

Internal Referral Body	Comments
	<p><i>1. Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of:</i></p> <ul style="list-style-type: none"> • 4 metres, or • 5 metres <p><i>as identified on the map.</i></p> <p>RESPONSE By virtue of the existing building fabric, height and zero lot alignment to the south/east boundary the building envelope control is encroached. The existing conditions along with the additional storey exacerbates this breach of the height control. See discussion below.</p> <p><i>D1 Landscaped open space and bushland setting Requirements</i></p> <p><i>1. The required minimum area of landscaped open space is shown on DCP Map Landscaped Open Space and Bushland Setting. To measure the area of landscaped open space:</i></p> <ul style="list-style-type: none"> <i>a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;</i> <i>b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;</i> <i>c) Landscaped open space must be at ground level (finished); and</i> <i>d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.</i> <p>RESPONSE The site is constrained by the existing building footprint, setbacks, boundary and built form. The proposed landscape response is noted.</p> <p><i>D6 Access to Sunlight Objectives</i></p> <ul style="list-style-type: none"> • <i>To ensure that reasonable access to sunlight is maintained.</i> <p><i>Requirements</i></p> <ul style="list-style-type: none"> <i>1. Development should avoid unreasonable overshadowing of any public open space</i> <i>2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.</i> <p>RESPONSE Replacement of window and door suites across the building should acknowledge the context and original intent of the building to maintain the integrity of the existing built form; receding window and door apertures with dark coloured framing suites to maintain the geometric clean lines of the building.</p> <p><i>D8 Privacy</i></p>

Internal Referral Body	Comments
	<p><i>Objectives</i> <i>The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices.</i></p> <p>RESPONSE Privacy and overlooking issues may exist by virtue of the existing building's fabric, location and planning in its high exposure context. Measures to screen views for privacy and acoustic amenity to all elevations are recommended; privacy tinting to glass, internal screening devices so as to retain the original external built form characteristics.</p> <p><i>D9 Building Bulk</i> ... <i>Side and rear setback are to be progressively increased as wall height increases.</i> ...</p> <p>RESPONSE The upper level addition to the off-form concrete stairwell could address this through setting back of this extrusion, either by way of chamfering the form back to the wall (in sympathy with the existing geometries) behind the parapet of the existing concrete stairwell, so that it recedes and is not viewed as a mere extrusion of the stair well in another material. The upper level storey could be set back at this upper level, assisting to minimise the impacts of the upper storey and further encroachment of the building envelope contr</p> <p><i>D10 Building Colours and Materials</i> ... <i>The colours and materials used for alterations and additions to an existing structure shall complement the existing building external façade.</i> ...</p> <p>Additional Level / Cladding - Perforated Screening The additional level can be supported. The resolution of the screening device as a 'contemporary addition' should be explored further through testing of material resolution of the screening device so it appears part of the building holistically in its context is recommended. The existing form, style and bulk of the building lends itself to further exploration so the addition is not immediately obvious to the untrained eye perceived as just a rooftop addition. The impact of the addition should be read in the overall context of the prominence of the site; to be seen as a single built form entity. The proposed design's dialogue with the existing geometry set up by the original building is supported for its relative complement to the original building.</p> <p>Exploration/testing of alternative colours, materials and detailed finishing of the external facades of the additional level, including appropriately detailed screening or enclosure of roof mounted mechanical units and services penetrations (not demonstrated on the current drawings) is recommended to achieve a satisfactory response to the context of the site as mentioned above.</p> <p>Off-form Concrete</p>

Internal Referral Body	Comments
	<p>Drawing DA-200 demonstrates finishes of the ramp and external face of the original concrete formwork to the circular stair well, as demonstrated on the drawings, are an off form concrete finish. Remediation/restoration of the original concrete formwork back to its original surface condition is recommended.</p> <p>Window / Door Awnings The addition of metal awnings over the windows and doors/balconies should be detailed so as to be in sympathy with the original design intent of the building. Materials to be avoided are custom orb or other metal profiled roof sheeting as treatments to the window and door awnings. The detail of the window and door awnings should complement the geometries and material palette of the original design intent and represent a more refined detailed resolution. A well resolved design that does not detract from the existing facades' rhythm and geometry is recommended for exploration.</p> <p>Infill Walls It is noted on drawing DA-101 an additional external infill wall encloses the original expression of this façade. Whilst the splayed wall in the plan of the entrance way here makes it difficult to adequately accommodate the amenity for Apartment 14, careful consideration to the editing of original intent of the plan should be addressed where originally a generous entrance way / portico distinguished the arrival to the building. Possible deletion of the proposed additional wall to the external fabric and, as a result deletion of the bathroom or the apartment in its entirety should be considered in any reconfiguration of the floor plan in this area.</p> <p>D11 Roofs <i>Objectives</i></p> <ul style="list-style-type: none"> • To encourage innovative design solutions to improve the urban environment. • Roofs are to be designed to complement the local skyline. • Roofs are to be designed to conceal plant and equipment. <p><i>Requirements</i></p> <ol style="list-style-type: none"> 1. Lift overruns, plant and other mechanical equipment are not to detract from the appearance of roofs. 2. Roofs should complement the roof pitch and forms of the existing buildings in the streetscape. 3. Articulate the roof with elements such as dormers, gables, balconies, verandahs and pergolas. 4. Roofs shall incorporate eaves for shading. 5. Roofing materials should not cause excessive glare and reflection. 6. Service equipment, lift overruns, plant and other mechanical equipment on the roof shall be minimised by integrating as many services, etc as possible into the building. <p>RESPONSE In the broader context of the heritage curtilage within the civic precinct, the detailed finishing of the roof form and consideration to the screening/enclosing of any mechanical plant services and vent pipes is required. Any rooftop services should be concealed in a way that when viewed from the broader context, including from the Civic Council building and surrounding properties' view aspects, are not exposed or obtrusive and unsightly to existing view aspects.</p>

Internal Referral Body	Comments
Traffic Engineer	<p>The application seeks to modify the existing 3 storey development by altering mostly the internal facade to accommodate 26 boarding rooms.</p> <p>The proposal intends to make use of the current parking amenity being 5 car parking spaces. Based on the current SEPP requirements, a provision of 0.5 spaces per unit is required. This represents a shortfall of 8 parking spaces. the parking generation rate identified within the revised SEPP requirements is the formal rate to be adopted by the applicant.</p> <p>The traffic generated by the development is anticipated to be negligible, in the order of 13 vehicles in the peak hour.</p> <p>Based on the above, the Traffic Team cannot support the parking shortfall of 8 spaces.</p>
Waste Officer	<p>Waste Services Assessment</p> <p>The location of the bin room is acceptable. However, the applicant has not provided any measures on the plan to determine whether the bin room is able to accommodate 21 x 240L bins as required under the Northern Beaches Council Waste Management Guidelines.</p> <p>Applicant has not provided 8 cubic meters of storage for bulky household waste which needs to be a separate and clearly marked area. The space is to be of practical dimension to store fridge, mattresses or lounge. The area is ideally to be located adjacent to the bin room.</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.

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 mixed use purposes for a significant period of time with no prior land uses.

A Preliminary Site Investigation was prepared by EI Australia dated 24 July 2018 to characterise the environmental conditions of the site on the basis of historical land uses, anecdotal and documentary evidence of possible pollutant sources. The key findings of the report determined the following:

- *Historical aerial photographs reviewed showed that the site was likely utilised for residential purposes since the 1940s. During the time between the 1961 and 1978 aerial photograph, it appears that the site was redeveloped for commercial purposes, and has remained commercial in nature till the current date;*
- *At the time of the inspection, the site was a commercial building and predominantly concrete paved. The site was used for light commercial uses included physiotherapy clinic and an office for Harbord Diggers, as well as a residential apartment on the top level of the property;*
- *Council records that were provided by the client showed that the site was previously used as a medical centre and as a publisher's office;*

The investigation concluded that there is low potential for contamination to be present on site and the site is suitable for the proposed use subject to implementation of the following recommendations:

- *Prior to site refurbishing, a suitably qualified and experienced consultant must be engaged to perform the Hazardous Materials Survey of all site structures. Any identified hazardous materials must be appropriately managed to maintain worker health during refurbishment works and site end users;*
- *Should the proposed development be altered from the intended usage, EI should be notified and a revised report to be issued.*

Subject to compliance with the recommendations of the report, 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 mixed use land use.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Consistent The site is located within the B4 Mixed Use Zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and	Consistent The site is located within the B4 Mixed Use zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

Sunday.	
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.

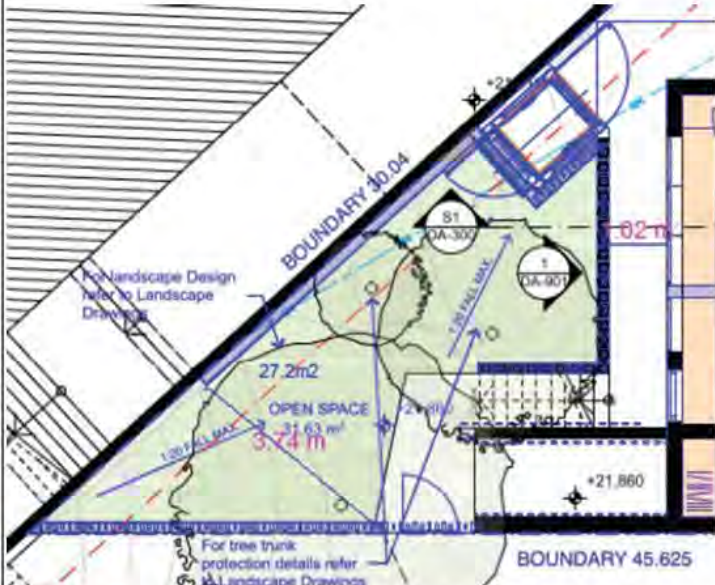
Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP.
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP.
	(c) if the development is on land within a	While there is currently no FSR for the subject site, there is a Planning Proposal with the Department of Planning which incorporates the subject site. The Planning Proposal if approved

	<p>zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>	<p>amend WLEP 2011 to include an FSR for the site of 1.45:1. The will provide an FSR of 1.16:1.</p>
(2) A consent authority must not refuse consent to development to which this Division applies on any		
(a) building height	<p>if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning</p>	<p>The maximum building height has been calculated at 14.2m, which is 1.2m over the maximum building height of 13m.</p>

	instrument for any building on the land,	
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	<p>The landscape treatment is inconsistent with the required landscaping (requiring minimum 40% landscaped open space and double row of Norfolk Island Pines along the Pittwater Road frontage) which is detailed within the Area 10 Civic Centre area requirements.</p> <p>The proposal includes 25% landscaped open space and two Norfolk Island Pines forming one row of planting.</p>
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The shadow diagrams submitted with the application do not include hourly or elevation shadow diagrams to demonstrate that sunlight will penetrate into Communal Living area 1 or 2 for at least 3 hours a day during mid-winter. The plans indicate that these areas are shadowed from at least midday.
(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of</p>	<p>The development provides one area for private open space which is not within the front setback. The space is approximately 27m², is triangular in shape and is located in the north-western corner of the site. (See excerpt from Architectural drawing below).</p>  <p>Source - Proposed Ground Floor Plan - BKA Architecture</p>

	2.5m is provided adjacent to that accommodation,	<p>While this area provides a dimension of 3.74m at its widest point the space is considered to provide poor quality private open space due to its exposed and disjointed location in the rear corner of the site and is an area which will be in shadow for the entire day during mid-winter.</p> <p>The on-site boarding house manager is to be located at Unit 16 on Level 2 at the front south-eastern side of the property. The unit includes a balcony measuring 15.71m² which is consistent with the requirement for a minimum 8m².</p>
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding</p>	<p>The development is within an accessible area, however is not carried out on behalf of a social housing provider. Accordingly, parking at a rate of at least 0.5 spaces per boarding room is required. In addition, up to 1 space for the on-site manager is required.</p> <p>This equates to 12 parking spaces for boarding rooms plus 1 space for the on-site manager. A total of 13 parking spaces.</p> <p>The proposal provides for five (5) spaces, of which space number 1 is considered unusable as it would not satisfy the 85th percentile swept path requirement for access. In addition spaces 1 and 2 provide a height clearance of only 1.97m which is inconsistent with the required 2.2m under the Building Code of Australia.</p> <p>The development is therefore short by eight (8) parking spaces. If the spaces identified above as non-compliant are excluded then the development is up to eleven (11) spaces short.</p>

	room, and (iii) in the case of any development— not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,																																																					
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>The boarding room sizes for single and double rooms complies with this requirement.</p> <table><tr><td>Unit 1</td><td>19.69m²</td><td>Unit 14</td><td>13.16m²</td></tr><tr><td>Unit 2</td><td>17.71m²</td><td>Unit 15</td><td>20.12m²</td></tr><tr><td>Unit 3</td><td>17.35m²</td><td>Unit 16</td><td>20.90m²</td></tr><tr><td>Unit 4</td><td>20.82m²</td><td>Unit 17</td><td>16.02m²</td></tr><tr><td>Unit 5</td><td>16.20m²</td><td>Unit 18</td><td>16.12m²</td></tr><tr><td>Unit 6</td><td>18.30m²</td><td>Unit 19</td><td>17.62m²</td></tr><tr><td>Unit 7</td><td>12.11m²</td><td>Unit 20</td><td>18.37m²</td></tr><tr><td>Unit 8</td><td>12.20m²</td><td>Unit 21</td><td>16.53m²</td></tr><tr><td>Unit 9</td><td>12.54m²</td><td>Unit 22</td><td>16.71m²</td></tr><tr><td>Unit 10</td><td>12.00m²</td><td>Unit 23</td><td>16.02m²</td></tr><tr><td>Unit 11</td><td>16.02m²</td><td>Unit 24</td><td>16.15m²</td></tr><tr><td>Unit 12</td><td>17.01m²</td><td>Unit 25</td><td>17.61m²</td></tr><tr><td>Unit 13</td><td>17.64m²</td><td>Unit 26</td><td>18.37m²</td></tr></table>	Unit 1	19.69m ²	Unit 14	13.16m ²	Unit 2	17.71m ²	Unit 15	20.12m ²	Unit 3	17.35m ²	Unit 16	20.90m ²	Unit 4	20.82m ²	Unit 17	16.02m ²	Unit 5	16.20m ²	Unit 18	16.12m ²	Unit 6	18.30m ²	Unit 19	17.62m ²	Unit 7	12.11m ²	Unit 20	18.37m ²	Unit 8	12.20m ²	Unit 21	16.53m ²	Unit 9	12.54m ²	Unit 22	16.71m ²	Unit 10	12.00m ²	Unit 23	16.02m ²	Unit 11	16.02m ²	Unit 24	16.15m ²	Unit 12	17.01m ²	Unit 25	17.61m ²	Unit 13	17.64m ²	Unit 26	18.37m ²
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	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	This development is identified as a 'new generation boarding house' and each room therefore includes private kitchen and bathroom facilities.																																																				

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
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(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	<p>There are two (2) communal living areas shown at ground floor level providing a total area of 22.2m². There are three (3) levels of accommodation above the ground floor level which do not provide any form of communal living space directly accessible.</p> <p>While the absolute minimum has been incorporated for compliance in relation to communal living space, it would be considered a much better outcome for additional communal living areas to be provided at one of the upper levels. Given the awkward dimensions of and how disjointed and inconvenient the private outdoor open space is, an additional space is considered imperative to ensure a high level of amenity is maintained with this development.</p>	Technically compliant. Unsatisfactory.
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	All boarding rooms are less than 25m ² in size.	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	The plans indicate that all rooms are either allocated as single or double lodger rooms.	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each boarding room is furnished with kitchen facilities in line with a 'new generation boarding house'. In addition, there are communal cooking facilities detailed within the common living area.	Consistent
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	Unit 16 has been identified as the on-site boarding house manager's accommodation.	Consistent

(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The site is within the B4 mixed use zone. Accordingly, accommodation on the ground floor is acceptable.	Consistent
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	<p>The development as proposed includes parking for 10 motorbikes and 9 bicycles.</p> <p>While this appears to be in excess of the requirements of this clause, 9 of the motorbike spaces (located within the front setback areas of the site) are accessed only through a shared access path (motorbikes, pedestrians and bicycles) which requires access across Council road reserve using a public footpath and not using a formal driveway crossing. The other motorbike parking space is located next to parking space 5. This location for parking would not only block access to the electrical meter room but would be difficult to access with a vehicle parked in space 5.</p>	Inconsistent

Clause 30: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

The local area is characterised by the Dee Why Town Centre, Dee Why Civic Centre precinct adjoining the site to the south-west, high density residential development to the south and east of the site and medium density development to the north. Development within the adjoining Kingsway is predominantly three to four storey residential flat buildings.

The proposal presents as a four (4) storey development from both street frontages and surrounding development. The additional storey proposed does not, in itself, make the development incompatible with the character of the local area. The final resolution of this additional level and its setbacks however are not positively contributing to the desired outcome for this site.

In this regard, it is considered that the scale of the development is compatible with the streetscape and subject to some amendments of the setbacks and finishes may be considered consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

Given the dominant location of this building and the significance of this site as a corner marker site in the Dee Why Town Centre, it is considered that the additional level requires more substantial setbacks from the existing facade.

At ground level, the proposed use of any area forward of the existing facade (excluding the fin wall) for anything other than landscaping is inconsistent with this principle.

In this regard, the development in its current form is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The site currently provides negligible vegetation to offset the impact of the building. While the development incorporates some new planting along the Pittwater Road frontage, the scale of the planting remains inconsistent with the requirements of WDCP which specifies a 15m setback accommodating two (2) rows of Norfolk Island Pine trees to be planted.

In this regard, it is considered that some effort has been made to provide effective methods in the design of the development to reduce its visual dominance, however the need to accommodate most of the motorcycle parking within this space negates any ability to incorporate substantial planting in this setback making the development inconsistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can*

never be introduced only that their introduction should be done with care and sensitivity.

Comment:

The form of the new building elements of the proposed Level 3 is considered to complement the original building design in terms of its geometry. The appearance of this new level requires further resolution so that it does not appear immediately obvious as roof top addition.

In this regard, the development is considered to be inconsistent with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

Details of the development are considered to adversely impact the adjoining properties in terms of amenity and noise. The proposal is not expected to result in an adverse impact on the development potential of surrounding sites.

Privacy

The location of the existing building on the site has resulted in a small triangular area at the rear of the site being the only available location for the provision of private open space. This area is considered unsuitable in terms of privacy both to and from the development due to its proximity to boarding rooms within the development and the adjoining residential flat building due to its non-compliant setbacks (refer to detailed assessment within Clause D8 Privacy).

In this regard, the development is considered to result in unacceptable privacy impacts.

Overshadowing

Due to the orientation of the site, additional overshadowing from the proposed additions does not impact on the surrounding residential development. The additional shadows at 9am extend into the current Civic Centre carpark area to the south-west. The shadows extend approximately 35m into this site, an increase approximately 7.3m.

At midday, shadows have moved to the south-eastern corner of the Pittwater Road frontage to the Civic Centre extending approximately 14m into the site, an increase of approximately 3m.

By 3pm, all shadows from the proposed development extend across the Pittwater Road frontage of the site and across Pittwater Road.

The development is not considered to result in any unreasonable overshadowing impacts.

Noise

While the use as a boarding house is permissible within the zone, the site with the retention of the existing built form provides significant departures from a number of controls applying to the site. The required side setbacks for the site are 4.5m. The existing building form is up to 1.0m from the northern boundary with No.2 Kingsway and the primary private open space to service up to 45 people is located on the boundary of the site.

The development is considered likely to result in substantial noise impacts to both the neighbouring properties and to the occupants of Units 5, 6, 14, 20, and 26 who adjoin this area and have a single form of ventilation (window) opening toward the area of private open space.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal, through its design is incompatible with the character of the local area and surrounding wider locality.

This matter warrants the refusal of the Development Application.

Conclusion

The proposed development is not supported.

SEPP (Building Sustainability Index: BASIX) 2004

No BASIX certificate was submitted with the application.

In *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*, the court found that where a room in a boarding house contains facilities that would allow it to be used as a self-contained domicile (as is the case for most/all new generation boarding rooms) then the "boarding room" would be classified as a "dwelling" and the building is a "BASIX affected development".

In this regard, a BASIX certificate is required and was not submitted with the application. This issue has been included as a reason for refusal.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	13m	14.2m	9.3%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

The calculated height from the existing ground level of the parking area to the new ridge line is 14.21m (9.3%). The applicant states that the development complies with the building height and has therefore not provided a Clause 4.6 variation. As the applicant has not provided a Clause 4.6, no further assessment has been undertaken and this issue has been included as a reason for refusal.

Warringah Development Control Plan

Built Form Controls

The built form controls do not apply to this site. Refer to Areas 10 for controls for this site are contained within Part G Special Area Controls, Area 10 Civic Centre.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	No	No
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	No	No
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	No	No
D20 Safety and Security	No	No
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
Part G Special Area Controls	No	No
G1 Dee Why Mixed Use Area	No	No
Area 10 Civic Centre	No	No

Detailed Assessment

A.5 Objectives

The proposed development is considered inconsistent with the objectives of WDCP 2011 specifically in relation to the following:

- **To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome**

Comment:

The proposed development will create an unacceptable conflict between pedestrians, motorbikes and bicycles with the proposed shared path access adjoining the Kingsway. This pathway connects with the public footpath and Council road reserve. The area adjoining motorbike spaces 2, 3 and 4 has been identified as landscaped open space. This area adjoining the driveway is unlikely to be maintained as landscaping when it is the only access point for these spaces.

- **To provide a high level of access to and within development.**

Comment:

While the development includes two (2) accessible units at Ground Floor Level, there is no internal lift to service other levels within the building and the only access into the building is at the front of the development where the main entry stairs are noted to contain a 'stair climber' as the primary form of access. The extent of access is considered inappropriate for this scale and location of development and is not considered to satisfy this objective.

C2 Traffic, Access and Safety

Merit consideration

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

- *To minimise traffic hazards.*

Comment:

The existing parking on the site will require vehicles to reverse onto Kingsway in order to exit the site. Reversing vehicles, tight on-street parking adjoining the site, use of the footpath front setback and road reserve as a shared access path for motorcycles, cyclists and

pedestrians are considered an undesirable combination which will likely accentuate traffic hazards.

- *To minimise vehicles queuing on public roads.*

Comment:

Given there is limited parking proposed for the development, and the traffic and parking assessment has not specifically addressed this issue, it is unknown what extent of vehicles queuing is likely to occur.

- *To minimise the number of vehicle crossings in a street.*

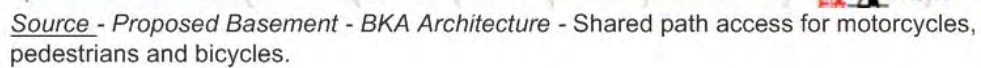
Comment:

The development for a change of use and increase in floor area seeks to retain the existing vehicle crossing and parking arrangement on the site. Accordingly, there is no increase in the number of vehicle crossings to this site.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The proposed development includes a shared path access across the road reserve and public footpath for motorcycles and bicycles to access the parking identified within the front setback of the site. The development does not minimise traffic, pedestrian and cyclist conflict.



- *To minimise interference with public transport facilities.*

Comment:

The proposed development is not considered likely to interfere with public transport facilities.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The Traffic and Parking Assessment submitted with the application fails to provide any information in relation to the status of on-street parking in the surrounding street network and parking restrictions around the site. The Kingsway is generally fully utilised in terms of on-street parking availability. Due to the lack of parking proposed to be accommodated on the site (being at least 8 spaces) the proposed development is considered to contribute to further loss of kerbside parking.

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

In consideration of the proposal and the merit consideration would the development maintain the ability for the development to be consistent with the:	
• objectives of the DCP?	NO
• zone objectives of the LEP?	NO
• objectives of the LEP?	NO
• objects specified in s1.3 of the Environmental Planning and Assessment Act 1979?	NO

Based on a merit consideration, the circumstances of this application / site and an assessment of the proposal against the underlying objectives of the clause, is:	
• Consistency with the control unreasonable?	NO
• Consistency with the control unnecessary?	NO
• Is the proposal acceptable?	NO

C3 Parking Facilities

Description of non-compliance

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	SEPP ARH calculation	Required	Provided	Difference (+/-)

Boarding House	0.5 spaces per boarding room and 1 space for the on-site manager	25 rooms x 0.5 spaces = 12.5 spaces + 1 space (manager) Total = 13.5 spaces	5 spaces	-8
Total		13	5	-8

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed development does not seek to provide any new or additional parking on the site. Existing and proposed parking is located at ground level open to the Kingsway street frontage.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The parking facilities are not considered to dominate the street frontage.

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

D3 Noise

Merit consideration

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

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed design of the private open space is considered unsatisfactory resulting in adverse impacts on the urban environment.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The proposed private open space will create a constrained area being the only outdoor space available for 50 lodgers. This area is effectively walled in by the existing building and the neighbouring residential unit building. The use of this space is considered likely to result in noise impacts on the adjoining property occupants and also the occupants within the development in units which have windows within close proximity (approximately 1.0m for units 5 and 6).

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

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed location for the only area of private open space on the boundary with No. 2 Kingsway is considered to be a source for compromised acoustic privacy for the occupants of No. 2 Kingsway and also for the internal occupants of the units within the boarding house which have single aspect windows which open onto this area.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

While it is acknowledged that some attempt has been provided to screen parts of windows on the northern facade, the location of the private open space is an undesirable solution for this development to meet the minimum requirements of SEPP ARH.

- *To provide personal and property security for occupants and visitors.*

Comment:

The development provides secure entry into the building for occupants.

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

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The upper level addition to the off-form concrete stairwell should provide a setback for this extrusion, in a manner that provides sympathy with the existing geometries of the building form so that it recedes and is not viewed as a further non-compliant extension of the stair well in another material.

The new Level 3 should be set back from the existing building footprint with compliant setbacks. This would assist to minimise the visual impact of the upper storey and would reduce the extent of encroachment of the building envelope control.

The overall design appearance of the additional level is considered suitable subject to further resolution of the finishes used.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The impact of the proposed additional level has been exacerbated by its non-compliance with the setbacks and side boundary envelope. The additional building works will be visible from adjoining properties including the existing civic centre building. These impacts could be significantly reduced with a reduced footprint at this new level.

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

D10 Building Colours and Materials

Merit consideration

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

- *To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.*

Comment:

The site holds importance as a marker site into the town centre. Further resolution of alternative colours, materials and detailed finishing of the external facades of the existing built form and the additional level, including appropriately detailed screening or enclosure of roof mounted mechanical units and services penetrations are required.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D20 Safety and Security

Merit consideration

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

- *To ensure that development maintains and enhances the security and safety of the community.*

Comment:

Pedestrian vehicle conflict resulting from the proposed motorbike parking at the front of the site being accessed from Kingsway.

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

Area 10 Civic Centre

Description of non-compliance and/or inconsistency

The proposed boarding house does not provide compliance with any of the controls identified within the Area 10 Civic Centre Requirements. The proposed development provides the following compliance with the relevant controls in the B10 Civic Centre precinct:

Built Form Control	
Side Boundary Envelope	
Side Boundary Setbacks	
Front Boundary Setbacks	
Landscaped Open Space (LOS) and Bushland Setting	
Minimum Floor to Ceiling Heights	

***Note:** controls for this site are contained within Part G Special Area Controls, Area 10 Civic Centre.

Merit consideration

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

- *To encourage good design and innovative architecture.*

Comment:

While the proposed development is for alterations and additions to the existing building and a change of use to a boarding house, the additional works are not considered to be adequately resolved the final finishes and overall height of the development.

- *To create a pedestrian environment that is comfortable, interesting and safe.*

Comment:

The site is not considered to provide a desirable pedestrian environment. The frontage addressing both Kingsway and Pittwater Road includes a shared path for pedestrians, cyclists and motorcycle access. The path is the only graded access for the motorcycle parking spaces and requires access from the public footpath within the Kingsway road reserve. The shared path will also cross over at the main front entry stairs to the building. this arrangement is not considered to facilitate a safe pedestrian environment.

- *The northern side of this locality adjacent to the Kingsway will be redeveloped for dwellings in landscaped settings and be of similar scale housing in the adjacent area.*

Comment:

The subject site is located within the northern side limits of the locality adjacent to the Kingsway. While the site will retain a reduced area of landscaping within the front setback of the site to Pittwater Road, it is not considered a landscape setting due to its deficient provision on a corner allotment. In terms of the scale of the proposal, the additional Level 3 is considered excessive in scale and inconsistent with the scale of adjacent housing.

- *To ensure shops and dwellings enjoy good access to natural light and buildings address the street.*

Comment:

While the building structure is externally retained, the internal layout of the building which was previously used as a medical centre, is to be further divided into twenty six (26) self contained boarding rooms (dwellings). Of these 26 rooms, eight (8) of them (31%) are considered to have poor access to natural light (Units 1,5,6 7,14,15,20 and 26). As there was no solar access details provided, the extent of natural light and ventilation available to the dwellings within this development can not be assessed as sufficient.

- *The sandstone outcrops and vegetation between the existing Council Chambers and the existing library, and west of the main entrance to the existing Council Chambers, will be retained.*

Comment:

The proposed works do not impact on the sandstone outcrops or vegetation between the

Council Chambers and the existing library. It is noted that the requirements for this area specify a double row of Norfolk Island Pines along Pittwater Road. Due to the insufficient setback in this location, the site proposes a single row of Norfolk Island Pine trees (two (2) in total) along the Pittwater Road frontage.

Area 10 Civic Centre

The site is subject to the requirements contained within Part G *Special Area Controls* of the WDCP 2011. Specifically, the site is identified as being within Part G1 Dee Why Mixed Use Area and accordingly, the following requirements apply to the site:

- ***This area will remain the focus of Civic activity within Warringah with this role enhanced by the development of a new Civic Building on Pittwater Road. The building will be enhanced by the use of colonnades to distinguish it from other buildings in the locality and the planting of double row of Norfolk Island Pines at the front of the building along Pittwater Road. The corner of Pittwater Road and St. David Avenue will be strongly defined as a major pedestrian access to the site.***

Comment:

This control is not directly applicable to the site as the allotment is separate to the Civic Building site. Accordingly, no further assessment of this requirement is necessary in this instance.

- **The minimum floor to ceiling heights are as follows:**
 - **ground floor storey (other than where used for housing): 3.6 metres**
 - **ground floor storey (where used for housing): 2.7 metres**
 - **upper storeys: 2.7 metres**

Comment:

The proposed development provides the following floor to ceiling heights:

Ground Floor level - 2.2m-2.619m
Upper Storeys - Level 1 - 2.4m
- Levels 2 and 3 - 2.5m

The proposed development does not satisfy this requirement on any level. This issue forms a reason for refusal.

- **Development is to maintain a minimum front building setback. The minimum front setbacks will be 15 metres from Pittwater Road, zero metres from St. David Avenue and 6 metres from the Kingsway.**

Comment:

The proposed development does not satisfy this requirement providing a setback for the new Level 3 to Pittwater Road of 13.6m and 4.3m to the Kingsway. At ground level, new works include a new entry stair with a setback of 7.7m setback to Pittwater Road. The proposal does not satisfy these setback requirements.

- **The first 4 storeys of the civic building must be set back a sufficient distance to**

enable the establishment of a double row of Norfolk Pines and the provision of a level 4 metre sidewalk. Storeys above the fourth storey must be set back at least 4 metres from the parapet line of the fourth storey.

Comment:

This control is not directly applicable to the site as the allotment is separate to the Civic Building site and does not include works on the civic building. Accordingly, no further assessment of this requirement is necessary in this instance.

- **The minimum rear building setback is 6 metres.**

Comment:

This control is not directly applicable as the site is a corner allotment. Accordingly, no further assessment of this requirement is necessary in this instance.

- **Development must be sited within an envelope determined by projecting planes at 45 degrees from a height of 5 metres above natural ground level at the side boundaries.**

Comment:

The proposed development incorporating a new Level 3 (fourth floor) does not comply with the side boundary envelope on the north-east or the south-west facades of the building. The extent of non-compliance is up to 4.4m on the north-east and up to 5.7m to the south-west.

- **The minimum setback from a building to a side boundary is 4.5 metres.**

Comment:

The proposed development does not comply with the side boundary setback requirement providing a 1.0m setback to the new Level 3 on the northern boundary and a nil setback to the new works on the south-western boundary.

- **On corner allotments the side boundaries are taken to be the boundaries that do not have frontage to a public street. Fascias, gutters, downpipes, eaves, masonry chimneys, flues, pipes, or other services infrastructure may encroach beyond the side envelope.**

Comment:

The site is a corner allotment. The side boundaries have been taken to be the northern boundary adjoining No. 2 Kingsway and the south-west boundary adjoining the Civic Centre carpark.

- **The minimum area of landscaped open space is 40 per cent of the site area.**

Comment:

The site provides 25% landscaped open space on the site due to the use of the Pittwater Road frontage and part of the Kingsway frontage for motorbike parking.

- **Carparking facilities must be provided below ground or behind buildings in shared**

parking areas Ground level parking must be provided with trees that will achieve 70% mature canopy coverage over the area.

Comment:

The proposed development does not seek to provide any additional parking for the increased density proposed on the site. Existing parking is currently provided in an open undercroft at ground level accessed from the Kingsway. There are no canopy trees provided adjoining the parking area.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the aims and objectives of WDCP 2011 and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

In consideration of the proposal and the merit consideration would the development maintain the ability for the development to be consistent with the:	
• objectives of the DCP?	NO
• zone objectives of the LEP?	NO
• objectives of the LEP?	NO
• objects specified in s1.3 of the Environmental Planning and Assessment Act 1979?	NO

Based on a merit consideration, the circumstances of this application / site and an assessment of the proposal against the underlying objectives of the clause, is:	
• Compliance and/or consistency with the requirement unreasonable?	NO
• Compliance and/or consistency with the requirement unnecessary?	NO
• Is the proposal acceptable?	NO

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP

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

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP Affordable Rental Housing, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, the relevant provisions of the WDCP 2011 and the DYTC Masterplan/Planning Proposal.

The application was referred to internal departments and external authorities. In the responses, Council's Urban Designer, and Traffic Engineer each raised fundamental concerns with the proposal. Council's Waste Management section has indicated that additional information is required to adequately address the requirements of the proposal.

The development attracted 9 individual submissions. The majority of the submissions raised concerns with regards to the proposed density and scale, pedestrian safety and traffic and parking. Other issues raised include the impact of the development upon existing on street parking, and the impacts on the neighbouring site to the north of the site. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

The assessment of the application against the provisions of SEPP Affordable Rental Housing found that the proposal is unsatisfactory with number of the requirements.

The assessment of the proposed development against the provisions of WLEP 2011 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the WLEP 2011 which permits a maximum building height of 13m within the B4 Mixed Use zone. The development exceeds this maximum limit by 1.2m. In this regard, it has been found that the development is inconsistent with the objectives of the Development Standard and the zone. Furthermore, the applicant has not provided sufficient justification for the departure from the Development Standard.

The assessment of the proposed development against the provisions of WDCP 2011 found that the proposal is not consistent with Clauses C2, C3, D3, D8, D9 and D10 and a number of non-compliances have been identified with respect to the controls under Part G (Area 10) of the WDCP, which specifically relates to the subject site.

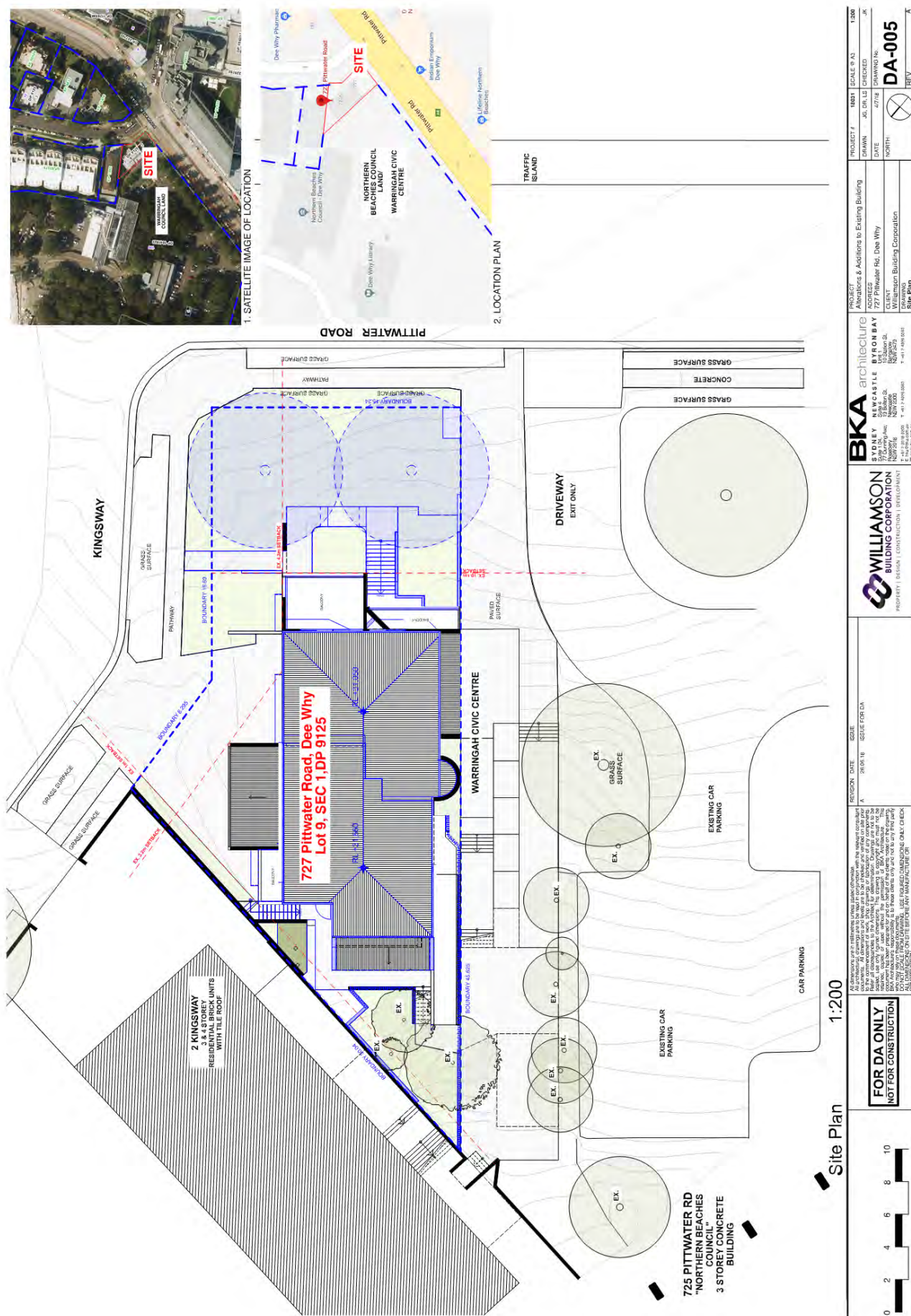
Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel (NBLPP) refuse the application for the reasons detailed within the recommendation attached to this report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/1293 for the Alterations and Additions to an existing commercial building and use as a Boarding House with 26 rooms on land at Lot 9 DP 9125,727 Pittwater Road, DEE WHY, for the reasons outlined as follows:

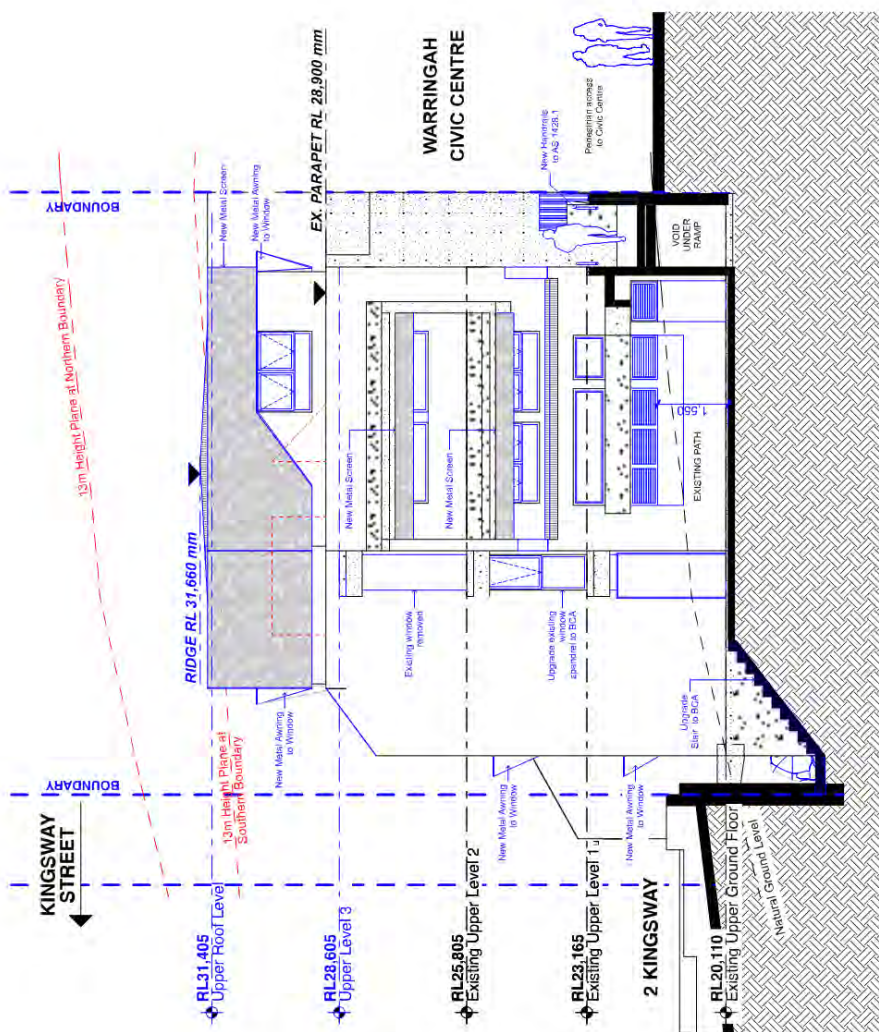
1. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979 and is not in the public interest.
2. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the relevant provisions of the following clauses of the Warringah Development Control Plan:
 1. C2 Traffic, Access and Safety
 2. C3 Parking
 3. D3 Noise
 4. D8 Privacy
 5. D9 Building Bulk, and
 6. D10 Building Colours and Materials
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause G1 Dee Why Mixed Use Area - Area 10 Civic Centre of the Warringah Development Control Plan.





NOTE: All existing windows to be replaced by new ones to design specifications.

[illegible]



1:100

Proposed North-West Elevation

LEGEND:

- Existing
Proposed
Boundary

NOTE: All existing windows to be replaced by new ones to design specifications.

<div>FOR DA ONLY</div> <div>NOT FOR CONSTRUCTION</div>					<div>Atkinson is not reviewing this plan for compliance with the National Fire Protection Association (NFPA) code and is not providing any warranty or guarantee of the accuracy of the information contained herein. Atkinson is not responsible for any errors or omissions in this plan or for any consequences arising from the use of this plan. The user of this plan is responsible for obtaining all necessary permits and for complying with all applicable laws and regulations. The user of this plan is also responsible for obtaining all necessary information from the relevant authorities and for ensuring that the plan is used in accordance with its intended purpose. Atkinson is not responsible for any damages or losses resulting from the use of this plan.</div> <div>ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</div>		<div>REVISION: DATE: ISSUE FOR DA</div> <div>A 24/06/16 ISSUE FOR DA</div>		<div> WILLIAMSON BUILDING CORPORATION</div> <div>10001411 10001411 10001411 10001411</div>		<div>PROJECT: Alterations & Additions to Existing Building</div> <div>ADDRESS: 1231 Pinner Rd, One Way</div> <div>CLIENT: Warrimoo Building Corporation</div> <div>PROJECT NO: NSW550</div> <div>DATE: 24/06/16</div> <div>SCALE: 1:100</div>		<div>PROJECT: Alterations & Additions to Existing Building</div> <div>ADDRESS: 1231 Pinner Rd, One Way</div> <div>CLIENT: Warrimoo Building Corporation</div> <div>PROJECT NO: NSW550</div> <div>DATE: 24/06/16</div> <div>SCALE: 1:100</div>	
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[illegible]



Proposed South-East Elevation

LEGEND:

- Existing
- Proposed
- Boundary line
- DR
- Drencher

NOTE: All existing windows to be replaced by new ones to design specifications

[illegible]

ITEM 3.6**DA2018/1634 - 16 FAIRLIGHT CRESCENT, FAIRLIGHT -
CONSTRUCTION OF A DWELLING HOUSE INCLUDING A
SWIMMING POOL****REPORTING OFFICER****Matt Edmonds****TRIM FILE REF****2019/171184****ATTACHMENTS**

- 1 Assessment Report**
- 2 Plans**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1364 for construction of a dwelling house including a swimming pool at Lot 9 DP 3742, 16 Fairlight Crescent, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1634
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 9 DP 3742, 16 Fairlight Crescent FAIRLIGHT NSW 2094
Proposed Development:	Construction of a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Alexandra Claire Rees
Applicant:	Alexandra Claire Rees
Application lodged:	04/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/10/2018 to 30/10/2018
Advertised:	Not Advertised
Submissions Received:	11
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,204,000.00

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

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 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 - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 9 DP 3742 , 16 Fairlight Crescent FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Fairlight Crescent.</p> <p>The site is regular in shape with a frontage of 15.24m along Fairlight Crescent and a depth of 40.3m. The site has a surveyed area of 613.2m².</p> <p>The site is located within the R1 General Residential zone and accommodates a single storey dwelling house.</p> <p>The site slopes from the northern end of the property to the southern end (front) approximately 3.5m</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development typically single and multi dwelling residential development.</p>

Map:



SITE HISTORY

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

CDC2018/0312- Demolition of the existing dwelling house and driveway.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the construction of a three storey detached dwelling house with basement, swimming pool, construction of a driveway and crossover and associated landscaping works.

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on the 4 December 2018 outlining a number of issues that would not allow Council to support the application in its original form. The issues included building height non-compliance, privacy and issues related to the proposed solid fuel heaters. Following receipt of the letter the applicant advised council that they intended to amend the development application. Council agreed to accept amendments to the application, and requested height poles be erected on site to allow for an accurate view loss assessment.

The applicant subsequently provided amended plans to address the concerns raised on 10 December 2018. Amendments to the proposal included removal of the proposed roof terrace and compliance with the Height of Buildings development standard (Clause 4.3 Manly LEP).

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 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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&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&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&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&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&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&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&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&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	(i) Environmental Impact

Section 4.15 Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 11 submission/s from:

Name:	Address:
Mr Bruce Williams	6 / 14 Fairlight Crescent FAIRLIGHT NSW 2094
Mrs Ann Gillian Anstee	3 / 14 Fairlight Crescent FAIRLIGHT NSW 2094
Mr Simon Robert Buttenshaw	5 / 14 Fairlight Crescent FAIRLIGHT NSW 2094
Mr Richard Charles Ogden	Villa 2 26-30 Ashington Street WEST END QLD NSW 4010
Tracy Davey Proprietors of Strata Plan 4548	14 Fairlight Crescent FAIRLIGHT NSW 2094
Ms Martina Elisabeth Gabrielsson Mr James Patrick	1 / 14 Fairlight Crescent FAIRLIGHT NSW 2094

Name:	Address:
Gabrielsson	
Mr Simon Albert Rosewell	4 / 20 Fairlight Crescent FAIRLIGHT NSW 2094
Mrs Bernadette Mary Watson Mr Ian David Watson Simon Rosewell Pty Ltd	18 Fairlight Crescent FAIRLIGHT NSW 2094
Mrs Kathleen Judith O'Doherty	4 / 12 Fairlight Crescent FAIRLIGHT NSW 2094
Ms Carole Johanne Moss	8 Bolingbroke Parade FAIRLIGHT NSW 2094
Ms Jayne Mary-Ellen Tancred	1 / 17 Bolingbroke Parade FAIRLIGHT NSW 2094

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

- **Roof Terrace**
- **View Loss**
- **Building Height**
- **Bulk and Scale**
- **Setback non-compliance**
- **Streetscape non-compliance**
- **Solar access**
- **Privacy**
- **Solid fuel heater**
- **Air conditioning units/compressors**
- **Swimming pool and spa**

The matters raised within the submissions are addressed as follows:

- **Roof Terrace**

Comment:

Concern was raised by numerous neighbouring properties in regards to the potential privacy impacts that would result from the proposed roof terrace, originally proposed under this application. The roof terrace was deleted as part of amended plans provided to Council on 10 December 2018, following Council writing to the applicant requesting the removal of the roof terrace on 4 December 2018.

This does not warrant the refusal of this application.

- **View Loss**

Comment:

Concern was raised in regards to view loss from neighbouring dwellings 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.

- **Building Height**

Comment:

Concern was raised in regards to the height of the dwelling house. The section plan submitted as part of this application indicates a compliant building height. Further, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.3 of the Manly LEP.

This does not warrant the refusal of this application.

- **Bulk and Scale**

Comment:

The proposed design of the house is sympathetic to the size and scale of neighbouring dwellings and the foreshore area, allowing for reasonable view corridors to be maintained. It is further noted that the proposed dwelling house is consistent with both the Building Height and Floor Space Ratio development standard under the Manly LEP, the foremost controls of bulk and scale. The bulk and scale of the proposed dwelling house is not unreasonable.

This matter does not warrant the refusal of the application.

- **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.

- **Streetscape non-compliance**

Comment:

The visual impact of the proposed house is consistent with that of other dwelling houses along Fairlight Crescent. The proposed size, scale and siting of the dwelling house is not unreasonable given the existing range of development within the streetscape.

This matter does not warrant refusal of the application.

- **Solar Access**

Comment:

An assessment of the application against Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP reveals that the application complies with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties.

This matter is addressed in further detail elsewhere in this report.

- **Privacy**

Comment:

Concern was raised about resulting privacy impacts (acoustic and visual) that result from the proposed works. 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 3.4.2 of the Manly DCP. This matter is addressed in further detail elsewhere in this report.

Accordingly, this matter is resolved by way of condition.

- **Solid Fuel Heater**

Comment:

Concern was raised in regards to the two proposed solid fuel heaters to the east of the dwelling house and within the principal private open space. The application was referred to Council's Environmental Health Officer for comment in relation to the proposed heaters. Suitable information has not been provided to allow for an assessment of the suitability of the heaters and as such, no approval is given under this recommendation. A suitable condition has been imposed as part of this recommendation to ensure this is included as part of any consent.

Accordingly, this matter is resolved by way of condition.

- **Air conditioning/compressors**

Comment:

The proposed plans do not depict any air-conditioning units and the location of such would need to meet the requirements of SEPP (Exempt and Complying) 2008 and Council controls.

- **Swimming pool/spa**

Comment:

Concern was also raised in regards to the setbacks and acoustic impact of the swimming pool mechanics including the pool filter. A recommended condition of consent has been included as part of this recommendation to ensure that the pool filter box is sound insulated to ensure no unreasonable aural impact to adjoining properties. As assessment against the underlying objectives of this clause is included as part of this application under clause 4.1.9 of the Manly DCP.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>Environmental Health has been asked to comment on this DA. Plans indicate by drawings only what appears to be chimney from a heating device beside the swimming pool area. Like wise it may be a BBQ and if so: The BBQ shall not be used as a principle cooking appliance for the dwelling but for occasional recreational use.</p>

Internal Referral Body	Comments
	<p>The BBQ shall be operated in such a manner as to not create a smoke or odour nuisance to any neighbouring property at any time.</p> <p>There is no mention of any open fire place or solid wood fire heater or BBQ in any of the submitted detail and especially the Statement of Environmental Effects .</p> <p>Council consent is required to install and operate a wood fire heater. Council approval is required under Section 68 of the Local Government Act 1993 for the installation and use of a domestic oil or solid fuel heating appliance and can also be approved as part of a DA. All wood fire heaters must be made to comply with the Australian Standards (AS) for wood fire heater emissions AS4013. It is illegal to install a wood fire heater that does not comply with this Australian Standard. Heaters that comply with the AS4013 have an efficiency requirement of 55% and lower emissions levels of 2.5grams of particulate emissions per kilo of wood burnt.</p> <p>heater means any solid fuel burning appliance that is designed, manufactured or adapted for domestic use.</p> <p>A person must not burn anything:</p> <p>(a) in the open, or</p> <p>(b) in an incinerator,</p> <p>in a local government area specified in Part 1 of Schedule 8</p> <p>Therefore it is important that we get additional information at this time.</p> <p>"details of compliance with appropriate legislation and standards for the construction and operation of</p> <p>the internal wood fire heaters.</p> <p>Generally as a guide we require :</p> <p>1. Provide evidence that the flue pipe will extend not less than 4.6m above the top of the floor</p> <p>protector.</p> <p>2. If the flue is 3m or less in horizontal distance from the highest point of the roof, is the top of</p> <p>the flue at least 600mm above the highest point of the roof?</p> <p>3. If the flue is over 3m metres in horizontal distance from the highest point of the roof, is the</p>

Internal Referral Body	Comments
	<p>height of the flue at least 1000mm above the roof penetration?</p> <p>4. Provide council evidence that the topography of the site or likely weather patterns or</p> <p>configuration of nearby dwelling/s indicate a potential to cause a smoke nuisance? (Include</p> <p>on site plan)</p> <p>5. Provide evidence that there are not any significant trees or other environmental or</p> <p>structural factors in the immediate vicinity that may cause a smoke down draught? (Include</p> <p>on site plan)</p> <p>6. The application must contain site, floor and elevation plans drawn to a scale of 1:100 or</p> <p>1:200 clearly demonstrating the location of the proposed heater and the proposed flue in</p> <p>relation to the roof line of the dwelling and the closest neighbouring dwelling/building.</p> <p>7. Provide detailed evidence to Council that the application contains specifications of the</p> <p>appliance to be installed indicating compliance with AS/NZS 2918:2001 and the Building</p> <p>Code of Australia.</p> <p>8. Provide evidence that the proposed heater will meet the emission control requirements of</p> <p>AS 4013.1999/AS 4013.2014?</p> <p>9. Provide evidence that the installation will meet the requirements of AS/NZS 2918.2001</p> <p>Open fires and open fireplaces are not permitted by the EPA with the exception of recreational use and of an occasional nature.</p> <p>In summary: The matter of the possible heater/flue beside the pool area needs clarification before any approval can be given. Likewise the heater/flue beside the pool area may be deleted from the proposal.</p>

Internal Referral Body	Comments
	<p>Additionally It is noted that there is a proposed elevated roof top deck in the development. Based on previous Council wide complaints with regard to noise and lack of privacy Environmental Health is not in favour of a roof top deck.</p> <p>Recommendation REFUSAL</p> <p><i>Planners comment:</i> Additional information was provided by the applicant to address concerns raised in this referral regards to the two proposed solid fuel heaters. A second referral revealed that further information was not satisfactory, as such no consent for the operation of any solid fuel heater is provided as part of any approval. A suitable condition of consent have been included as part recommendation.</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to conditions of consent.

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.

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 residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 964904S).

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

SEPP (Infrastructure) 2007Ausgrid

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 Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

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

Manly Local Environmental Plan 2013

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	8.4m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.6:1	N/A	Yes
	367.92m ²	367m ²		

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

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

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

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

Clause 6.2 - 'Matters for Consideration'	Comments
(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality	The geotechnical report submitted as part of this recommendation states that no overland stormwater is evident from adjoining properties. There are no geotechnical hazards that affect the subject site.

(b) the effect of the proposed development on the likely future use or redevelopment of the land	The proposed excavation is not considered to unreasonably impact upon the potential future use of the site.
(c) the quality of the fill or the soil to be excavated, or both	As stated in the geotechnical report, the excavation will be primarily sandstone bedrock.
(d) the effect of the proposed development on the existing and likely amenity of adjoining properties	The supporting geotechnical report submitted as part of this application, states that the risk of instability from the excavation is negligible. A condition of consent has been included as part of this recommendation to ensure that a dilapidation report in relation to adjoining properties to the east and west prior to issue of any construction certificate.
(e) the source of any fill material and the destination of any excavated material	The excavated material is to be disposed of offsite, as per the submitted waste management plan.
(f) the likelihood of disturbing relics	The subject site is not located in an area that is considered high potential for Aboriginal sites.
(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area	The subject site is located within the G4 Landslip Risk Class within the Manly DCP. The excavation proposed does not propose a large risk of instability.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2013, MDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 613.2m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 6.9m (based on gradient 1:15)	8m	15.9%	No
	West: 6.9m (based on gradient 1:15)	7.4m	7.2%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.55m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.2m, consistent with prevailing setback	-	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.66m (based on eastern wall height)	0.9m	33.8%	No
	2.46m (based on western wall height)	1m	40.6%	No
	Windows: 3m	0.9m	70%	No
4.1.4.4 Rear Setbacks	8m	9.1m	-	Yes
4.1.5.1 Minimum	Open space 55%	46.2% 283.6m ²	16%	No

Residential Total Open Space Requirements	(337.26m ²) of site area			
Residential Open Space Area: OS3	Open space above ground 25% (70.9m ²) of total open space	17.3% 49.1m ²	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (99.26m ²) of open space	64.6% 183.4m ²	-	Yes
	3 native trees	1 trees	66%	No
4.1.5.3 Private Open Space	18sqm per dwelling	87sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.03m	-	Yes
	1m curtilage/1.5m water side/rear setback	0.8m, 1m	33%	No
4.1.10 Fencing	1.5m with 30% transparency	2.2m	31%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	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 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 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	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

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

The proposed front fence/wall has a maximum height of 2.2m, non-compliant with the numeric control. This is a 31% 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 minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposed front fence is non-compliant with the 1.5m numeric control under clause 4.1.10 of the Manly DCP. To offset the visual impact of the fence landscaping has been proposed within the front setback, to offset the visual impact of the fence/wall. The proposed wall will be utilising the demolished sandstone that is being removed for the driveway as part of the proposed new wall. The proposed new fence/wall will be an improvement of the existing wall on site. The fence is found to be satisfactory.

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

Comment:

The proposed front fence as proposed is consistent with that of other dwelling houses within the street including the adjoining property to the west (No. 18 Fairlight Crescent) and properties along the southern side of Fairlight Crescent including Nos. 15, 17 and 19 Fairlight Crescent.

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

Comment:

The proposed landscaping within the front setback is suitable in this circumstance.

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.

3.4.1 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 will allow for adequate levels of light and sunshine to penetrate the subject site and adjoining 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. 18 Fairlight Crescent- West of subject site.

Clause 3.4.1.1 a) of the Manly DCP requires new development not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties between 9am and 3pm throughout the winter solstice. Between 9am and 12pm the adjoining property to the west (No. 18 Fairlight Crescent) private open space will be impacted by shadowing to a minor extent, with substantial sunlight access retained to private open space to this site. The proposed works do not eliminate more than one third of the existing sunlight accessing the private open space of No. 18 Fairlight Crescent between 9am and 3pm during the winter solstice.

Clause 3.4.1.2 a) of the Manly DCP requires at least 4 hours of solar access be retained to living room windows that currently enjoy sunlight between 9am and 3pm on the winter solstice. The primary living rooms of this property are located to the rear (north) of the subject site, allowing for significant level so sunlight throughout the day. The proposed development will not unreasonably compromise the level of sunlight to living rooms that this property currently enjoys. The proposal is compliant with this clause.

No. 14 Fairlight Crescent- East of subject site.

Clause 3.4.1.1 a) of the Manly DCP requires new development not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties between 9am and 3pm throughout the winter solstice. The proposed development does not compromise the common area of private open space of No. 14 Fairlight Crescent located to the rear of the building between 9am and 3pm during the winter solstice. The balconies of Units 1, 3 and 5 to the front of the building will be shadowed to a negligible to minor extent in the later afternoon of the winter solstice. The proposed works do not eliminate more than third of the existing sunlight accessing the private open space of No. 2 Parkview Road, Fairlight between 9am and 3pm during the winter solstice.

Clause 3.4.1.2 a) of the Manly DCP requires at least 4 hours of solar access be retained to living room windows that currently enjoy sunlight between 9am and 3pm on the winter solstice. The west facing

bedroom windows to the southern end of the buildings will receive additional shadow during the afternoon of the winter solstice (12pm-3pm) this includes units 1, 3 and 5. However, during this time no living room windows will be unreasonably shadowed, with all units of this property retaining adequate sunlight access throughout the day. 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 proposal is sited towards the front of the subject site to allow for suitable sunlight access to both the landscaped open space common area and living room windows of the adjoining eastern residential flat building (No. 14 Fairlight Crescent).

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:

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

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

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

Comment:

The proposal includes a large courtyard and balconies that service both the front and rear of the dwelling house. The principal private open space which includes a large terrace area with swimming pool and spa are located at ground level and do not allow for any direct opportunities for overlooking between properties. The terraced area is sited to the center of the subject site, appropriate given the constraints of the site and considered reasonable in this residential setting, with no unreasonable acoustic impacts upon neighbouring properties. In regards to the resulting privacy impacts of the swimming pool and spa this has been addressed in detail elsewhere within this report (refer to Clause 4.1.9 Swimming Pool and Spas under the MDCP 2013 section of this report). Furthermore, deep soil landscaping along the northern, western and eastern perimeter of the site may further offset the development and assist in reducing the potential opportunities for overlooking into adjoining properties.

The proposed ground and first floor balconies to the front of the dwelling house are suitably offset from the adjoining balconies to the east (No. 14 Fairlight Crescent). The proposal has been designed to ensure reasonable levels of privacy are maintained to adjoining properties. Suitable physical separation is provided between buildings which reduces the potential for overlooking to occur between dwellings.

The balcony at ground floor level is partially screened which further mitigate visual privacy between properties. The ground floor level balcony is elevated to RL17.240 (approximately 1.6m above natural ground level) and is built to the western boundary. The elevated nature of the balcony provides the opportunity for overlooking into the adjoining property to occur. This balcony is deemed to be a secondary area of private open space given the the large private open space area to the rear of the property and the first floor balcony. As such, a condition of consent has been included in the recommendation requiring the ground floor balcony to be setback at least 1.5m from the western boundary, to reduce the usability of the balcony, limit the bulk of the development and reduce potential overlooking to the adjoining western property.

The development also includes a number of large windows along the eastern wall of the dwelling. The proposed first floor windows towards the front of the dwelling off bedroom 2 and 3 have been angled away from the adjoining flat building to the east (No. 14 Fairlight Crescent) to prevent any direct view between windows. The sill of the remaining first floor windows is 1.6-1.8m above the floor level, a sufficient sill height to mitigate any potential for overlooking to the adjoining living room windows or private open space.

The development, as conditioned satisfies this objective.

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 development, as conditioned, will provide suitable access to light and air to the subject site and adjoining properties and view sharing from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The dwelling house will allow for passive surveillance of the street.

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

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 including No. 14 Fairlight Crescent (Units 1, 3, 4, 5 and 6) as well as 20 Fairlight Crescent (Unit 4), 8 Bolingbroke Parade and 17 Bolingbroke Parade (Unit 1).

Following a preliminary site inspection and assessment of views, Council in its assessment of the application formerly requested the application to erect height poles on the 17 December 2018.

Subsequently, the applicant erected height poles with certification of the height and location of the poles provided by a registered surveyor on 12 March 2019. The location of the height poles is shown below:



Image 1- Survey confirmation of height poles

A preliminary assessment of the application found there may be views impacts from the adjoining residential flat building to the rear of the subject site (No. 2 Bolingbroke Parade). While this property was notified in accordance with the Manly DCP, no submissions from No. 2 Bolingbroke Parade were received.

Access to unit 2 of No. 2 Bolingbroke Parade was provided by the owner during the assessment of the application to assess the impact of views, which is detailed below. Multiple attempts were made to contact the owner of Unit 3, the southern side unit of this building to undertake a view loss assessment, however no contact was able to be made. As such, the assessment of view loss from this property has been undertaken and considered with the information currently available to Council.

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 proposal allows for reasonable levels of view sharing for both existing and proposed development.

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

The proposal 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 eight (8) submissions from neighbouring properties in relation to view loss from the 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.

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:

No. 2 (Unit 2) Bolingbroke Parade

The nature of the view affected from this dwelling would be harbour, North Head and land water interface views to the south. These views would be filtered through existing development and vegetation as pictured below. Currently, the majority of the existing views are over the top and to the side of the existing dwelling house.



Photo 1- Private open space (Terrace)



Photo 2- Private open space (Terrace)

No. 2 (Unit 3) Bolingbroke Parade (No access to site provided).

The nature of the views affected from this dwelling would be harbour, headland and the land water interface to the south. These views would be filtered through existing development and vegetation. Currently, the majority of the existing views are over the top and to the side of the existing dwelling house.



Photo 3- View of 3/2 Bolingbroke Parade

No. 17 Bolingbroke Parade (Unit 1)

The nature of the views affected from this dwelling would be partial water views. The views are heavily filtered through existing development. At present, the existing views are to the eastern side of the existing dwelling house.



Photo 4- Ground floor bedroom



Photo 5- Ground floor bedroom

No. 8 Bolingbroke Parade

The nature of the views affected from this property would be partial harbour and district headland views. The views are filtered through existing development. At present, the views are over the top of the existing dwelling house of the subject site as pictured below.



Photo 6- First floor master bedroom



Photo 7- First floor living room



Photo 8- First floor living room (looking south)

No. 20 Fairlight Crescent (Unit 4)

The nature of the views affected from this property would be partial harbour and views. The views are filtered through existing development. A large portion of the existing views are to the side and over the top of the subject site dwelling house.



Photo 9- Bedroom 2



Photo 10- Private open space (terrace/balcony)

No. 14 Fairlight Crescent (Unit 5)

The nature of the views affected from this property would be partial harbour and district headland views. The views are filtered through existing development. A large portion of the existing views are through the front and over the top of the existing dwelling house.



Photo 11- Balcony off living room



Photo 12- Bedroom

No. 14 Fairlight Crescent (Unit 6)

The nature of the views affected from this property would be partial harbour views and district headland views. The views are filtered through existing development. The view are taken over the top of the existing dwelling house.



Photo 13- Bedroom

No. 14 Fairlight Crescent (Unit 3)

The nature of the views affected from this property would be partial harbour, district, headland views as well as the land and water interface. The views are filtered through existing development. A large portion of the existing views are that are affected are through the front and over the top of the existing dwelling house.



Photo 14- Balcony off living room

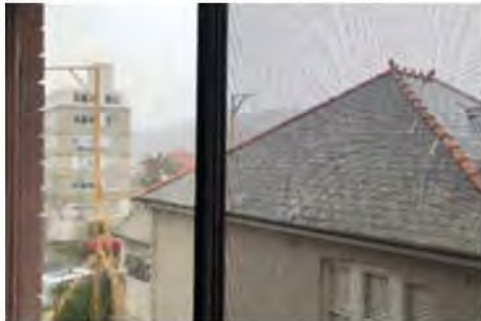


Photo 15- Bedroom

No. 14 Fairlight Crescent (Unit 4)

The nature of the views affected from this property would be water and district views. The views are filtered through existing development. At present, the existing views are over the top and to the side of the existing dwelling house of the subject site.



Photo 16- Bedroom



Photo 17- Balcony off living room

No. 14 Fairlight Crescent (Unit 1)

The nature of the views affected from this property would be partial harbour views. The views are filtered through existing development. A large portion of the existing views are that are affected are through the front of the existing dwelling house.



Photo 18- Bedroom

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:

No. 2 (Unit 2) Bolingbroke Parade

The views affected from this dwelling are obtained over the rear boundary of the site over the top of the subject site dwelling house. Views are obtained from a standing and sitting position from private open space (terrace).

No. 2 (Unit 3) Bolingbroke Parade (No access to site provided).

The views affected from this dwelling are obtained over the rear boundary over the top and to the side of the dwelling house. Views would be obtained from a standing position from bedrooms

No. 17 Bolingbroke Parade (Unit 1)

The views affected from this dwelling are obtained over the front boundary across Bolingbroke Parade, through existing development and over the top of the existing dwelling house (eastern side). Views are obtained from both a standing and sitting position from a bedroom, the views are partial water views and heavily filtered through existing development.

No. 8 Bolingbroke Parade

The views affected from this property are obtained over a side boundary to the south-west and through the subject site. The views are obtained from a standing and sitting position from bedroom and living rooms.

No. 20 Fairlight Crescent (Unit 4)

The view affected from this dwelling are obtained over a rear boundary through existing development to the side and over the top of the subject site. The views are obtained from a standing position from a bedroom and private open space.

No. 14 Fairlight Crescent (Unit 5)

The view affected from this dwelling are obtained from over a side boundary. The views impacted will be over the top and to the front of the dwelling house. views are obtained from a standing and sitting position from bedroom and private open space.

No. 14 Fairlight Crescent (Unit 6)

The view affected from this dwelling are obtained over a side boundary through existing development to the front and over the top of the subject site. The views are obtained from a standing position from a bedroom.

No. 14 Fairlight Crescent (Unit 3)

The view affected from this dwelling are obtained from over a side boundary. The views impacted will be over the top and to the front of the dwelling house. Views are obtained from a standing and sitting position from bedroom and private open space.

No. 14 Fairlight Crescent (Unit 4)

The view affected from this dwelling is obtained over a side boundary through existing development to the front and over the top of the subject site. The views are obtained from a standing position from a bedroom.

No. 14 Fairlight Crescent (Unit 1)

The view affected from this dwelling is obtained over a side boundary. The views impacted will be to the front of the dwelling house. Views are obtained from a standing and sitting position from bedroom 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:

No. 2 (Unit 2) Bolingbroke Parade

No. 2/2 Bolingbroke Parade currently enjoys substantial views to harbour, north head and land water interface. Views are taken from the roof terrace over the top of the existing dwelling house. Partial water views would be impacted. The level of impact is considered minor to moderate. The occupants will continue to the majority of the existing water views. Views of the headland and land water interface to the south and south west will be retained.

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

No. 2 (Unit 3) Bolingbroke Parade (No access to site provided).

No 3/2 Bolingbroke Parade has partial water views to the south and south west. While no site inspection from this property was undertaken, it can be identified that views are enjoyed from the first floor bedroom and bathroom windows to the southern end of the dwelling. Water views directly south of the this property will be impacted to a devastating extent. However, it is considered that views corridors to the south east of the subject dwelling house and to the south west while impacted would still allow for a partial water view be retained from the first floor of this unit.

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

No. 17 (Unit 1) Bolingbroke Parade

No. 1/17 Bolingbroke Parade currently enjoys filtered water views from the ground floor bedroom to the

south. The views are obtained through existing development too the south and over the existing ridge line of the subject site. The views are from the ground floor bedroom. This property is located wholly on the ground floor and is highly vulnerable to view impacts from any development to the south. The existing water views are expected to be lost completely.

Therefore, the extent of this impact is considered to be devastating.

No. 8 Bolingbroke Parade

The property currently enjoys partial water views from the first floor. The views are obtained through existing development and vegetation to the south west. The views to the south west will be lost to a severe extent as a result of the proposed works, with only a minor corridor or the water retained. However, it is noted that existing water views directly to the rear of the property (south) are retained in full.

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

No. 20 Fairlight Crescent (Unit 4)

The property has water views to the south and south-east. Views are enjoyed from the private open space (balcony) and second bedroom. The water views from both the balcony and bedroom will be impacted to a moderate extent by the proposed works. Qualitatively and having consideration of the existing view, the overall impact is considered to be moderate.

No. 14 Fairlight Crescent (Unit 5)

The property has substantial water views to the south, south west and south east, and North Head. Views are enjoyed from the living room and adjoining balcony as well as outlook views from bedrooms. Water views to the south west from both the living rooms and balconies would be impacted to a minor extent as result of the proposed works, with the majority of this view over the side boundary retained. Water views to the south, south east and North Head would not be impacted.

The existing outlook view over the side boundary from the bedroom is impacted to a moderate extent. However, given the view is gained over a side boundary and not considered to be highly valued the totality of impact is minor.

No. 14 Fairlight Crescent (Unit 6)

This property has water views to the south and south-east. Water views are enjoyed from the living room, the adjoining balcony and the bedroom. The water views from the living room and balcony will not be impacted by the proposed works. The view from the bedroom will, to a moderate extent, be impacted by the proposed works. It is considered that these views are directly over a side boundary. Qualitatively, and in consideration of the existing substantial views from available from the balcony, the totality of the view loss is minor.

No. 14 Fairlight Crescent (Unit 3)

The property has substantial views to the water to the south, south west and south east, and North Head. Views are enjoyed from the living room and adjoining balcony as well as bedrooms. Water views to the south west from both the living rooms and balconies would be impacted to a minor extent as result of the proposed works, with the majority of this view over the side boundary retained. Water views to the south, south east and North Head would not be impacted.

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

No. 14 Fairlight Crescent (Unit 4)

The property has water views to the south and south-east. Views are enjoyed from the living room and

balcony and a outlook view is enjoyed from the bedroom. The water views from the balcony will not be impacted by the proposed works. The bedroom of the unit has small water view that can enjoyed from only a small area of the bedroom as pictured above. The view should be mostly maintained.

The existing outlook view over the side boundary from the bedroom is impacted to a moderate extent. However, given the view is gained over a side boundary and not considered to be highly valued the totality of impact is minor.

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

No. 14 Fairlight Crescent (Unit 1)

The property has substantial views to the water to the south, south west and south east and North Head. These views are enjoyed from the living room and adjoining balcony as well as a small view from one of the bedrooms. Water views views from the living room and balconies from this unit would be impacted to a negligible to minor extent. Views to the south, south west and south east and North Head will be retained.

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

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:

The proposal responds appropriately to the available views through the provision of views corridors and building articulation to ensure highly valued views are retained and the totality of impact on properties in term of view loss is considered to be moderate. The proposed dwelling house is consistent with both the Height of Building and Floor Space Ratio development standard under the Manly LEP. The proposed dwelling house is non-compliant with the front and side setback control as well as wall height control.

In regards to the extent of view impact on No. 1/17 Bolingbroke Parade, which is considered to be devastating, it is considered that the dwelling is located at ground floor level and such is highly vulnerable to view impacts for any development to the south. If the existing view was to be retained it would mean that there would be no opportunity for anything more than single storey dwelling house to be developed on site. Given this and the developments compliance with clause 4.3 Height of Building development standard the application is supported.

In regards to the adjoining eastern flat building (No. 14 Fairlight Crescent), It is noted that the proposed roof extension over the first floor balcony contributes to the loss of water views from the building. It is considered that a more skillful design of the roof could retain a greater level of harbour views, while maintaining a suitable awning/shade structure for the majority of the first floor balcony. The proposal will maintain reasonable view sharing, subject to the following recommended condition of consent:

- The proposed roof is to be setback at least 6m from the front boundary.

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

Reason: To maintain views from adjoining properties and reduce the bulk and scale of the dwelling house.

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.

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)

Description of non-compliance

Clause 4.1.2.1 of the Manly DCP requires the eastern and western wall height of this development, not be more than 6.9m (based on a gradient of 1:15). The development proposes a eastern wall height of 8m and a western wall height of 7.4m, non-compliant with the numeric control. This represents 15.9% variation the numeric control for the eastern wall and 7.2% variation to the numeric control for the western wall.

Clause 4.1.2.2 of the Manly DCP requires building be limited to two (2) storeys. The development proposed is three (3) storeys, non-compliant with the numeric control.

Merit consideration:

This clause relies upon the objectives of Clause 4.3 under MLEP 2013.

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

Objective (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 the uniformity of the proposed dwelling in regards to height when compared to neighbouring dwelling houses within the streetscape.

Objective (b) To control the bulk and scale of the 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.

Objective (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.

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

Comment:

The 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.

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

Comment:

The subject site is not located in a recreation or environmental protection zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 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.

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires development be setback 6m from the front boundary or be consistent with the prevailing building line within the streetscape.

Clause 4.1.4.2 requires development be setback at least one third of the adjoining wall height.

Clause 4.1.4.2 requires windows be setback at least 3m from side boundaries.

The development proposes the following:

Front setback- 3.2m (46% variation)
Windows- 0.9m (70% variation)
Side setback (east)- 0.9m (70% variation)
Side setback (west)- 0-1m (40-100% 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 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:

Fairlight Crescent is a mix of single and multi storey residential development. The bulk and scale of the proposed dwelling house is consistent with the streetscape. The proposal will retain significant landscaping on site to offset the visual impact of the development

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, solar access and maintenance of views are all maintained to a reasonable extent as part of this proposed development.

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

Comment:

Flexibility is provided in this circumstance as the proposed works will not unreasonably compromise amenity 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 development proposes suitable deep soil landscaping is proposed on site, consistent with the numeric control under the Manly DCP. The proposed development will not detract from the foreshore area to the south of the site.

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

Comment:

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

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the Manly DCP requires 55% or 337.26m² site area be total open space. The development proposes 46.2% or 283.6m² of total open space, non-compliant with the numeric control. A 16% variation to the numeric control.

Clause 4.1.5.2 of the Manly DCP requires at least 3 native tree species be planted on site. The proposed development proposes 1 tree, non-compliant with 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 retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

There is no removal of any important existing landscape features on site.

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

Comment:

The proposed works are consistent with the numeric control for landscaped open space. The level of proposed tree planting is considered reasonable given the level tree planting of neighbouring properties. Further tree planting may compromise views to and from the foreshore.

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

Comment:

The proposed new dwelling maintains sufficient level of amenity to adjoining properties.

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

Comment:

Stormwater runoff is minimised by the proposed and existing landscaped open space.

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

Comment:

The proposed works does not unreasonably impact upon public open space. The proposed works will not lead to an increased spread of weeds.

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

Comment:

The subject site is not located in close proximity of any wildlife corridors.

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.

4.1.8 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 excavation of the site.

The dwelling house responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the dwelling house.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP 2013 requires swimming pools be setback at least 1.5m from the waters edge and 1m from the pool coping

The proposed swimming pool is setback 0.8m from the swimming pool coping and 1m from the waters edge., non-compliant with 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 follow

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring

properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposed swimming pool is located at ground level and sited appropriately so as not unreasonably impact upon the adjoining property to the west. A suitable condition has been included as part of the recommendation to ensure the pool filter box is sound insulated to ensure no unreasonable aural impacts to adjoining properties.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The swimming pool is proposed to the rear of the property. It will not be readily visible from the street.

Objective 3) To integrate landscaping; and

Comment:

Landscaping is proposed to the rear and sides of the swimming pool and associated decking. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed landscape may further offset the visual impact of the swimming pool from surrounding properties.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The subject site is not located in a bush fire asset protection 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.

4.1.10 Fencing

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

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 DA2018/1634 for Construction of a dwelling house including a swimming pool on land at Lot 9 DP 3742, 16 Fairlight Crescent, FAIRLIGHT, 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
Issue 3/ Site and Roof Plan	17 January 2019	Vaughan Architects
Issue 1/ Proposed Basement Plan	2 October 2018	Vaughan Architects
Issue 3/ Proposed Ground Floor and Swimming Pool Plan	17 January 2019	Vaughan Architects
Issue 3/ Proposed First Floor Plan	17 January 2019	Vaughan Architects
Issue 3/ North and South Elevations	17 January 2019	Vaughan Architects
Issue 3/ East and West Elevations	17 January 2019	Vaughan Architects
Issue 2/ Sections and Swimming Pool Sections	17 January 2019	Vaughan Architects
Issue 1/ Excavation Plan	2 October 2018	Vaughan Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 964904S	25 September 2018	Vaughan Architects
Geotechnical Assessment Report	29 August 2018	Jack Hodgson Consultants

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Planting Plan	21 August 2018	Edwina Stuart
Landscape Plan	21 August 2018	Edwina Stuart

Waste Management Plan		

Drawing No/Title.	Dated	Prepared By
Waste Management Plan	25 September 2018	Vaughan Architects

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 \$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).

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

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

5. Required canopy tree planting

i) details are to be provided of the proposed native canopy trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013,

ii) details of new planting are to include appropriate siting and pot size (minimum of 75 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection. Details are to be submitted with the Construction Certificate to the satisfaction of the Certifying Authority,

iii) each tree shall be planted into ground with a minimum soil area of 3m x 3m, contained wholly within the site.

Reason: This is to ensure the planting of endemic trees back onto the site.

6. On-site Stormwater Detention Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by Quantum Engineers, drawing number 180308 dated 12/9/2018. Details demonstrating compliance are to be

submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

7. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

8. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

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. **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)

11. **Roof awning**

The proposed roof is to be setback at least 6m from the front boundary.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the Construction Certificate.

Reason: To maintain views from adjoining properties and reduce the bulk and scale of the dwelling house. (DACPLCPCC1)

12. **Solid fuel heaters**

No approval is given for the installation of any solid wood fired heater which would need a separate application for consideration.

Reason: To ensure compliance with Section 68 of The Local Government Act (DACPLCPCC2)

13. **Swimming pool mechanical plant**

Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the pool filter does not emit any noise of 5dba above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents.

14. **Ground floor balcony**

The proposed ground floor balcony is to be setback 1.5m from the western boundary.

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

Reason: To maintain privacy from neighbouring properties.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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 public land, 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

17. **Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches

Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

18. **Landscape works**

A) Landscaping is to be implemented in accordance with the Planting Plan LP3817-01, prepared by Edwina Stuart Landscape Design, issue A, and inclusive of the following requirement:

- i) installation of the required number of native trees on site,
- ii) the proposed *Rhapiolepis indica* species shall be substituted with a non seed-spreading native species of similar size,
- iii) the proposed *Bambusa* species shall be maintained to a height no higher than the eaves.

B) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the landscape plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

19. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

20. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

21. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces

22. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

23. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

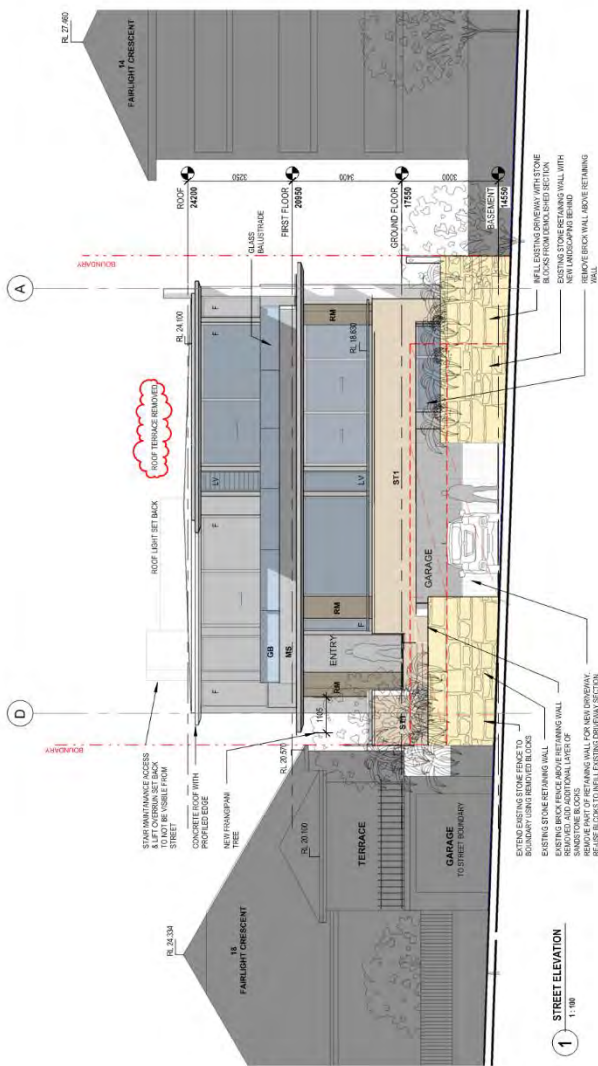




STREET PERSPECTIVE



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