

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 17 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

Lesley Finn	Chair
Annelise Tuor	Town Planner
Graham Brown	Town Planner
John Simmonds	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 17 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 3 APRIL 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 3 April 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 DA2018/2005 - 12 ETTALONG STREET, WHEELER HEIGHTS -
DEMOLITION WORKS AND SUBDIVISION OF ONE LOT INTO
TWO LOTS

REPORTING OFFICER STEVE FINDLAY

TRIM FILE REF 2019/200755

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%.

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. DA2018/2005 for demolition works and subdivision of one lot into two lots at Lot C DP 420487, 12 Ettalong Street, Wheeler Heights subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2005
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot C DP 420487, 12 Ettalong Street WHEELER HEIGHTS NSW 2097
Proposed Development:	Demolition works and subdivision of one lot into two lots
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Megan Rose Bowley
Applicant:	Megan Rose Bowley
Application lodged:	18/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	02/01/2019 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 20,000.00

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot C DP 420487 , 12 Ettalong Street WHEELER HEIGHTS NSW 2097
Detailed Site Description:	<p>The site is described as 12 Ettalong Street, Wheeler Heights being Lot C within Deposited Plan 420487 and is located within the R2 Low Density Residential zone.</p> <p>The subject site consists of one (1) allotment located on the northern side of Ettalong Street.</p> <p>The property has a surveyed area of 1695 square metres (sqm) and is a battle-axe allotment. The property has eastern and western boundaries measuring 77.005m and 109.685m respectively. The southern frontages measure 12.625m and 4.31m respectively, with a north rear boundary of 20.245m.</p> <p>The site has a moderate slope across most of the site with the land falling steeply (approximately 5m) at the front of the property to Ettalong Road. The land is located within 'Land Slip Risk Map-Area D'.</p> <p>A dwelling house, swimming pool and a detached garage are situated on the site with some small to medium sized trees scattered across the property.</p> <p>Adjoining and surrounding development is characterised by low-density, detached dwellings in a landscape settings. Lot sizes vary considerably in the vicinity of the site with smaller Lots (<600 sqm) to the east and west and some larger lots (>1000sqm) to the east, and west along Ettalong Road.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant applications to the site:

Pre-Lodgement Meeting No.PLM2018/0220

A Pre-lodgement Meeting (PLM2018/0220) was held on the 18 September 2018 between Council staff, the owner/applicant and the Town Planning consultant to discuss alterations and additions to the existing dwelling-house (partial demolition) and the subdivision of the existing lot into 2 lots.

The pre-lodgement meeting discussed the proposed subdivision whilst retaining the existing dwelling house on the property.

It was concluded that the proposal could be supported due to consistency of the proposed lots with the existing subdivision pattern and character in the surrounding area. It was advised that any future application must address the variation to the minimum lot size for proposed Lot 1 - 540sqm (9.85%) pursuant to Clause 4.6 of the WLEP 2011 for the variation to the minimum subdivision lot size of 600sqm under the WLEP 2011.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes the following:

- Demolition of an existing garage and ancillary site preparation works
- Torrens Title subdivision of one (1) lot into two (2) lots as follows:
 - Proposed Lot 1: 530.6 sqm - Total lot area is 702.6sqm (including the right of carriageway & passing bay)
 - Proposed Lot 2: 904.4 sqm - Total lot area is 1013qm (including the right of carriageway & passing bay)
- Construction of a driveway along the eastern boundary (and creation of a right-of-way)

- for shared access to each lot
- Connections for infrastructure services and ancillary site works

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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>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</p>

Section 4.15 Matters for Consideration'	Comments
	addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) 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

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
Landscape Officer	The development application is considered acceptable with regard to the relevant controls relating to landscape issues, subject to applied

Internal Referral Body	Comments
	conditions.
NECC (Development Engineering)	<p>Comments from the Development Engineers:</p> <ol style="list-style-type: none"> 1. The proposed driveway gradients seem to be satisfactory with Council's extra High Vehicle Crossing Profile. 2. The proposed stormwater design seems to be satisfactory with Council's policies <p>There is no objection to the proposed subdivision subject to the recommended conditions.</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 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 (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.

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

Comment:

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600sqm	Lot 1 - 530.6sqm (702.6sqm including access handle) Lot 2 - 904.4sqm (1013sqm including the access handle)	11.6% N/A	No Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.1 Minimum subdivision lot size

See clause 4.6 for a detailed assessment of the development standard non-compliance.

4.6 Exceptions to development standards

Description of Non-Compliance:

4.1 Minimum subdivision lot size requirement:	600sqm
Proposed:	Lot 1 - 530.6sqm Lot 2 - 904.4sqm
Percentage variation to requirement:	Lot 1: 11.6% Lot 2: N/A

Assessment of request to vary a Development Standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size 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 4.1 - Minimum subdivision lot size 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.'*

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Applicants Written Submission

The applicants written request argues, in part:

- *The proposed subdivision is consistent with the existing subdivision pattern in the locality, which comprises of lots of varying sizes and configurations.*
- *The proposed allotments are capable of accommodating future development which is in keeping with the density of the existing and desired future development in the locality.*
- *The proposed allotments will have suitable access via a future improved driveway.*
- *The development will present a variation to the minimum lot size control, however is in keeping with the size and configuration of lots in the locality. Notwithstanding the minor variation to the lot size control, the proposal is considered to have a negligible impact on the locality and is therefore considered worthy of support.*

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for minimum lot size.

Planners comment:

It is agreed that there is a varying range of lot sizes in the vicinity of the subject site and that the proposed lots would be in keeping with the size and shape of the majority of lots in the locality.

It is also agreed that the proposed allotments are capable of accommodating future development which is in keeping with the density of existing and desired future development for the area.

In this regard, the applicant's written request has demonstrated that the proposed subdivision is an orderly and economic use and development of the land, 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 Minimum subdivision lot size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Assessment against the Objectives of the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

Along the northern side of Ettalong Street between Berith Street and Veterans Parade, there is a stretch of 21 lots (from No. 2 to 36 Ettalong Street) of irregularly shaped lots, varying in size from 401sqm to 2178.6sqm. The neighbouring lots to the east (Nos. 2/4/6/8/10) were created in 1959 and the lots to the west (18/18A/16 Ettalong Street) were created in 1979, both subdivisions reflecting the manner in which it is proposed to subdivide the subject site.

All other surrounding lots, including those on the southern side of Ettalong Road are of a size and shape that is similar to the proposed development. Nos. 15A, 15 and 13 Ettalong Road were subdivided in 1965 and Nos. 21/21A, 23/23A and 25/25A Ettalong Road were subdivided in 2000.

Given this context, it is reasonable to conclude that the size and shape of the proposed lots will be consistent with the majority of lots in the locality. The pattern will be consistent with subdivisions directly adjoining the proposed property, being Nos. 16/18/18A and Nos 6/8/10 Ettalong Road, in that they are also battle-axe lots.

As such, the proposal will be able to protect the residential character by-way-of a future built form that is consistent with the streetscape pattern, dwelling size and landscaped setting in the surrounding locality.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

The subject site is zoned R2 Low Density Residential. Commercial and industrial development is prohibited on this site and surrounding sites and therefore this objective does not apply.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

The subject site is not zoned for rural purposes and therefore this objective does not apply.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The development is within a low intensity residential environment but is not within an area zoned for, or otherwise identified as, being of environmental significance.

(e) to provide for appropriate bush fire protection measures on land that has an interface to

bushland.

Comment:

The land is not identified as being bushfire prone or on the interface of a bushland area.

(f) to protect and enhance existing remnant bushland.

Comment:

The site does not contain any existing remnant bushland.

(g) to retain and protect existing significant natural landscape features.

Comment:

The site is mostly flat land across the central area with a steep embankment at the road frontage. There are scattered trees on the site but there are no other significant landscape features. The footprint of the existing dwelling house on Lot 2 and the proposed footprint of Lot 1 ensures a landscape setting is able to be maintained, despite the non-compliance with minimum lot size.

Any new dwellings will need to be consistent with Part E6 'Retaining unique environmental features' of the WDCP 2011. The development satisfies this objective.

(h) to manage biodiversity.

Comment:

The subject site does not have significant value in terms of biodiversity. The development satisfies this objective.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

The land is sufficiently sloping to enable drainage to Ettalong Street. A stormwater/services easement is proposed along the western boundary of the lots to enable drainage to the street. Council's Engineers have reviewed this proposed design and raised no objections. The development satisfies this objective.

Assessment against the Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposal will provide two smaller lots which are capable of catering for the housing needs of the community. 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:

The proposal does not involve any other permitted land uses within the subject land. The proposal will not prevent other sites from providing facilities or services to meet the day to day needs of residents. The development satisfies this objective.

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

Comment:

The plans show that proposed Lot 2 will remain fully compliant with the landscaped open space control and that an appropriate building envelope for proposed Lot 1 is easily achieved. However, to ensure consistency is maintained with this objective, conditions are recommended to ensure a required western side setback distance of 6.5m, and a northern rear setback of 4.5m is maintained to ensure that the built form of any new house on Lot 1 is in harmony with the surrounding environment. As such, both new lots will be suitably characterised by landscaped settings. The development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular 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 Minimum subdivision lot size Development Standard is assumed by the Local Planning Panel.

6.4 Development on sloping land

The property is located within the Landslip Area D under WLEP 2011. The proposal seeks to provide for the subdivision of the existing allotment into two allotments. A Preliminary Geotechnical Assessment has been prepared by White Geotechnical Group, Reference No. J2044, dated 3 December 2018. This report and its recommendations are included within the draft conditions of consent to ensure there are no adverse impacts to surrounding properties resulting from the proposal.

Warringah Development Control Plan

Built Form Controls

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Built Form Control	Requirement	Proposed
B1 Wall height	7.2m	<p>The proposed lots have adequate dimensions to enable future dwellings to generally comply with the built form controls. The condition to maintain a 6.5m side setback to the western boundary will mean the part rear boundary to Proposed Lot 2 (adjoining the proposed parking area on that lot) will be reduced from 6.0m to 4.5m, which is considered reasonable.</p> <p>The proposed building footprint of 150m² for the new front lot (Lot 1) will be able a future dwelling to generally comply with the required setback areas, and while providing adequate landscaped areas (excluding areas for driveway/access).</p>
B2 Number of storeys	2	
B3 Side Boundary Envelope	4m	
	4m	
B5 Side Boundary Setbacks	0.9m	
	0.9m	
B7 Front Boundary Setbacks	6.5m	
B9 Rear Boundary Setbacks	6m	
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	No	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
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C1 Subdivision

Component	Requirement	Proposed	Compliant
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Lot requirements	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p><u>Lot 1:</u> a) 18.495m b) 37.38m c) 150m²</p> <p><u>Lot 2:</u> a) 20.245m b) 39.63m c) Existing dwelling retained</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the</p>	<p>A shared access along the right of carriageway parallel to the western boundary is proposed. The access is 4.5m wide plus 0.5m for services.</p> <p>Motor vehicle access to each residential allotment is provided.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles is not inhibited.</p> <p>The driveway has been reviewed by Council's Development Engineers as acceptable.</p> <p>Each lot will have area available to turn within the site and exit in a forward direction.</p> <p>An easement for services has been provided on the access driveway of proposed Lot 1 and Lot 2.</p>	<p>Yes</p>

	<p>passing/turning bay.</p> <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)																
Up to 3 lots	0.5																
4 or more lots	1.0																
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and</p>	<p>Appropriate conditions have been imposed to ensure that the drainage design and construction is in accordance with Council specifications.</p> <p>The plans have been reviewed by Council's Development Engineers who have raised no objection to approval, subject to these</p>	Yes														

	<p>Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>conditions.</p> <p>Design The creation of Lots will result in the construction of one (new) dwelling as the existing dwelling and swimming pool of proposed Lot 2 is to be retained.</p> <p>Proposed Lot 1 is undersized and constrained by the right of carriageway for Lot 2. It is recommended that a condition be imposed requiring the building envelope to maintain a minimum western side setback distance of 6.5m, and a northern rear setback of 4.5m. This will ensure the building bulk and built form is consistent with the pattern and scale of surrounding development and to ensure the future dwelling will be provided in a landscaped setting.</p> <p>This issue is resolved by a positive covenant to maximise landscaped open space, increase spatial separation and maintain consistency with the low density pattern of development.</p>	
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>Each allotment will have the ability to drain via an easement to Ettalong Street.</p>	Yes
Restrictions	Any easement, right-of-	The proposed allotments are	Yes

	carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	subject to imposed easements and rights of carriageway to enable drainage and right of access.	
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The land is not environmentally constrained.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bushfire prone.	Yes

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 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

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

This proposal is for the subdivision of one (1) lot into two (2). Lot 1 does not comply with the minimum lot size development standard, with a variation of 11.6% to the minimum standard of 600sqm. Lot 2 is compliant with the development standard at 904.4sqm. Both Lots are compliant with the minimum width and depth.

Lot 1 has a proposed minimum building area of 150sqm. A condition has been imposed requiring the building envelope to maintain a minimum western side setback distance of 6.5m and a northern rear setback of 4.5m. This is to ensure the building bulk and built form is consistent with the pattern and scale of surrounding development and to ensure the future dwelling will be provided in a landscaped setting.

Lot 2 will contain the existing dwelling which will continue to fully comply with all built form controls.

The context of the surrounding subdivision pattern is best described as a series of 21 lots on the northern side of Ettalong Street with varying sizes, from 401sqm to 2178.6sqm. Two of the original lots have been subdivided in the 50's and 70's in a manner similar to the current proposal. The vast majority of all other surrounding lots, including those on the southern side of Ettalong Street are of varying sizes from 553m² to 1298sqm range (excluding the access handles), such that the proposed lots are consistent with the surrounding subdivision pattern and character.

The applicant submitted a clause 4.6 Variation request to vary the minimum lot size development standard. This request provided adequate environmental planning grounds to show that strict compliance with the standard is unnecessary. The plans also demonstrated that each new lot can comfortably accommodate a dwelling house in a suitable landscaped setting, similar to the majority of surrounding lots.

On balance, the proposal is suitable and appropriate and so the non-compliance with the minimum lot size and rear setback control for proposed lot 1 is considered to be acceptable in the context.

Therefore, the proposed development is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/2005 for Demolition works and subdivision of one lot into two lots on land at Lot C DP 420487, 12 Ettalong Street, WHEELER HEIGHTS, 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
Survey Plan showing the subdivision	14/02/2018	CMS Surveyors Pty Ltd
Front of Driveway 18090	25/11/2018	Michael Korecky
Rear of Driveway 18090	25/11/2018	Michael Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	03/12/2018	White Geotechnical Group
Arboricultural Impact Assessment Report	03/11/2018	Seasoned Tree Consulting

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

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.

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

5. **Submission of Engineering Plans**

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design and construction of driveway and drainage to the following requirements:

1. Concrete right of carriageway a minimum of 3.5 metres wide. The proposed internal driveway is to be constructed generally following the existing driveway levels from the site front boundary to the passing bay to match the adjacent internal driveway.
2. The driveway requires a passing bay at least 5.0 meters wide for a distance of at least 10m is to be provided every 30m.
3. Under grounding of all utility services for the proposed two lots.
4. Stormwater drainage pipelines to service both the proposed two lots.
5. OSD systems provided for both the proposed two lots.

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

(NOTE: An application for a Subdivision Construction Certificate can be applied for approval from Council for the above works).

Reason: To ensure compliance with Council's specification for engineering works.

6. **Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property.

7. **Utilities Services**

Prior to the issue of the Construction Certificate, evidence is to be submitted to the Principal Certifying Authority that

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility provider, requirements for the development can be provided.

Reason: To ensure that service have been provided as required by this Consent

8. **On-site Stormwater Detention**

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current "WARRINGAH WATER MANAGEMENT POLICY PL850"

and generally in accordance with the concept drainage plans prepared by Michal Korecky, drawing number 18090 Sheet SW-1 and SW-2, dated 25 November 2018.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field.

Detailed drainage plans are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

9. **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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. **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.

11. **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.

12. **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

13. **Tree protection**

(a) Existing trees which must be retained:

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection:

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site
- iii) All tree protection is to be in accordance with the Arboricultural Impact Assessment prepared by Seasoned Tree Consulting dated 3 November 2018 and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

Reason: To ensure compliance of civil works with Council's specification for engineering works.

15. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

16. Vehicle Crossings

The provision of one new vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/4 EH and specifications. The existing layback shall be reconstructed due to its poor conditions. 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.

17. Maintenance of 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.

18. Waste Management During Development

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

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

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

19. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

20. 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

21. Required Planting

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Pot Size
3	Tree species capable of attaining a minimum height of 5 metres at maturity	Lot 1	200mm

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

Reason: To maintain environmental amenity.

22. 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.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

23. Positive Covenant for On-site Stormwater Detention

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, 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, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure ongoing maintenance of the on-site detention system.

24. Provision of Services for Subdivision

The applicant is to ensure all services including, water, electricity, telephone and gas are

provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots

25. Authorisation of Legal Documentation Required for Onsite Detention

An application for the authorization of legal documents is to be submitted to Council for approval. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) with a copy of the Works-as-Executed plan(details overdrawn on the copy of the approved drainage plan), hydraulic engineers certification and photographs of the completed system.

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

Reason: To create encumbrances on the land.

26. Existing Right of Carriageway to be released and two new Right of Carriageway to be created

The existing Right of Carriageway shall be extinguished and two new Right of Carriageway shall be created under the provisions of Section 88B of the Conveyancing Act on the final plan of subdivision and accompanying 88B instrument to include all vehicular access and manoeuvring areas.

The two new Right of Carriageway to be created are as follows.

1. One new Right of Carriageway from the site front boundary to the passing bay shall be created benefiting No.18 Ettalong Street (Lot A DP 420487), which is to ensure that proper driveway access and turning area to No.18 Ettalong Street (Lot A DP 420487) is not affected by the proposed development.
2. One new Right of Carriageway shall be created benefiting both the proposed two lots.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919

27. Restriction as to User for On-site Stormwater Detention

A restriction as to user (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. 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 the Subdivision Certificate.

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval

28. Stormwater Drainage and Utility Services Plan

A plan of subdivision identifying the location of water, gas, telephone, electricity and stormwater drainage in relation to boundaries and/or relevant easements, prepared by a registered surveyor

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

Reason: To ensure that services have been provided with appropriate easements as required by the Conveyancing Act 1919

29. Survey Plan - Construction Identification

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan showing all utility services locations, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure accurate location of buildings, access and services.

30. Sydney Water Compliance Certification

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance. Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water

31. Easement for Drainage

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision the accompanying 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919

32. Easement for Services

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919

33. Subdivision Certificate Application

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final

plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges

Reason: Statutory requirement of the Conveyancing Act 1919

34. **Certification and work as executed plan for the Subdivision works**

A certificate is to be submitted by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifying Authority that the vehicular crossing, concrete driveway and passing bay have been constructed in accordance with the approved construction certificates and relevant conditions of Development Consent. The subdivision Certificate will not be released until this certification and work as executed plan have been submitted and the Principal Certifying Authority has confirmed that this condition has been satisfied.

Reason: To ensure the subdivision works have been built to the appropriate standard.

35. **Positive Covenant - Setback of Building Envelope to Western and Northern Boundaries of Proposed Lot 1**

A positive covenant (to be registered on the Title of the land to accompany the Subdivision Certificate application) requiring the proprietor of the land to comply with the following building envelope restriction for a dwelling house on Proposed Lot 1. The terms of the Positive covenant are to be prepared by a Legal Practitioner, pursuant to Section 88B of the Conveyancing Act 1919 with the following lot restrictions applying to proposed Lot 1 for a future dwelling house:

Proposed Lot 1: The building envelope is to maintain a western side setback of 6.5 metres and a northern rear setback of 4.5 metres.

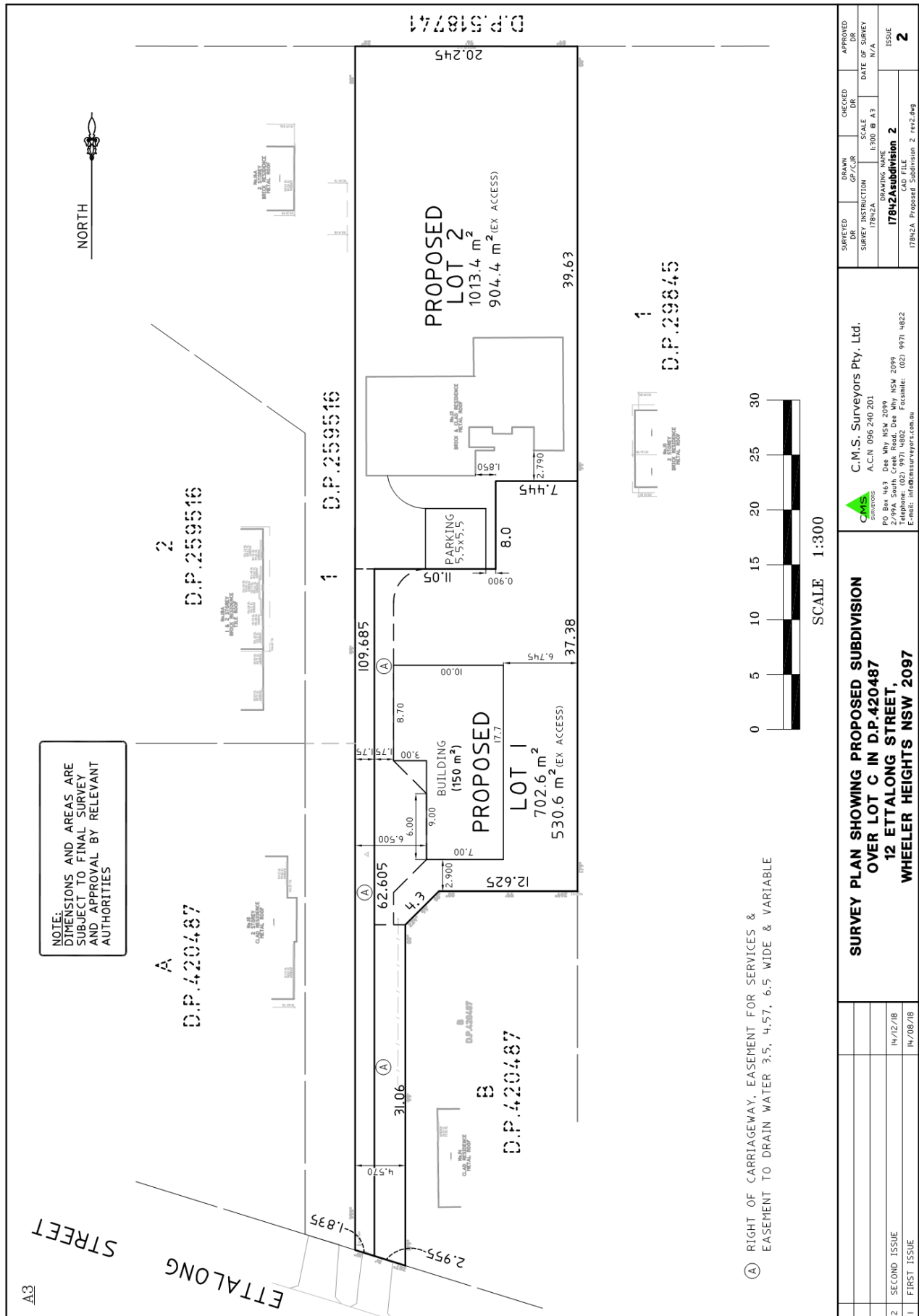
Northern Beaches Council shall be nominated as only party able to release, vary or modify such covenant. Details are to be submitted with the Subdivision Certificate application.

Reason: To ensure built form is consistent with the pattern and scale of surrounding development in response to the site constraints and existing amenity. (DACENHPS1)

36. **Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate

Reason: To ensure proper management of land



ITEM 3.2

**MOD2018/0658 - 17 LAUDERDALE AVENUE, FAIRLIGHT -
MODIFICATION OF DEVELOPMENT CONSENT DA0082/2016
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
EXISTING RESIDENTIAL FLAT BUILDING AND STRATA
SUBDIVISION**

REPORTING OFFICER ANNA WILLIAMS
TRIM FILE REF 2019/200765
ATTACHMENTS 1 [↓ Assessment Report](#)
2 [↓ Plans](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the original development 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. MOD2018/0658 for Modification of Development Consent DA0082/2016 granted for alterations and additions to an existing Residential Flat Building and Strata Subdivision at Lot B DP 965042, 17 Lauderdale Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0658
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot B DP 965042, 17 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA0082/2016 granted for alterations and additions to an existing Residential Flat Building and Strata Subdivision
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peter Malcolm Heyworth Karley Heyworth
Applicant:	Peter Malcolm Heyworth Karley Heyworth
Application lodged:	04/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/12/2018 to 18/01/2019
Advertised:	Not Advertised
Submissions Received:	4
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

SITE DESCRIPTION

Property Description:	Lot B DP 965042 , 17 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject property is commonly known as 17 Lauderdale Avenue, Fairlight and legally known as Lot B in DP 965042. The site is located on the southern side of Lauderdale Avenue. The property is irregularly shaped and has a frontage of 3.05m (vehicle access handle) to Lauderdale Avenue and an overall site area of 876.1m² including the access handle. The main portion of the site has a northern boundary of 23.66m, eastern boundary of 35.37m, western boundary of 43.495m and a frontage to Esplanade Park of 22.49m. The land slopes down to the southern boundary.</p> <p>The property currently contains a three-storey apartment building with vehicular access via an existing driveway from Lauderdale Street to basement car parking. The building contains four apartments, one on lower ground floor, two on the upper ground floor, and one on the first floor.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The area is characterised by residential development including residential dwellings and residential flat buildings. The immediate surrounding properties contain a 2-3 storey residential dwelling to the east and a 2 storey residential flat building to the west. To the north of the site is a 2 storey residential flat building.</p> <p>The site has direct access to Fairlight Beach and the Manly Scenic Walkway connecting to Manly to the east and Spit Bridge to the west.</p>

Map:



SITE HISTORY

Development Application no. 82/2016 was determined 21 July 2016 and Modification no. 82/2016 part 2 was determined 16 February 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Application 82/2016 with the deletion of two planter boxes on the first floor balcony of Apartment 4.

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 DA82/2016, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) 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 DA82/2016.
(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 Environment Plan 2011 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 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.

Section 4.15 'Matters for Consideration'	Comments
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>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 in the original consent.</p> <p>Clause 50(1A) 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>Clauses 54 and 109 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>Clause 92 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>Clauses 93 and/or 94 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>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 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</p>

Section 4.15 'Matters for Consideration'	Comments
	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 process council is in receipt of 4 submission/s from:

Name:	Address:
Ms Janet Christina Lisha	38 Tedder Avenue MAIN BEACH NSW 4217
Ms Elizabeth Catherine Gregory	43 Hilary Street WINSTON HILLS NSW 2153
Mr Ivor Raymond Orchard Mrs Jennifer Susan Orchard	15 Lauderdale Avenue FAIRLIGHT NSW 2094
Ms Margaret Ann Lechner	2 / 19 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- Previously approved works
- Privacy, security and noise
- Loss of value
- Submission of amendments to original Development Application
- Noise

The matters raised within the submissions are addressed as follows:

- **Previously approved works**
The submissions raised concern with works and details on the plans that have been approved

or amended under previous development consents.

Comment:

The proposal is only for the removal of planter boxes from the approved plans. Other issues that were raised such as the the glass bi-folding doors, the non-compliance with FSR, view sharing and parking were addressed and approved under the previous development application 82/2016 and development application part 2. The removal of the planter boxes will not impact on these issues.

The plans submitted include palm trees which were previously conditioned to be removed. A condition has been included in the consent requiring compliance with the previous condition under development application 82/2016 part 2.

- **Privacy and security**

The submissions raised concern with the removal of the planter boxes and the impact this will have on the privacy and security of nos. 15 and 2/19 Lauderdale Avenue.

Comment:

The issue has been addressed in more detail under part 3.4.2 Privacy and Security of this report. In summary, the issue of concern for the adjoining property at no. 15 Lauderdale Avenue is the increased loss of privacy and security to their ground level courtyard and study. No. 2/19 Lauderdale Avenue is concerned about the conversion of the planter boxes to usable habitable/pedestrian space which is at a height that will invade their privacy and attract an increased noise level.

The planter boxes that are proposed to be removed from the plans are located along the eastern edge of the first floor balcony of Apartment 4. It is recommended that the 1m high glass balustrade along the eastern edge of the first floor balcony be constructed of opaque glass to maintain the sense of privacy to no. 15 Lauderdale Avenue.

The top of the proposed glass balustrade is approximately 6.6m higher than the courtyard of no. 15 Lauderdale Avenue. The use of a solid masonry wall and opaque glass will limit overlooking from the balcony to the courtyard and study of no. 15 Lauderdale Avenue. The main entertainment areas for Apartment 4 are located off the dining room at the south eastern corner of the balcony and directly off the living room at the southern end of the balcony. While the removal of the planter boxes will allow greater overlooking of the adjoining dwelling the area where the planter boxes are located can not be directly accessed from the apartment and will be used as a external walkway between the outdoor entertainment spaces. Also the height and angle of the balcony as well as the separation between buildings would require someone to stand at the edge of the balcony and look down into the courtyard to obtain views of the study and the opaque glass will limit views from those in a seated position and those further back from the edge of the balcony.

No. 2/19 Lauderdale Avenue is located to the north of the site. When viewed from 2/19 Lauderdale Avenue the main entertainment area for Apartment 4 is located directly in front of where the planter boxes would be located and partially screened by the previously approved addition to dining room. While the removal of the planter boxes will increase the usable space of the first floor balcony the location and size of this area will not unreasonably impact on the privacy and noise of no. 2/19 Lauderdale Avenue.

It is considered that the proposal along with the recommendation for the glass balustrade to be opaque glass will not unreasonable impact on the privacy of nos.15 and 2/19 Lauderdale

Avenue.

- **Loss of value**

The submission raised concern that the proposal would result in a loss of value of no. 2/19 Lauderdale Avenue.

Comment:

The valuation/devaluation of property is not a valid planning consideration under Section 79C of the Environmental Planning and Assessment Act, 1979.

- **Submission of amendments to original Development Application**

The submissions raised concern with the number of applications that have been submitted 'this property has had 11 applications for amendments to the original development. Having been knocked back at the beginning and having to change their plans, they now seem to have achieved everything they first wanted and more'.

A submission also questioned the timing of the lodgement of the application over the Christmas /new year period.

Comment:

Council assesses each application on its merit and is not in a position to limit the number of applications that can be lodged per site.

Applications that are lodged during the Christmas/new years period have an extended notification period to allow for those who are away to review the proposal and submit a submission.

- **Noise**

The submission raised concern that the the removal of the planter boxes would increase the usability of the balcony and would result in unreasonable noise to the adjoining properties.

Comment:

The increase floor area as a result of the removal of the planter boxes is not expected to increase noise produced from the balcony area. The development is not expected to produce noise above the level of normal residential use and what is consistent with the surrounding residential area. The proposal complies with the relevant objectives of the MDCP.

MEDIATION

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

REFERRALS

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 (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.

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	Approved	Proposed	Complies
Height of Buildings:	8.5m	7.9m	No change	Yes
Floor Space Ratio	FSR: 0.6:1 525.7m ²	FSR: 0.64:1 559.2m ²	No change	Yes - approved under Development Application No. 82/2016 - Part 2

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes

Mainly Development Control Plan

Built Form Controls

The proposal is for the removal of existing planter boxes on the first floor balcony of unit 4. There will be no change to the MDCP controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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 top of the proposed glass balustrade is approximately 6.6m higher than the courtyard of no. 15 Lauderdale Avenue. The use of a solid masonry wall and opaque glass will limit overlooking from the balcony to the courtyard and study of no. 15 Lauderdale Avenue. The Courtyard of no. 15 Lauderdale Avenue is not a high use area as it is located off the laundry and study. The Study is used regularly used as the owner of the property works from home. While the removal of the planter boxes will allow greater overlooking of the adjoining dwelling, the height and angle of the balcony as well as the separation between buildings would require someone to stand at the edge of the balcony and look down into the courtyard to obtain views of the study and can only be observed from a small section of the balcony. The opaque glass will limit views from those in a seated position and those further back from the edge of the balcony. The area where the planter boxes are proposed can not be directly accessed via the apartment and is located between the two main entertainment areas. It is envisioned that this space will be used as a walkway between the entertainment areas as opposed to an area where people will congregate.

No. 2/19 Lauderdale Avenue is located to the north of the site. When viewed from 2/19 Lauderdale Avenue the main entertainment area for Apartment 4 is located directly in front of where the planter boxes would be located and partially screened by the previously approved addition to dining room. While the removal of the planter boxes will increase the usable space of the first floor balcony the location and size of this area it is not expected to host an increased number of people will use this space and will not unreasonably impact on the privacy and noise of no. 2/19 Lauderdale Avenue.

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 removal of the planter boxes and placement of 1m high opaque glass balustrades on top of the existing masonry wall will enhance privacy between the site and the adjoining property to the east while not unreasonably impact on the outlook and view of the properties to the north. The removal of the planter boxes will also improve the view access for 2/19 Lauderdale Avenue to the south, as the views will not be compromised by the growth and height of the plants in the planter boxes.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Reasonable personal and property security for occupants and visitors will be provided.

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

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. Mod2018/0658 for Modification of Development Consent DA0082/2016 granted for alterations and additions to an existing Residential Flat Building and Strata Subdivision on land at Lot B DP 965042, 17 Lauderdale Avenue, FAIRLIGHT, 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
A01 - Issue E - Location Plan Roof Site Plan	30.11.2018	Du Plessis Architects
A04 - Issue E - Apartment 3 Level 1	30.11.2018	Du Plessis Architects
A05 - Issue E - Cross Section XX Cross Section YY	30.11.2018	Du Plessis Architects
A06 - Issue E - Southern & Eastern Elevations	30.11.2018	Du Plessis Architects
A07 - Issue E - Northern & Eastern Elevation	30.11.2018	Du Plessis Architects

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

d) 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.

B. Add Condition 45 Palms to read as follows:

The 'Existing Palms' as shown on plans A01, A04, A06 and A07 are to be removed.

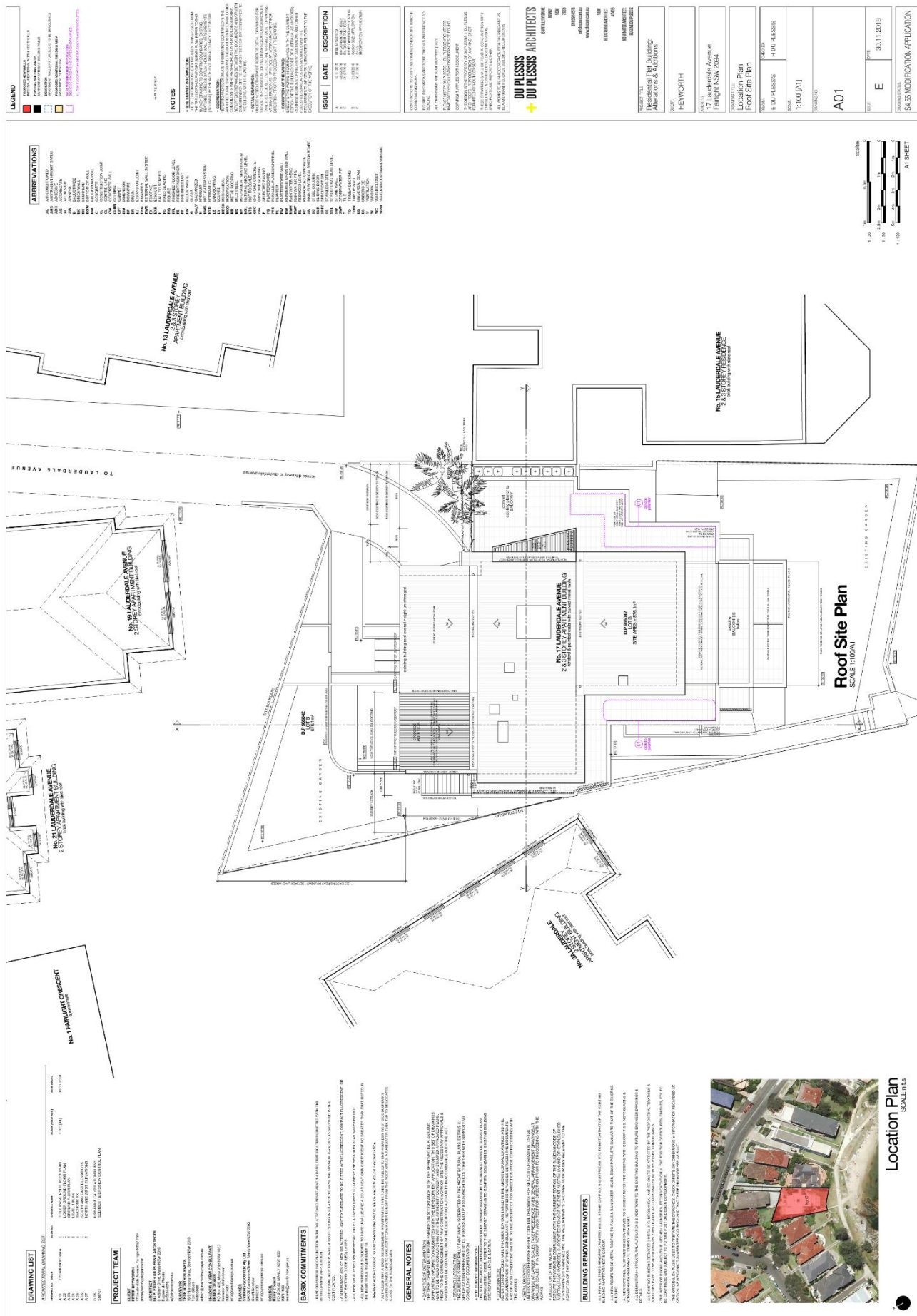
Reason: To comply with conditions of previous development application 82/2016 part 2.

D. Add Condition 46 Glass Balustrade to read as follows:

The glass balustrade along eastern edge of the first floor balcony of Apartment 4 is to be constructed of opaque glass in the area as shown on the plans as the location of the 'delete planter'.

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

Reason: In order to maintain privacy to the adjoining / nearby property.



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4.0 REVIEW OF DETERMINATIONS

ITEM 4.1 REV2018/0035 - 14 WYATT AVENUE, BELROSE - REVIEW OF DETERMINATION OF APPLICATION DA2018/0401 FOR CONSTRUCTION OF A BOARDING HOUSE WITH 24 ROOMS INCLUDING A MANAGERS RESIDENCE

REPORTING OFFICER MATTHEW EDMONDS

TRIM FILE REF 2019/200762

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a review of a determination or decision made by a local planning panel.

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. REV2018/0035 for Review of Determination of Application DA2018/0401 for construction of a Boarding house with 24 rooms including a managers residence at Lot 2597 DP 752038, 14 Wyatt Avenue, Belrose subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Development Application Number: REV2018/0035

Planner: Claire Ryan, Principal Planner

Property Address: 14 Wyatt Avenue, Belrose

Property Description: Lot 2597 DP 752038

Recommendation: **REFUSAL**

Clause 20 Variation: Yes

Proposal: Construction of a boarding house with 24 rooms including a manager's residence.



SITE DESCRIPTION

The subject site is a single allotment located on the north-western side of Wyatt Avenue, Belrose. The site is rectangular in shape and has a width of 28.595 metres and a depth of 80.42 metres, equating to an overall surveyed area of 2,298 square metres.

At present, the site accommodates heavy planting of canopy trees of varying species and heights. The majority of the trees are located parallel to the eastern property boundary, with several trees interspersed around the allotment. A hedge approximately 3m in height exists parallel to the street frontage. The trees parallel to the eastern boundary are scattered amongst boulders and the like, identified as a 'watercourse' in the provided survey.

The site is not developed and includes a driveway that extends for the length of the site and connects to the rear portion of 16 Wyatt Avenue to the north.

The site slopes approximately 10 metres from south to north (front to rear) via a gradual slope, and no exceptional topographical features can be found on the site.

The site is bound by 16 Wyatt Avenue to the west and north. 16 Wyatt Avenue accommodates a multi-storey detached dwelling house and an in-ground swimming pool. The portion of 16 Wyatt Avenue that the driveway on the subject site leads to (to the north) accommodates a tack shed, horse facilities and an informal helicopter landing area. 16 Wyatt Avenue extends approximately 115 metres to the north-west before adjoining bushland. East of the subject site is 12 Wyatt Avenue, which is identical in shape to the subject allotment, and is vacant of structures. South of the site and across Wyatt Avenue are six detached dwelling houses on allotments far smaller than those on the northern side of Wyatt Avenue.

SITE HISTORY

The land has been vacant for an extended period of time. A search of Council's records has revealed that there are no recent or relevant applications for this site prior to the prelodgement meeting and development application DA2018/0401 described below. This application (REV2018/0035) is for the review of the determination of DA2018/0401, which was refused by the Northern Beaches Local Planning Panel (NBLPP) on 26 October 2018.

It is important to note a historical subdivision pattern of the land on 8 March 1974 which is referenced in the Housing Density standards of WLEP 2000. A copy of this subdivision pattern is shown on Figure 1 below from Council records:



The red circle (added) shows that Nos. 14 and 16 Wyatt Avenue were in the same ownership at 8 March 1974. This background history becomes relevant later in this assessment.

Prelodgement Meeting

A prelodgement meeting was held between the applicant and Council on 30 November 2017 to discuss the proposal for the construction of a boarding house (refer PLM2017/0139), summarised as follows:

The proposal was for a part two-, part three-storey boarding house with 33 rooms, nine car parking spaces and seven motorcycle spaces. The proposal accommodated one common room.

It was agreed that the State Environmental Planning Policy (Affordable Rental Housing) 2009 does not apply to the development, but, *notwithstanding the applicability of the SEPP ARH to this particular development, it is considered that the standards contained with Cl.40 of the SEPP ARH should be considered in the design of the development.*

It was agreed that the development for the purpose of a boarding house is a Category Two development by virtue of being an innominate use, and is therefore permitted with consent in the locality.

It was agreed that, if any form of development is to occur on this site, the specified location is the most suitable with regard to minimising impacts on trees and the landform.

Insufficient detail was provided regarding the materiality and proposed landscaping to make a judgement of whether the development will be enhancing and complementary to the natural landscape.

The onus was placed on the applicant to provide legal advice regarding whether or not the development can comply with the requisite housing density standard.

The development proposed side boundary setbacks as little as 3m, where 10m is required by the WLEP 2000. This element was not supported, and it was recommended that a minimum setback of 6m be required given the width of the site, subject to the building having sufficient articulation and it being demonstrated that the variation will have no unreasonable impact.

A minimum of 50% landscaping is required, and a landscape plan is to accompany the application.

The report concluded that, where possible, the applicant should attempt to undertake preliminary consultation with neighbours prior to lodgement given the controversial nature of boarding house developments. This is not a legislative or statutory requirement, only a recommendation.

Development Application DA2018/0401

DA2018/0401 sought consent for the following works:

- Construction of a boarding house, comprising:
 - Basement car park containing 10 car spaces, 8 motorcycle spaces, 18 bicycle spaces, laundry facilities, services and circulation spaces (lift and stairs);
 - 27 boarding rooms (including one caretaker's unit and two adaptable units), capable of holding up to 54 residents (including caretaker); and
 - Two communal living areas.
- New driveway; and
- Landscaping works.

DA2018/0401 was refused by the Northern Beaches Local Planning Panel on 26 October 2018 for the following five reasons:

1. *The flood risk assessment report submitted with the development application contains insufficient information to allow a proper and thorough assessment to determine if the development would be likely to have adverse flood risk impacts.*
2. *For that reason the Panel is not satisfied that for the C8 Belrose North Locality the development is consistent with the Warringah Local Environmental Plan 2000 (WLEP 2000) desired future character requirement of protection and, if possible, enhancement of the natural environment.*
3. *The Panel is not satisfied that the development is consistent with the WLEP 2000 desired future character requirement of conformity with the maximum housing development standard of 1 dwelling per 20 hectares. Although the Panel has a discretion to consent notwithstanding this contravention, it does not consent given the extent of the contravention, the smallness of the site relative to 20 hectares, the large size of the development relative to the site size, and the matters referred to in the other reasons for refusal. If the Panel were prepared to consent (which it is not), then the prescribed concurrence of the Director would be required because the contravention is far more than 10%.*
4. *The Panel is not satisfied that the site is suitable given the matters referred to above and the Panel's assessment that it is an overdevelopment of the site because the building footprint and the total built upon area are too large for the site.*
5. *It is not in the public interest to consent given the matters referred to above.*

PROPOSED DEVELOPMENT IN DETAIL

REV2018/0035 seeks consent for the following works:

- Construction of a boarding house, comprising:
 - Basement car park containing 12 car spaces, 8 motorcycle spaces, 18 bicycle spaces, laundry facilities, services and circulation spaces (lift and stairs);
 - 24 boarding rooms (including one caretaker's unit and two adaptable units), capable of holding up to 48 residents (including caretaker);
 - Two communal living areas (one indoor and one outdoor); and
 - Two communal kitchen/dining rooms.
- New driveway; and
- Landscaping works.

REV2018/0035 provides an amended design that attempts to address the reasons for refusal in the following ways:

1. DA2018/0401 was recommended for deferred commencement approval by the previous Assessing Officer, subject to Deferred Commencement conditions as follows:

1. Stormwater Drainage

This consent must not operate until the following deferred commencement conditions have been satisfied.

1. *The flood report prepared by Northern Beaches Consulting Engineers dated 8 March 2018 shall be amended to include appropriate modelling, design and reporting sufficient to inform works required to manage overland flows. The*

flood report is to demonstrate that for the proposed works, there are no adverse effects on neighbouring lots (including the road reserve) relating to changes in flood levels, velocities or overland flow location, for the 1%, 5%, and 20% AEP events.

2. *Plans of the proposed works shall be submitted to Council that demonstrate compliance with the requirements of Condition 1. These plans are to:*
 - a) *Include concept plans demonstrating how drainage will be conveyed through the proposed stormwater drainage works and kerb and gutter for the full frontage of 14 Wyatt Avenue.*
 - b) *Demonstrate that any stormwater runoff from the public road that will be captured by the proposed kerb and gutter, is conveyed through the site.*
 - c) *Demonstrate compliance with Council's AUS-SPEC ONE specifications and Water Management Policy, Policy no. PL 850*
 - d) *Delineate the overland flow path through the subject property*
 - e) *Ensure trees are not planted within the stormwater easement*

Details demonstrating compliance with the above are to be submitted to Council's satisfaction, prior to activation of the Development Consent, within twelve months of determination.

Reason: To ensure adequate provision is made for stormwater drainage in a proper manner that protects adjoining properties.

The proposal attempts to provide the additional information. However, not all information was provided, and additional issues have arisen in assessment of this review application, as detailed in the section of this report relating to Referrals (see Development Engineering referral comments).

DA2018/0401 attempted to deal with shortcomings in relation to stormwater management through deferred commencement conditions. However, the NBLPP noted that this was not an appropriate way to deal with the shortcomings, and that the matters must be resolved prior to any approval. The NBLPP subsequently refused DA2018/0401. As such, the shortcomings in relation to stormwater management under REV2018/0035 warrant refusal of the application.

2. In addition to the above at point 1, the proposal also attempts to reduce the technical housing density of the proposal (see comments below in relation to point 3). The proposal also reduces the bulk and scale of the proposed development (see below in relation to point 4). The Applicant accordingly considers the proposal to be in greater consistency with the Desired Future Character of the C8 Belrose North Locality.
3. The amended proposal states kitchenettes have been removed from the boarding room designs, in order to attempt to consider the application as one domicile, rather than 24 domiciles, and thereby reduce the housing density proposed. The proposal instead includes communal kitchen facilities.

It is important to note that the rooms retain plumbing separate to the bathroom (in the form of a kitchen-like sink), and appliances could be installed for cooking purposes. While the Plan of Management stipulates rooms are not to be used for cooking, it is the opinion of the Assessing Officer that the proposal effectively retains kitchenettes, and that the proposal is comprised of 24 domiciles. Notwithstanding this, calculation of housing density is provided in relation to one domicile versus 24 domiciles in the section of this report relating to Non-Compliance with Built Form Controls – Housing Density.

4. The proposal provides the following amendments in order to address the NBLPP's concern that the building is an overdevelopment of the site:
 - Increased side setbacks;
 - Increased separation between building 'pavilions';
 - Increased landscaped area from 50% to 54%;
 - Increased number of canopy tree plantings from 54 to 59; and
 - Increased car parking from 10 to 12 spaces.
5. The Applicant considers the above adequate in demonstrating the application is in the public interest.

Clause 8.3 (3) of the *Environmental Planning and Assessment Act 1979* states:

In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

As described above, the proposal has been amended in order to address the previous Panel's reasons for refusal. While the amendments are relatively conservative in nature, they combine to result in a considerable and meaningful reduction in impact compared to the original proposal. As such, the amended proposal is considered substantially the same as the original proposal.

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

MEDIATION

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

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EP&A Regulation 2000 and the Warringah Development Control Plan 2011. As a result of the public exhibition of the application Council received 68 submissions. A list of the persons which

made submissions against the application can be found attached to this report as an Appendix.

Of the 68 submissions received, 6 were in support, and 62 were in objection. The following issues were raised in the submissions and each has been addressed below:

Review of Determination

Concern was raised that the original application was refused, and that a review application should not be allowed. Objectors raised that all previous submissions should be considered under this review. It was also raised that the large number of objections received should result in refusal.

Comment:

Clause 8.3 of the *Environmental Planning and Assessment Act 1979* (the Act) provides that an applicant may request a consent authority to review a determination. The Applicant of DA2018/0401 has a lawful right to seek the review of the refusal of the application. The objections raised in relation to the previous application are also raised in relation to this review application, and are therefore addressed in this section of the report.

Refusal of an application based wholly or partly on the number of objections received does not constitute an objective, thorough, or fair assessment. The application has been assessed based on its merits and a recommendation has been applied accordingly.

These matters do not warrant the refusal of the application.

Assessment Considerations

Concern was raised that the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH) should not be a consideration in the assessment of this review of the determination. Objectors raised concern that the development should be considered commercial and, therefore, a Category 3 development under the *Warringah Local Environmental Plan 2000*.

Comment:

It is agreed that the SEPP ARH does not strictly apply to this site. However, in the absence of controls for the assessment of boarding house developments under the WLEP 2000, it is warranted to consider the application against the relevant provisions of the SEPP ARH. Notwithstanding this, assessment against the SEPP ARH holds no determining weight to the recommendation of this application.

The intention of a boarding house is to provide residential accommodation. The proposed development is no more a commercial development than a residential flat building or single dwelling house. The proposal is considered Category 2 development under the WLEP 2000.

These matters do not warrant the refusal of the application.

Affordable Housing

Concern was raised that this type of housing is not 'affordable'.

Comment:

The property market will set the rate for rental prices, as there is no legislation capping rental prices for this development.

This matter does not warrant the refusal of the application.

Substantially the Same Development

Objectors raised that the development is not substantially the same, as the Applicant states that by removing the kitchenettes from the boarding room designs, the proposal can be classified as 'one' domicile, not 24 individual domiciles (or 27 in the original application). The density of the development should be calculated on a site area excluding the driveway/right of way through to 16 Wyatt Street. Additionally, the design submitted for the review application adds common rooms, adds a lift, reduces the number of rooms, alters the proposed layout and landscaping, and modifies the plan of management.

Comment:

The density of this application (including calculation of the variation of the housing density development standard) is addressed in the section of this report relating to the Non-Compliance with Built Form Controls – Housing Density. The density of the proposal is assessed as being substantially the same as the original proposal.

The changes to the proposed building and landscape design and the plan of management are assessed as being substantially the same as the original proposal.

These matters do not warrant the refusal of the application.

Desired Future Character

Concern was raised that the proposed development is not in character with the C8 Belrose North Locality, sets a poor precedent, and is not low impact and low intensity as required.

Comment:

The proposed development is considered acceptable in relation to the desired future character of the locality for the reasons detailed in the section of this report relating to the WLEP 2000. The proposal is therefore not considered a poor precedent, and is low intensity and low impact.

This matter does not warrant the refusal of the application.

Building Form

Concern was raised that the proposal is over development of (i.e. too large for) the site. Objectors also raised concern that the proposal included non-compliances, and that the rooms were not of adequate size for families. There is public benefit in maintaining the planning controls.

Comment:

The proposed bulk and scale of the development, including non-compliances, are acceptable for the reasons detailed in the section of this report relating to WLEP 2000 (Appendix C) Built Form Controls. The section also demonstrates that proposal is in the public benefit notwithstanding the development controls.

The proposed boarding rooms are of acceptable size in accordance with the SEPP ARH. This report establishes the relevance of considering the SEPP ARH notwithstanding that it does not strictly apply to this development. It is important to note that boarding rooms are not intended to be used by more than two individuals.

These matters do not warrant the refusal of the application.

Traffic and Parking

Objections noted that the proposed development does not provide enough parking onsite. Concern was raised that Wyatt Avenue lacks on-street car parking, due to the nearby school and the activities associated with Wyatt Reserve. Concern was also raised regarding the congestion of the local road network and that the proposed development will exacerbate the traffic and congestion, such as when garbage is collected. Finally, objectors raised concern that the site was not adequately serviced by public transport.

Comment:

The proposed development provides compliant parking in accordance with the SEPP ARH. This report establishes the relevance of considering the SEPP ARH notwithstanding that it does not strictly apply to this development.

The proposed development is supported by a detailed traffic and parking report prepared by a suitably qualified traffic engineer. The report and the proposed development have been reviewed by Council's Traffic Engineer, who raised no objection to the traffic generation resulting from the development.

These matters do not warrant the refusal of the application.

Environmental Impacts

Concern was raised regarding the following environmental impacts:

- Removal of trees and the impact this may have upon any wildlife corridors and threatened species (no flora/fauna study was submitted);
- The site is in a riparian zone;
- The site poses a flood risk;
- The proposal relies on deep excavation;
- The application does not detail pollution prevention measures;
- The proposed landscaping is not all native and does not equate to 54% of the site;
- The use of the boarding house will result in unreasonable light spill.

Comment:

The extent of tree removal is supported based on Council's Landscape Officer's advice and the provision of replacement planting that will offset the effects of the tree removal. The subject site is not classified as containing threatened species or wildlife corridors. The site is supported by an Arboricultural report relating to the proposed tree loss, and is adequately landscaped with compensatory trees. This is considered adequate in providing habitat for flora and fauna on site.

The original application was reviewed by Council's Riparian Lands and Creeks team, and no objection was raised as the subject site is not identified as being subject to detailed Waterways and Riparian Lands assessment.

The proposal involves significant earthworks to allow for basement car parking. However, as discussed in the section of this report relating to the Desired Future Character Statement, this excavation allows the development to respond better to the topography by reducing the overall height and bulk of building visible above the ground surface. Externally, the resulting building steps down to form three pavilion-like segments, in response to the sloped topography of the site.

The development is for the purpose of a boarding house and is not anticipated to result in the emission of pollutants that would unreasonably diminish the amenity of adjacent properties, the locality, or waterways.

The Assessing Officer has calculated that 53.5% (1,231sqm) of the site is landscaped, thereby providing compliance with the landscaped area required on site. Clause 63 of the WLEP 2000 provides that development is to enable the establishment of indigenous vegetation and habitat for native fauna. Clause 63A of the WLEP 2000 provides that development is to provide opportunities for the planting of substantial native trees. As such, not all planting is required to be native. The proposed development includes 59 canopy tree plantings, all of which are native. Of the remaining 20 species of smaller trees, shrubs, groundcovers and grasses, 16 are native. This poses a significant majority of native planting and is acceptable in accordance with Clauses 63 and 63A of the WLEP 2000.

Light spill is considered reasonable based on the design of the proposal, its residential use and physical separation from adjoining residential premises.

The above matters do not warrant the refusal of the application.

The subject site is not classified as affected by flood hazard. A flood hazard report was prepared to assess the impact of the proposed development on the site in consideration of large storm events and overland flow. As with the original application, the flood risk assessment report submitted with the review application contains insufficient information to allow a proper and thorough assessment to determine if the development would be likely to have adverse flood risk impacts.

The above matter warrants the refusal of the application.

Social Impacts / Concerns

Concern was raised that residents of a boarding house are 'transient' and will be responsible for decreased property value, increased insurance premiums, increased crime, decreased safety, unreasonable noise, bad behaviour, and unclean living. Concern was also raised that the location of these residents is inappropriate near a school / near children. Concern was raised that there are not enough social activities for the residents to remain occupied.

Comment:

Derogatory and unfounded remarks need not be considered in assessment of this application. Residents of a boarding house are typically less established than residents who have lived in the locality for many years. However, this does not automatically result in an adverse impact on the locality.

A premises accommodating 48 persons may produce more noise than a single dwelling house. However, a boarding house is subject to stricter requirements in relation to resident behaviour (including noise) than a standard dwelling house. The application is supported by a Plan of Management that details how the ongoing use of the boarding house will be managed. The original application was supported by an Acoustic Report that details that the development in its original form (being of greater impact than this amended form) is unlikely to have any adverse or unreasonable acoustic impacts upon adjoining properties. This matter has been reviewed by Council's Environmental Health Officer who raises no objections to the development, subject to conditions as recommended.

The area is suitable in terms of social activities for the existing residents of the locality. As such, the area is considered suitable for potential boarding house residents.

These matters do not warrant the refusal of the application.

Stormwater and Groundwater Management

Concern was raised that the proposal is inadequate in relation to stormwater management.

Comment:

The proposed development has been reviewed by Council's Development Engineer and is recommended for refusal in relation to inadequate stormwater management measures, and inadequate information relating to stormwater.

This matter warrants the refusal of the application.

Housing Density

Concern was raised that the proposal results in a significant variation to the housing density development standard of the WLEP 2000, regardless of whether the site is considered one domicile or 24 domicile. Objectors also raised that the proposal should be limited to 12 boarding rooms, and the site should be considered to be zoned E3 Environmental Management or R5 Large Lot Residential land, following consultation with the Department of Planning and Council.

Comment:

The density of this application (including calculation of the variation of the housing density development standard) is addressed in the section of this report relating to the Proposed Development in Detail.

A recent amendment was made to the SEPP ARH to limit the number of rooms in a boarding house development to 12 applies to land zoned R2 Low Density Residential. The SEPP ARH does not apply, as the subject site is not zoned under one of the relevant zones listed at Clause 26 *Land to which Division applies* of the SEPP ARH. As such, the limit on the number of rooms does not apply in this circumstance.

Recent consultation between the Department of Planning and Environment, Council and landowners in the C8 Belrose North Locality has not led to any amendments to zoning. As such, the land cannot be considered to be zoned E3 Environmental Management or R5 Large Lot Residential land.

These matters do not warrant the refusal of the application.

Noise

Objectors raised concern that the subject site is inappropriate for residential use, given the proximity to a heliport.

Comment:

The heliport in question relates to a residential property only, and is not considered to be of such frequent use to be a noise nuisance.

This matter does not warrant the refusal of the application.

Bushfire Risk

Concern was raised that the subject site is bushfire prone land and/or surrounded by bushfire prone land, the evacuation of residents in the event of a bushfire, and access to the site and surrounding sites in the event of a bushfire.

Comment:

The subject site is not identified as bushfire prone land, while surrounding land is affected by this classification. As such, no further assessment is required or warranted on these matters.

This matter does not warrant the refusal of the application.

Accessibility

Concern was raised that the clothesline, private open space, fire exit, and path of egress are not accessible for people with a disability. Concern was also raised that the proposal includes BCA non-compliances. It was also raised that there is no accessible route from the site to a bus stop. One submission queried what the adaptable rooms are used for.

Comment:

The application was referred to Council's Building Assessment team, who raised no objections to the proposal, subject to conditions of consent. The proposed development is recommended for refusal, in relation to stormwater and flood risk management. Should the application be approved, appropriate conditions can be included in the consent, requiring compliance with the BCA, all relevant Australian Standards and other legislation, including the *Disability Discrimination Act 1992*.

The proposed development provides disabled access throughout the entire building. While disabled access may not be provided to all outdoor areas, the proposal includes disabled access to outdoor private open space in the form of the rear deck, and drying facilities in the laundry. The building is supported by a ramp of a compliant grade, to allow access to and from the road reserve. There is no legislative requirement for a boarding house development to provide accessible paths between the subject site and bus stops.

An adaptable room is of dimensions suitable for general use, as well as conversion for use as an accessible room.

These matters do not warrant the refusal of the application.

Future Use of Building / Land

Concern was raised that the building could be converted to a residential flat building in future. Concern was also raised in related to the future use of the nearby TAFE site.

Comment:

The proposed development relates to a boarding house, not a residential flat building. Should this application be approved, any change of use that is not considered exempt or complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* will require separate future application to Council.

This application does not relate to land other than Lot 2597 DP 752038. Consideration of the future use of other land is not a relevant planning matter for consideration under the *Environmental Planning and Assessment Act 1979*.

These matters do not warrant the refusal of the application.

Support for Application

Six submissions were received in support of this application.

Comment:

Noted.

REFERRALS

Referral Body Internal	Comments	Consent Recommended
Building Assessment – Fire and Disability upgrades	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p><i>Proposal review limited to final certification issues only in the event the proposal is approved. No project /proposal assessment conducted. Accordingly, this assessment is restricted to simply provision of a condition for Final Certification of Essential Services and an ongoing Fire Safety Services Maintenance condition.</i></p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>As above.</p>	Yes
Environmental Health (Industrial)	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>No objections to the proposed development, subject to conditions as recommended.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>As above.</p>	Yes
Landscape Officer	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p><u>Original Comment:</u></p> <p><i>Concern is raised regarding side setback landscape treatments which may be able to be addressed via design amendments.</i></p> <p><i>The proposed driveway along the north eastern side of the site occupies a significant proportion of the side setback. It is noted that side setbacks proposed are less than those required under the planning controls.</i></p> <p><i>The resultant area for landscape planting along the north eastern side is relatively narrow adjacent to the building. Integration into the locality and improved alignment with the planning controls would be better achieved if the driveway could be narrowed to single lane (with passing bays), or, preferably, removed from the north eastern side and access directly under the building from Wyatt Ave, providing more</i></p>	Yes

	<p><i>opportunity for enhancing the landscape in the side and rear setbacks.</i></p> <p><i>It is unclear why the driveway needs to continue onto the adjoining property through the subject Lot when existing access is available to the adjoining property off Wyatt Avenue. Reducing or removing the driveway along the length of the north eastern boundary would provide for better integration of building bulk, maintaining and enhancing the character of the Locality and improved pedestrian access and use of outdoor spaces.</i></p> <p><i>At this stage the proposal is not supported with regard to landscape issues, however if amended plans or additional information regarding the comments above are provided, additional assessment can be undertaken.</i></p> <p><i>It is noted that several trees along the Wyatt Ave frontage of the site indicated to be retained on the Architectural Plans will be required to be removed (as indicated on the Landscape Plans) to accommodate the works proposed. It is also noted that the Landscape Plans do not provide for local native species as required under the Locality Statement - Bushland setting</i></p> <p><i>Bushland setting</i></p> <p><i>A minimum of 50 per cent of the site area is to be kept as natural bushland or landscaped with local species.</i></p> <p><i>These issues can, however, be addressed via conditions.</i></p> <p><u>Additional information and amended plans. Comment 21/09/2018:</u></p> <p><i>Following further discussion and review of amended plans, it is apparent that retention of the trees along the north eastern side of the site is not feasible due to vehicle passing bays for RFS access as well as stormwater infrastructure upgrade works by Council.</i></p> <p><i>In view of the above, the issues raised previously regarding relocation of the drive to enable tree retention are no longer pressed.</i></p> <p><i>In consideration of the information provided, the DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.</i></p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>No objections to the proposed development, subject to conditions as recommended.</p>	
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<p>NECC (Development Engineering)</p>	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>Development Engineers have reviewed the proposal and raise no objections subject to conditions.</p> <p>Appropriate conditions are also issue to comply with Council's Traffic Engineers, Roads Assets, Stormwater Assets Teams with respect to driveway width, kerb and gutter alignment, management of public road stormwater, etc.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p><i>Reference is made to Development Engineering Referral Response dated 03/08/18 and the Local Planning Panel Meeting resolution for Item 3.1 on 26/10/18 for DA2018/0401, and the additional information submitted by the Applicant under REV2018/0035.</i></p> <p><i>In regard to DA2018/0401:</i></p> <p><i>Insufficient information has been provided to satisfactorily address of the Deferred Commencement Conditions recommended in the Engineering Referral Response. The following matters are raised:</i></p> <ul style="list-style-type: none"> <i>• The Flood Risk Management Report does not consider the 5% or 20% AEP storm events in analysis.</i> <i>• Insufficient information is provided to demonstrate how stormwater will be conveyed along Wyatt Avenue and through the subject site. The proposed works within Wyatt Avenue are not satisfactory.</i> <p><i>Council's Planning section should consider whether the matters raised by the Local Planning Panel have been addressed by the Applicant.</i></p> <p><i>Further Assessment:</i></p> <p><i>In addition to the above, the following matters have been raised in assessment of the current submission. Please note that some of these items were previously addressed in the form of recommended engineering conditions:</i></p> <p><i>Council Road/Stormwater Infrastructure:</i></p> <ul style="list-style-type: none"> <i>• Full hydrological and hydraulic details have not been provided for the pipeline/headwall, in accordance with Council's Building Over and Adjacent to Constructed Council Drainage Systems and Easements Technical Specification Section 3 and 4.</i> <i>• A longsection of the proposed drainage with Wyatt Avenue has not been provided.</i> <i>• Cross-sectional information of the drainage channel along the eastern boundary has not been provided.</i> 	<p>Yes</p>
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	<ul style="list-style-type: none"> • The proposed kerb breaks and rip-rap within the road reserve are not supported. • Detail has not been provided for the provision of 1.5m wide footpath for the full property frontage. Adjustments to the proposed drainage arrangement will be required to facilitate the footpath. • Discharge from the headwall within Wyatt Avenue should be extended to cater for the 1.5m wide footpath and directed towards the existing easement. • Detail has not been provided for the provision of a 5.5m wide vehicle crossing for the development. <p>Stormwater:</p> <ul style="list-style-type: none"> • Discharge from the OSD tank to the existing easement is not supported. Stormwater shall be directed to a suitably designed stormwater dispersion system. Total stormwater discharge including bypass and controlled flows shall be limited to the 1 in 5 year ARI "state of nature" storm event (0% impervious), for all storm events up to and including the 100-year ARI. <p>Overland Flows:</p> <ul style="list-style-type: none"> • The Flood Report does not provide an analysis for the 5-year and 20-year storm event. • The Report appears to incorrectly identify the existing geometry plan, which shows an impact on the model results. • The DRAINS model has not been provided for assessment. The DRAINS summary in Figure 10 provides insufficient information for a detailed assessment to be undertaken. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • Deferred Commencement Conditions recommended in the Engineering Referral Response dated 03/08/18. • Pedestrian access along Wyatt Avenue for the development in accordance with clause C2 Traffic, Access and Safety. • Stormwater drainage for the development in accordance with clause C4 Stormwater. • Council's stormwater pipeline clearance for the development in accordance with clause C6 Building Over or Adjacent to Constructed Council Drainage Easements. <p>Referral Body Recommendation</p>	
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	<i>Recommended for refusal</i>	
NECC (Riparian Lands and Creeks)	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>No objection to the proposal as the property is not identified as being subject to detailed Waterways and Riparian Lands Assessment.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>Given the above, no referral was sent to the Riparian Lands and Creeks team for the review application.</p>	Yes
NECC (Water Management)	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>No objection to the proposal, subject to conditions.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>Given the above, no referral was sent to the Water Management team for the review application.</p>	Yes
Urban Design	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>No objections to the proposed development and no conditions recommended.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p><i>The Revised Development can be supported provided the following design issues are addressed in the final design;</i></p> <p><i>1. Fenestration</i></p> <p><i>It is difficult to see how cross ventilation will be achieved particularly to the apartments on the western wing of the building. The windows in the monolithic walls show one small operable window central to the bank/suite of windows in each blade wall. Whilst it is understood this is the western elevation and as such will have considerable heat gain in the summer and be governed by the requirements under Section J of the NCC, design should address larger and/or additional windows with operability to achieve both increased cross ventilation and increased solar gain to address internal amenity.</i></p> <p><i>2. Balconies/Private Open Space</i></p> <p><i>The balconies provided to the western aligned apartments show a door opening onto a what looks like a balustrade balcony. These spaces provided little to no room for occupation or sufficient space to manoeuvre around. Suggest these are either deleted or increased in size to accommodate positioning of seating, small table etc.</i></p> <p><i>3. Entrance Ramp</i></p>	Yes

	<p><i>Whilst the revised design has provided some articulation to the ramp design needs to ensure that the entrance landing dimension is compliant with the requirements of AS1428.1. No dimensions have been provided on the drawings.</i></p> <p>4. Western Blade Walls</p> <p><i>Whilst the revised drawings demonstrate a reduction on the monolithic plane of the western blade walls with a podium materiality change, the reference to material in the materials palette does show a window suite with no window reveals. In order to address the initial comments to reduce the monolithic nature of the wall the design detail should consider the fine grain detail of window and reveal articulation to assist to create some articulation to these walls.</i></p> <p><u>Assessing Officer's Response:</u></p> <ol style="list-style-type: none"> 1. The matter of ventilation for the western boarding rooms is addressed with the inclusion of Juliet-style balconies in the north-western corners of the rooms, which can be opened to provide access to air flow. Being north-west-facing, these Juliet balconies will also assist in providing solar access to the rooms, while retaining adequate privacy for the subject site and adjacent sites. 2. As above, the western boarding rooms include Juliet-style balconies in the north-western corners of the rooms to provide access to air flow. Their inclusion is not for individual recreation space, and they are suitable as proposed. 3. Should the proposal be approved, this matter can be dealt with via conditions of consent. 4. The western walls are designed with lesser window openings in order to provide a suitable privacy response to the property to the west. 	
Traffic Engineer	<p>COMMENTS ON ORIGINAL APPLICATION: (31 May 2018)</p> <p><i>The proposal is for construction of a boarding house containing 27 rooms.</i></p> <p><i>The car parking and bicycle parking provision complies with the SEPP requirements, but there are 4 motorbike spaces provided within the car park while the provision of 6 motorbike spaces designed in accordance with Australian Standards AS2890.1:2004 is required.</i></p> <p><i>The passing bay proposed next to the access driveway shall be extended to kerb providing a 5.5m wide access driveway and 5.5m wide passing bay for the first 6m of the driveway from the property boundary.</i></p>	Yes

	<p><i>Footpath and kerb and guttering shall be constructed at cost of the applicant from its boundary with No.16 Wyatt Avenue continuing to the existing footpath and kerb guttering outside No.12 Wyatt Avenue. The footpath and kerb and guttering shall be consistent with the existing footpath and kerb and guttering and is to meet the Council's development engineer's requirements.</i></p> <p><i>The proposed passing bay on the northern side of the site is to be improved by extending the passing bay and provision of a convex mirror improving the inter-visibility between vehicles exiting the car park and the vehicles turning onto the ramp leading to the car park.</i></p> <p><i>In view of above, no objection is raised to the proposal subject to conditions.</i></p> <p>COMMENTS ON REVIEW APPLICATION (7 January 2019): <i>The application seeks review of the original application DA2018/0401 which was previously refused.</i></p> <p><i>The application has amended the submission based on the comments of refusal being:</i></p> <ul style="list-style-type: none"> • <i>Reduced bulk and scale of the development with reduction from 27 to 24 rooms</i> • <i>Associated landscaping</i> • <i>Increase in parking provisions from 10 to 12 spaces</i> <p><i>Traffic:</i> <i>Based on 24 units, the anticipated generation of the site would be deemed as medium density. Therefore it can be expected that the site will produce up to 12 vehicles in the peak period. This is deemed negligible on the local road network.</i></p> <p><i>Parking:</i> <i>The development proposes 12 parking spaces. Based on SEPP requirements, the following breakdown is necessary:</i></p> <ul style="list-style-type: none"> • <i>0.5 spaces per room - $0.5 \times 24 = 12$ spaces</i> • <i>1 space for Manager = 1</i> • <i>1 space per 5 dwellings (visitors) - $0.2 \times 24 = 4.8 \sim 5$ spaces</i> <p><i>Therefore the total number of spaces required would be 18. This equates to a 6 space shortfall. These spaces must be accommodated onsite. Council may consider a discounted rate provided adequate assessment of the local amenity is undertaken.</i></p> <p><i>Car Park Layout:</i></p>	
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	<p><i>The car park is generally in compliance with AS2890.1:2004, however based on the additional parking provisions required, the layout will need to be altered to accommodate the shortfall.</i></p> <p>AMENDED COMMENTS ON REVIEW APPLICATION (14 January 2019):</p> <p><i>I have based my comments on the following extract from the WLEP2000:</i></p> <p><u>Housing for older people or people with a disability:</u> <i>Note that clause 29 imposes the following requirements as to parking:</i></p> <p><u>Hostel or residential care facility:</u> 1 space per 10 beds plus 1 space per 2 employees on duty at any one time plus 1 ambulance space AND 0.5 spaces per bedroom where the application is made by a person other than the Department of Housing or a local government or community housing provider, or 1 space per 5 dwellings where the application is made by, or is made by a person jointly with, the Department of Housing or a local government or community housing provider</p> <p><u>Visitor parking:</u> In the case of development that comprises less than 8 dwellings and is not situated on a clearway, no visitor parking is required In the case of development that comprises 8 or more dwellings or is situated on a clearway, visitor parking is required</p> <p><i>I have provided a 'strikethrough' on the items which are not applicable to the development.</i></p> <p><u>Assessing Officer's Response:</u></p> <p>Clause 29 of the WLEP 2000 referred to above provides the grounds on which housing for older people or people with a disability cannot be refused. This application relates to a boarding house, which is not considered housing for older people or people with a disability. As such, Clause 29 of the WLEP 2000 is applicable in this case. Schedule 17 of the WLEP 2000 provides car parking provision requirements for developments under the WLEP 2000. The Schedule does not provide a parking requirement for boarding houses. In this case, the most appropriate parking rate is under Clause 29 of the SEPP ARH.</p>	
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	<p>(Note: This report establishes the relevance of considering the SEPP ARH notwithstanding that it does not strictly apply to this development.)</p> <p>Clause 29 of the SEPP ARH states that a boarding house development not carried out by or on behalf of a social housing provider (as in this case) cannot be refused on the basis of parking, if at least 0.5 parking spaces are provided for each boarding room, and if not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site (manager). No visitor parking is required.</p> <p>The proposed development is for 24 boarding rooms, including on manager's room (noted as a caretaker's unit on plans). This requires at least 12 parking spaces, including no more than one for the manager. The proposal includes 12 parking spaces, including one for the manager. This is compliant with the requirement of the SEPP ARH and does not warrant refusal of the application.</p>	
Waste Officer	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>No objections to the development.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>No response was received from the Waste Officer regarding the review application at the time of writing this report. However, the amended proposal reduces density while retaining the same number of bins as the original proposal. As such, it can be reasonably assumed that no objections are raised to the amended development from a waste perspective.</p>	Yes

Referral Body External	Comments	Consent Recommended
Aboriginal Heritage Office	<p>COMMENTS ON ORIGINAL APPLICATION: (6 April 2018)</p> <p><i>Reference is made to the proposed development at the above area and Aboriginal heritage.</i></p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW</i></p>	Yes – subject to conditions

	<p><i>Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</i></p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>Given the above, no referral was sent to AHO for the review application.</p>	
Ausgrid	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>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.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>The following comments were received from Ausgrid in relation to the review application:</p> <p><i>Let you know that there transmission underground cables and overhead power line in front of the development work site on the road. Any excavation job close the transmission cables, you may need stand by person from the Ausgrid.</i></p> <p><u>Assessing Officer's Comment:</u></p> <p>Suitable conditions can be applied, if the application is to be approved.</p>	Yes
Sydney Water	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>(24 April 2018)</p> <p><i>Due to the proximity of the proposed development to Sydney Water assets, we recommend that Council imposing the following conditions of consent:</i></p> <p><i>Building Plan Approval</i></p> <p><i>The approved plans must be submitted to the Sydney Water <u>Tap in™</u> online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.</i></p> <p><i>The Sydney Water <u>Tap in™</u> online self-service replaces our Quick Check Agents as of 30 November 2015.</i></p> <p><i>The <u>Tap in™</u> service provides 24/7 access to a range of services, including:</i></p> <ul style="list-style-type: none"> <i>• building plan approvals</i> <i>• connection and disconnection approvals</i> <i>• diagrams</i> <i>• trade waste approvals</i> 	Yes – subject to conditions

	<ul style="list-style-type: none"> • pressure information • water meter installations • pressure boosting and pump approvals • changes to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's <i>Tap in</i>TM online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>Section 73 Certificate</p> <p>A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.</p> <p>It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.</p> <p>Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>Given the above, no referral was sent to Sydney Water for the review application.</p>	
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ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.15 Matters for Consideration	
Section 4.15 (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 4.15 (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	Yes
Section 4.15 (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 4.15 (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	Yes
Section 4.15 (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes

Section 4.15 (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 4.15 (1) (c) – Is the site suitable for the development?	Yes
Section 4.15 (1) (d) – Have you considered any submissions made in accordance with the EP&A Act or EP&A Regs?	Yes
Section 4.15 (1) (e) – Is the proposal in the public interest?	Yes

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATIONS 2000

Regulation Clause	Applicable	Conditioned
Clause 92 (Demolition of Structures)	Yes	Yes
Clause 93 & 94 (Fire Safety)	Yes	Yes
Clause 98 (BCA)	Yes	Yes

ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) is ordinarily the prevailing environmental planning instrument in the assessment of boarding house developments. However, this is not the case for this particular application. Clause 26 of the SEPP details the zones to which the boarding house policy applies, and these zones are limited to:

- (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.

The subject site is not within a 'zone'. Rather, it is in the C8 Belrose North Locality pursuant to WLEP 2000, which does not conform to the 'standard instrument'. It must then be determined if this locality can be considered as an equivalent land use zone pursuant to Clause 5 of the SEPP, and pursuant to Clause 1.6 of the SEPP (Exempt and Complying Development Codes) 2008.

Clause 1.6 (1A) reads:

Land identified as "Deferred matter" on the Land Application Map within the meaning of Warringah Local Environmental Plan 2011 is, for the purposes of this Policy, taken to be in Zone E3 Environmental Management.

Therefore, it can be considered that the C8 Belrose North Locality is the equivalent zoning of E3 Environmental Management of a standard instrument. Clause 26 of SEPP ARH does not stipulate that the boarding house policy applies to Zone E3 Environmental Management and therefore, the SEPP ARH does not apply to the development for the purpose of a boarding house upon this land. Notwithstanding this, the WLEP 2000 lacks controls for the assessment of boarding house developments, and it is therefore warranted to consider the application against the relevant provisions of the SEPP ARH. However, this assessment against the SEPP ARH holds no determining weight to the recommendation of this application.

An assessment of the application against Clause 30 (1) – Standards for boarding houses – of the SEPP ARH is as follows:

(a) If a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.

The boarding house includes 24 rooms. The rooms are supported by two indoor communal living rooms and one outdoor communal living area, and therefore complies with this requirement.

(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 25m².

The architectural plans detail the total floor area of each whole boarding room, including kitchen and bathroom facilities, with rooms having an area of between 22sqm and 27sqm. When bathroom and kitchenette facilities are excluded from the floor area of each room, the proposed development complies with this requirement.

(c) No boarding room will be occupied by more than 2 adult lodgers.

No boarding room proposed has the capacity to accommodate more than 2 adult lodgers. This is supported by the accompanying Plan of Management. Accordingly, the development complies with this requirement.

(d) Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodged.

Each boarding room has a private bathroom and kitchenette, and communal kitchen facilities are provided, thereby satisfying this requirement.

(e) If the boarding house has a capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.

The development has the capacity to accommodate 48 lodgers. One boarding room has been dedicated to be occupied by a caretaker. Accordingly, the development complies with this requirement.

(f) If the boarding house is on land zoned primary 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 subject site is not zoned primarily for commercial purposes. This control does not apply.

(g) At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

According to the above, five bicycle and five motorcycle spaces are required (based on 24 rooms). The development includes 18 bicycle spaces and eight motorcycle spaces. Accordingly, the development complies with this requirement.

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

The development application was not lodged with a BASIX Certificate. During the assessment of the original application, Caselaw from the Land & Environment Court of NSW established that individual rooms in a boarding house can be classified as 'dwellings' in circumstances where rooms can be reasonably described as self-contained and capable of being occupied or used as a separate domicile. Such is the case for this application, where each boarding room has kitchen, bathroom and living facilities.

Accordingly, following a request from Council, the Applicant supplied a BASIX Certificate for the original development. No updated BASIX Certificate was provided for the amended design. A condition of consent can be applied, requiring submission and endorsement of an updated BASIX Certificate relevant to the amended design.

(Note: See *SHMH Properties Australia Pty Ltd v City of Sydney Council* [2008] NSWLEC 66)

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) 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. Comments from Ausgrid are detailed in the section of this report relating to Referrals.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant 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.

Warringah Local Environmental Plan 2000

Locality: C8 Belrose North

Development *Boarding house:*

Definition:

(a) means any premises that:

(i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and

(ii) are used and occupied by at least 4 long term unrelated residents, and

(iii) include a communal living space used for eating and recreation, and

(iv) are not licensed to sell liquor, and

(b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises.

Category of Development: Category 2

Desired Future Character Statement (numbering added):

- (1) *The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.*
- (2) *The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*
- (3) *Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.*
- (4) *A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.*
- (5) *Development in the locality will not create siltation or pollution of Middle Harbour.*

Is the development consistent with the Locality's Desired Future Character Statement? Yes

Category 2 Assessment Against the Desired Future Character Statement

Requirement 1:

The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

Comment:

In consideration of whether the development will change the character of the C8 Belrose North locality, the existing character of the area must be first established. In the circumstance of this particular application, character is established via two separate assessments: land use and visual appearance.

Land Use

A detailed analysis of the pattern of land use in the C8 locality has been carried out to establish if the use proposed under this application is a use that already exists within the locality, and then to establish whether the use is compatible with other land uses. The pattern of land use in C8 Belrose North locality exists as follows:

- 13 x dwelling houses (including one dual occupancy)
- 1 x 31 room boarding house
- 1 x riding school
- 1 x Optus satellite communication facility
- 1 x sandstone quarry
- 3 x plant nurseries
- 1 x plant nursery / landscape wholesaler / restaurant
- 1 x electricity substation
- 5 x schools (over various parcels of land, both developed and undeveloped)
- 1 x child care centre (plus one approved, but unbuilt childcare centre)

From this review, it is evident that the C8 Belrose North locality has a wide array of land uses. Additionally, it should be noted that more than 50% of the land within the C8 Belrose North locality is presently undeveloped bushland owned by the Metropolitan Local Aboriginal Land Council.

It can be concluded from the above that residential land use exists as the *prevailing* typology of land use, but that this land use is arguably not the *dominant* land use of the C8 Belrose North locality, given the actual physical scale of the residential development in consideration of other land uses in the locality. Accordingly, it can be concluded that the proposed use of the land for the purpose of a boarding house is complementary to the prevailing residential land use, and is not incompatible with or inconsistent with other developments within the locality. It can also be concluded that by virtue of this compatibility, the development will be able to co-exist in harmony with the rest of the C8 Belrose North locality, and the character of the locality will remain 'unchanged' by the development.

Visual Appearance

In assessment of the physical development (its visual appearance) commensurate to other buildings, it should be noted the desired future character control requires character compatibility over the whole of the locality itself, and not on a street-by-street basis.

Whilst this Assessment Report goes into some detail regarding the physical attributes of the proposed building and how it compares with its surrounds, it can be established from a visual inspection of other buildings in the locality that the proposal is of a physical bulk and scale that is consistent with the established character of buildings in the locality. Therefore, it can be concluded that the character of the building proposed (regardless of its use) is of a bulk, scale and architectural typology that will not change the character of the area.

Accordingly, it is found that the development as proposed will not change the present character of the Belrose North Locality.

Requirement 2:

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Comment:

The landscape of the development site is generally characterised by lawn that falls from the road to the rear boundary of the site. Many trees are present on the land, with the vast majority existing parallel to the eastern boundary. Several other trees exist along the front and rear boundaries, and few trees are free-standing within the lawn area.

A review of the earliest available aerial imagery of the site (1943), established that the properties on the northern side of Wyatt Avenue had little canopy coverage and appear to generally accommodate ground-cover species and shrubbery. As such, it can be assumed that the pattern of trees planted directly along the property boundary were introduced upon the release of the subdivision pattern of the area. Notwithstanding this history, for the purpose of this assessment, all trees and topography will be considered as a part of the natural landscape.

The proposal seeks to remove two thirds of the trees on the site, and seeks consent for substantial excavation works to accommodate part one, part two levels of the building. Evidently, the natural landform will be greatly modified comparative to its existing state. However, it is also apparent that modification to the landform would occur if a different type of development were to be proposed upon the site, such as a single dwelling house. In this regard, impact to the natural environment is inevitable if the site is to be granted the ability to accommodate any form of development (that the *Environmental Planning and Assessment Act 1979* enables). Therefore, the consideration must be formed on the basis of enhancement.

The development application is accompanied by a comprehensive landscape plan by Paul Scrivener, Landscape Architect. The planting schedule details that an additional 59 canopy trees (and shrubbery) will be provided on the site to replace the vegetation proposed to be removed. This will significantly contribute to the site's compatibility with the bushland to the north. This replacement of tree stock will also provide growth opportunities for the new trees to establish, as some of the existing older trees reach the end of their useful life. On this basis, the impact on the vegetation on the site is found to be inevitable and suitably mitigated by replacement stock.

With regard to the impact on natural landform consequent of the proposed excavation, reference is made to recent Caselaw, *Boston Blyth Fleming v Hornsby Shire Council [2018] NSWLCE 1270*, which relates to the construction of a large seniors housing development on rural land and has circumstantial similarities to the subject application. At 26 Commissioner Walsh notes (extract, names removed):

*I note Mr ****s point that considerable excavation is required and that the development involves substantial modification to the landform. For me, this is an appropriate response to balance the achievement of local area compatibility while delivering a substantial project which, as he agrees, is in need.*

... This principle is concerned with preserving topography which assists in reducing the visual dominance of a building. In my view, the circumstances here

are different. The proposed excavation is concerned with reducing the visual dominance of a building.

With acknowledgement of the above citing, the purpose of the excavation sought as a part of this subject application is to accommodate basement car parking and to reduce the visual dominance of a building as it progressively recedes in height as the topography slopes away. Therefore, it is considered that if the site is to accommodate a development of this scale, the most suitable design response is to manipulate the topography of the land where necessary to reduce perceivable bulk and scale. Accordingly, the development as proposed is found to enhance the landscape environment.

Requirement 3:

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

Comment:

Development on this site is required to conform to low intensity, low impact use as described in the Land & Environment Court of NSW judgement *Vigor Master Pty v Warringah Shire Council* [2008] NSWLEC 1128 as follows:

"Intensity - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore "low intensity" would constitute a development which has a low level of activities associated with it".

"Impact - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality".

An assessment of the application in accordance with the above citing is required to ascertain whether the development sought can reasonably conform as a low intensity, low impact use.

Detached Style Housing

The proposed boarding house serves the purpose of providing additional housing on undeveloped land. The proposal includes several 'pavilion'-like forms, in order to break up building bulk. Additionally, the proposal reads from the street as a two-storey dwelling, being below the maximum overall building height, and including suitable setbacks. As such, the proposal has the appearance from the street as being detached housing, and meets the intention of the first portion of Requirement 3.

Low Intensity Assessment

The proposal is for a boarding house that provides for additional residential accommodation in the locality. The use of the land for residential purposes has already been established as the prevailing land use within the C8 Belrose North locality, and the form of residential accommodation as a boarding house is an innominate Category Two development. Therefore, the intensity of the land use conforms with the prevailing pattern of development in the locality, and the level of activities associated with it will

be limited (i.e. eating, sleeping, vehicle movements etc.) comparative to other forms of permissible land uses.

The assessment of 'low intensity' is not required under the desired future character to consider the density of the development.

Low Impact Assessment

The above Court citing lists a range of potential amenity impacts that could be used in the consideration of whether a development is low impact, including (but not limited to) visual impact, noise, traffic, vegetation, streetscape, privacy, solar access etc. As such, it is necessary to establish whether the development will have an impact, and then compare this impact with the likely impacts of other land uses in the C8 Belrose North locality to ensure that the development will be unlikely to significantly change the amenity of the locality as a whole.

An assessment on the potential impacts consequent of the development follows:

1. Visual Impact / Streetscape

The assessment of visual impact and streetscape impact relates to how the building will present to the street.

The proposed development is negligibly non-compliant with the front boundary setback control and the maximum height of building control and is acceptable for the reasons detailed in this report, demonstrating suitable presentation to the street. The front setback area is proposed to be heavily landscaped with canopy trees, smaller trees, bushes and groundcover/grasses. By virtue of consistency with the relevant numerical controls and the merits of the landscaping, the development is of an acceptable visual impact.

Other forms of development within the locality are found to be of a greater visual impact due to a lesser front setback, car parking within the front setback, a wider façade addressing the street, and/or a lesser landscaped outcome. As such, in consideration of other existing developments in the locality, the proposed development sought is unlikely to change the amenity of the locality.

2. Noise

The assessment of noise relates to the likely acoustic impact of the development upon surrounding developments.

The proposed development is for residential accommodation in the form of a boarding house. If the proposal is approved, occupants of the boarding house will be subject to a comprehensive Plan of Management, which manages occupants' noise and behaviour. This is enforced by the boarding house manager. The density and type of the development is likely to result in the building accommodating persons of different professions who work at different hours throughout the day and night. Therefore, use of the common areas and kitchens can be assumed to be spread out at varying times. It can be assumed that noise will be adequately managed on the site for both the amenity of occupants of the development, and for neighbouring properties.

In comparison, detached dwelling houses are not subject to any Plan of Management or noise policy. Therefore, there is no management, restrict or limitation to the noise that they could cause, with the exception of Police response to a complaint. Additionally, it can be reasonably assumed that schools and child care centres

(examples of which are in the C8 Belrose North locality) would generate a higher level of noise than a boarding house.

Accordingly, the level of noise associated with the boarding house is of a low impact and will not change the amenity of the locality.

3. Traffic

For the purpose of this application, the most appropriate traffic assessment is derived from one of the primary issues raised in submissions, being traffic congestion on the local road network, particularly in consideration of the nearby school and sports fields.

While the SEPP ARH (which requires boarding houses to be located within an accessible area, i.e. within 400m of a bus stop) does not apply to this development, there is a general expectation that occupants of boarding house developments will heavily rely on and utilise public transport. As above, occupants of the proposed boarding house are likely to work in various professions with varying working hour requirements. As such, it can be assumed that occupants will be coming and going from the boarding house at varying hours of the day and night, rather than all leaving and arriving at the same time. Accordingly, the vehicle trips associated with the development are unlikely to detrimentally impact the local road network. This consideration is supported by a traffic and parking assessment submitted in support of the application, and by the review conducted by Council's Traffic Engineer.

The level of vehicle movements associated with the site is evidently lesser than that of other land uses within the C8 Belrose North locality. Much of the objection received for this boarding house application pertains to traffic congestion that is supposedly caused by the nearby school and Wyatt Reserve.

The development for the purpose of a boarding house is found to be of a low traffic impact.

4. Vegetation

The assessment on the impact the development will have upon the vegetation on the site has been addressed throughout this report. The removal of vegetation and the replacement planting are sufficient to warrant the works to be of a low impact.

5. Privacy

The assessment of the impact on privacy relates to the opportunities for direct overlooking that are caused by the development upon adjoining properties.

The properties that are likely to be most affected by the proposed development in relation to privacy are 12 Wyatt Avenue to the north-east, and 16 Wyatt Avenue to the south-west.

12 Wyatt Avenue is presently vacant of structures and is identical in dimension to the subject site. 16 Wyatt Avenue is developed with a two-storey detached dwelling and swimming pool. There is currently no boundary fence between the subject site and 12 Wyatt Avenue. Accordingly, due consideration is to be given to the level of overlooking the proposed boarding house causes to the current dwelling and pool at 16 Wyatt Avenue, and how the proposal may affect development of 12 Wyatt Avenue.

The subject development includes side setbacks that vary from around 6-10.7m to the south west (towards 16 Wyatt Avenue) and 8.5-15.8m to the north east (towards 12 Wyatt Avenue). The dwelling at 16 Wyatt Avenue is set approximately 2.4m away from

its boundary with 14 Wyatt Avenue. As such, a spatial separation of approximately 8.4-13.1m exists between these buildings.

To the south west, the boarding rooms are designed with angled windows and large blade walls that act to restrict direct overlooking into 16 Wyatt Avenue, whilst still allowing for access to sunlight and air for the proposed development. To the north east, the proposal sets windows and Juliet balconies a minimum of 8.5m from the boundary, providing meaningful separation between the proposed development and 12 Wyatt Avenue. Additionally, the side setback areas are planted with significant canopy trees, smaller trees, and bushes, which cannot be solely relied upon for privacy, but do assist with obstruction of overlooking.

The proposed outdoor communal deck is raised above ground, though includes a planter box around the perimeter, preventing users of the space from accessing the edge of the deck (where overlooking would be greatest). Further, this deck is located 9.2m from the side boundary, providing meaningful separation from the adjacent property. Finally, as above, the side (and rear) setback areas are planted with significant vegetation to assist in obstructing views.

The proposed development is appropriately designed in order to mitigate unreasonable overlooking, and the impact on privacy is low.

6. Solar Access

The assessment of the impact of solar access relates to the level of overshadowing that the proposed development causes upon surrounding properties.

Given the site orientation, the front, side and rear setbacks proposed and the location of structures on surrounding allotments, the development will not have a significant or unreasonable overshadowing impact upon the subject site or adjacent sites.

Therefore, the level of overshadowing is found to equate to a low impact on solar access.

Conclusion

Given the above, it can be reasonably deduced that the impact of the development is low and, in the context of the site and surrounding developments, is unlikely to change the level of amenity enjoyed by the locality.

Requirement 4:

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Comment:

The subject development site does not adjoin Forest Way and accordingly this requirement is not applicable to the subject development. The architectural plans do not detail any fencing and, therefore, no fencing is assessed or approved as a part of this application.

Requirement 5:

Development in the locality will not create siltation or pollution of Middle Harbour.

Comment:

If the proposal is deemed worthy of approval, adequate conditions can be imposed on to ensure that siltation and pollution does not enter Middle Harbour.

WLEP 2000 (Appendix C) Built Form Controls

Built Form Compliance Table C8 Belrose North Locality Statement					
Built Form Standard		Required	Proposed	Comment	Compliance
Building Height	Ridge	8.5m	Max. 8.5m	The development is beneath the maximum permissible Building Height, thereby satisfying this requirement.	Yes
	Ceiling	7.2m	Max. 8m	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Housing Density		1 dwelling per 20ha	24 dwellings on 0.1855 ha (0.2998ha including driveway)	The development seeks a housing density variation of 258,700% and requires the concurrence of the Minister for Planning.	No
Front Setback		20m	19.6m	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Side Setback (North East)		10m	8.5-15.8m	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Side Setback (South West)		10m	6-10.7m to building proper	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Rear Building Setback		10m	10m to building proper	The development provides a rear setback of 10m, thereby satisfying this requirement.	Yes
Rear Setback Area		Free other than fence	Driveway	The proposed development provides a driveway only within	Yes

	and driveway		the rear setback area, thereby satisfying this requirement.	
Bushland Setting	50% (1,149m ²)	53.5% (1,231m ²)	More than 50% of the site is landscaped with local species, thereby satisfying this requirement.	Yes

Non-Compliance with Built Form Controls

The proposed development does not comply with the following Built Form Controls:

- Height of Building (Ceiling Height)
- Housing Density
- Front Setback
- Rear and Side Setbacks (Side Setbacks)

Accordingly, assessment of the proposed non-compliances is as follows, based on the objectives within the Warringah Design Guidelines for Warringah Local Environmental Plan 2000.

Building Height (Ceiling Height)

Appendix C of the WLEP 2000 requires that buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling. The development attains a maximum ceiling height of up to 8 metres resultant of the raked ceiling design and therefore varies the control by up to 11.1% (800mm). The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

Ensure that development does not become visually dominant by virtue of its height and bulk.

Comment:

The proposed building is generally set well below the overall height limit of 8.5m, and generally steps down the slope of the site, helping to minimise the height and bulk. The proposal is designed in three pavilion-like forms, which provide suitable articulation on site to break up the visual impact of the development and provide visual relief. Additionally, the proposed colours and materials provide varied (yet complementary) finishes to further break up the visual bulk.

Preserve the amenity of surrounding land.

Comment:

As detailed in the section of this report relating to the WLEP 2000 General Principles of Development Control and Public Exhibition, the proposed development will retain adequate amenity for the subject site and adjacent sites. The proposed ceiling height of 8m does not result in a non-compliance with the maximum height of building set by Appendix C of the WLEP 2000 and does not result in any unreasonable impacts on overshadowing, privacy, or view loss.

Ensure that development responds to site topography and minimises excavation of the natural landform.

Comment:

The proposal involves significant earthworks to allow for basement car parking. However, as discussed in the section of this report relating to the Desired Future Character

Statement, this excavation allows the development to respond better to the topography by reducing the overall height and bulk of building visible above the ground surface. Externally, the resulting building steps down to form three pavilion-like segments, in response to the sloped topography of the site.

Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.

Comment:

The proposed development is generally well below the overall 8.5m height limit, and sufficient room remains for variation in roof design. The proposed roof form is raked, with a generally low skillion pitch, and is considered to fit with the overall architectural style of the building.

Housing Density

Appendix C of the WLEP 2000 provides the following built form standards for housing density as relevant to the application (number added):

i. The maximum housing density is 1 dwelling per 20 ha of site area, except:

ii. where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and

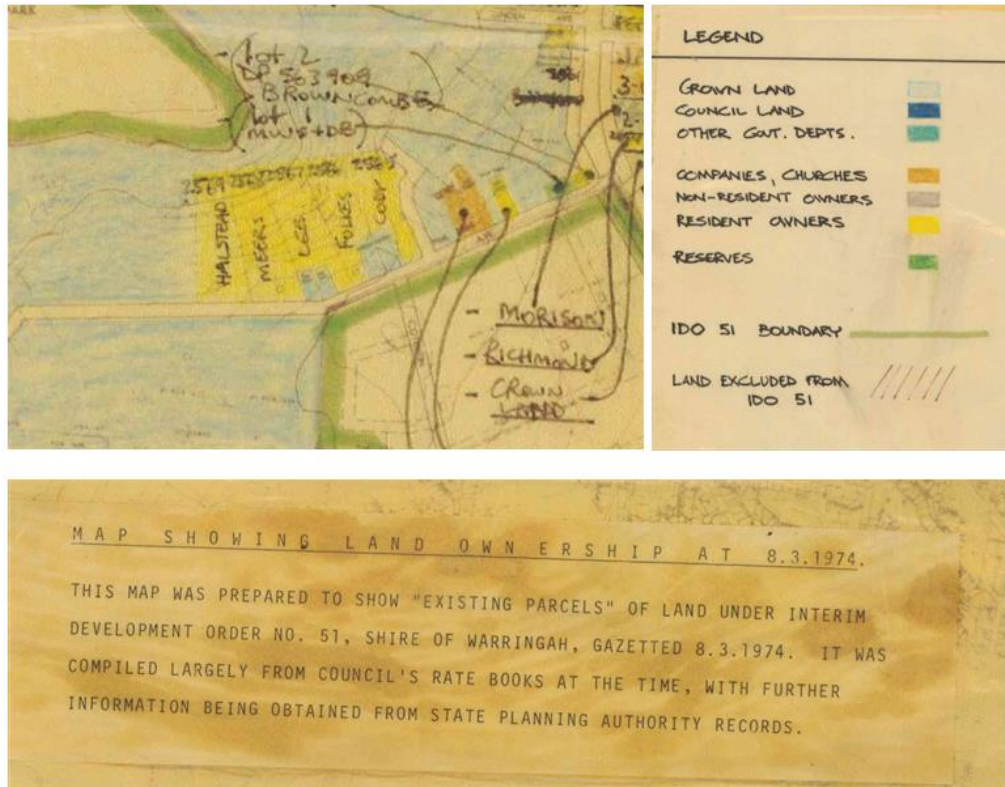
ii. However, consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.

iii. The matters which shall be taken into consideration in deciding whether concurrence should be granted are:

iv. (a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and

v. (b) the public benefit of maintaining the planning controls adopted by this plan.

The standard is prescriptive in that the housing density standard for this development has an exception provision as per (ii) above. This relates to the Site History section of this report, as the subject site and the adjoining Lot 2616 DP 752038 (known as 12 Wyatt Avenue) were held in the same ownership at the specified date, as per the below reproduced map:



The two sites shown to be in the same ownership at 8 March 1974 are very similar in shape and size, and have a total approximate area of 4,596sqm (or just under 0.46ha). Despite the two adjoining sites being in the same ownership at 8 March 1974, the combined area of the sites is less than 2ha, and the exception provisions of the control do not apply. As such, a housing density of 1 dwelling per 20ha applies. Assessing Officer's calculation of the variation to the housing density development standard is as follows:

24 domiciles per 0.2298ha
 $24 / 0.2298 \times 20 = 2,088.77$ (rounded to 2,089)
 Equates to a density of 2,089 domiciles across 20ha
 $2,089 - 1$ (being 1 allowable dwelling on 20ha) = 2,088
 $2,088 \times 100 = 208,800\%$

1 domicile per 0.2298ha
 $1 / 0.2298 \times 20 = 87.03$ (rounded to 87)
 Equates to a density of 87 domiciles across 20ha
 $87 - 1$ (being 1 allowable dwelling on 20ha) = 86
 $86 \times 100 = 8,600\%$

Submissions raise that the driveway (which is used to access 16 Wyatt Avenue to the north) should be excluded from the calculation of site area. Appendix C of the WLEP 2000 (in relation to C8 Belrose North locality) states:

In calculating housing density, the area of any access corridor (including any right-of-carriageway, access handle, accessway or other area that provides for vehicle access) is to be excluded, whether that access corridor is to be created or is in existence at the time of application for subdivision.

As such, housing density calculations are adjusted as follows:

The area for the proposed driveway is 443sqm.
2,298sqm - 443sqm = 1855

24 domiciles per 0.1855ha
 $24 / 0.1855 \times 20 = 2,587.6$ (rounded to 2,588)
 Equates to a density of 2,588 domiciles across 20ha
 $2,588 - 1$ (being 1 allowable dwelling on 20ha) = 2,587
 $2,587 \times 100 = 258,700\%$

1 domicile per 0.1855ha
 $1 / 0.1855 \times 20 = 107.8$ (rounded to 108)
 Equates to a density of 108 domiciles across 20ha
 $108 - 1$ (being 1 allowable dwelling on 20ha) = 107
 $107 \times 100 = 10,700\%$

It is established by recent Caselaw that each room in a boarding house can be defined as a 'domicile' and therefore, a dwelling (refer SHMH Properties Australia Pty Ltd v City of Sydney Council). For the purpose of the housing density assessment, the subject site is proposed to accommodate 24 domiciles. It is also established by Appendix C of the WLEP 2000 that the area for the driveway is to be excluded from the site area for the purpose of calculating the housing density. Therefore, the calculable variation to the housing density standards is 258,700%, being 24 dwellings on 0.1855ha (the area of the lot minus the area for the driveway).

It should be noted as per the above (in relation to the calculation of 1 domicile per 0.1855ha) that any form of residential development on the site, including a single dwelling house, would result in a variation to the housing density development standard. To require strict compliance with the housing density development standard would sterilise the site of any residential development. It is reasonable to assume Council would be supportive of a single dwelling on the site. As such, while it is acknowledged that the technical variation is 258,700%, it is reasonable to consider that the site is 23 times greater (or 230%) the density of a single dwelling house. Additionally, while the technical calculation of the variation to housing density appears astronomical, the proposed development is demonstrated to be of low intensity and low impact throughout this report. As such, a significant variation does not necessarily constitute an inappropriate development.

Given that the quantum of variation is greater than 10%, the concurrence of the 'Director' (Minister of Planning or their delegates) is required, should the application be found worthy of support by the NBLPP. The standard contains two matters for consideration for the Director in determining whether to grant concurrence or not, being:

- (a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the planning controls adopted by this plan.*

It is not for Council to determine whether or not concurrence should be granted. However, the WLEP 2000 lacks any objective assessment when considering the variation to the housing density standard other than the above. It is therefore warranted to address the two matters for consideration.

Whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning

There are no known environmental planning instruments that would consider the variation request to be detrimental to any matter of significant for State of regional planning. The development satisfies this requirement.

The public benefit of maintaining the planning controls adopted by this plan

The WLEP 2000 is 18 years old at the time of writing this report and, comparative to other similar environmental planning instruments, is outdated.

There are several matters that establish that there is no discernible public benefit in maintaining the housing density planning control adopted by this plan:

- Any form of residential development on this land would be contrary to the housing density standard. If the control were to be strictly enforced, the land would be undevelopable.
- The site is bound by land to the south that is zoned for R2 Low Density Residential development pursuant to the Warringah Local Environmental Plan 2011. Each of these R2 sites located some 20m away could accommodate a boarding house development of the same scale as the proposal.
- The development provides alternate housing choices and housing for essential workers and. The provision of additional housing in the Northern Beaches area is in the public interest and need not be justified in this report.
- The development complies with the Desired Future Character of the C8 Belrose North Locality.
- The development has potential to result unreasonable or adverse impact upon adjoining land, in relation to stormwater and flood risk, as detailed in this report. However, this is not directly related to the housing density variation, as these matters relate most closely to the footprint of the building, and a single dwelling on site could reasonably be of similar building footprint as the proposed boarding house.

Therefore, it is concluded that there is public benefit in the development itself, and that strictly maintaining the housing density development standard is contrary to the public benefit and restricts (and sterilises) the ability to development the site. As such, the variation sought to the housing density standard is supported in this particular circumstance.

If the NBLPP is of a mind to approve this application, concurrence must be sought by the Director for the variation to the housing density standard prior to consent being issued.

Rear and Side Building Setback (Side Setbacks)

Appendix C of the WLEP 2000 requires that development provide minimum side building setbacks of 10m. Side setback areas are to be landscaped and free of any structures,

car parking or site facilities other than driveways and fences. The proposal includes side setbacks to the building proper of 8.5-15.8m on the north-east side, and 6-10.7m on the south west side. The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

Preserve the amenity of the surrounding land.

Comment:

As detailed throughout this report, the proposal maintains a reasonable level of amenity for the subject site and adjacent sites. The development will not unreasonably overshadow neighbours, nor create any unreasonable privacy impacts or view loss. This has been discussed in detail in the Desired Future Character Statement and Public Exhibition sections of this report.

Provide separation between buildings.

Comment:

The proposed setbacks will maintain a significant and meaningful separation between the proposed building onsite and existing or future buildings on adjacent sites. The neighbouring building to the south-west will be a minimum of 9m from the proposed building, and there is currently no building adjacent to the north-east (although the proposed side setback on that side is larger to the north-eastern boundary). This provides adequate room for significant landscaping to contribute to amenity, and spatial separation between buildings.

Provide opportunities for landscaping.

Comment:

The proposed side setbacks provide opportunities for landscaping. The proposal includes a comprehensive landscaping plan that will result in a substantial number of trees being planted on site, with many of the new and retained trees being concentrated along the side boundaries within the side setbacks.

Create a sense of openness.

Comment:

The proposed building is well articulated along both side elevations, and provides varied side setbacks and architectural features to break up the built form and help to create a sense of openness. The side setbacks provided enable significant landscaping and separation between buildings. A strong sense of openness is provided.

WLEP 2000 General Principles of Development Control

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	The building is not anticipated to result in any unreasonable glare and reflection. Notwithstanding this, a condition can be recommended restricting the roof of the development to a medium to dark range colour.	Yes
CL39 Local retail centres	No	The site is not identified as being within a local retail centre.	N/A

CL40 Housing for Older People and People with Disabilities	No	The development is not for the purpose of Housing for Older People and People with Disabilities.	N/A
CL41 Brothels	No	The development is not for the purpose of a brothel.	N/A
CL42 Construction Sites	Yes	Conditions can reasonably be imposed on any consent to ensure that development does not unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment. Accordingly, this General Principle can be addressed by way of condition.	Yes
CL43 Noise	Yes	The development application is supported by an acoustic report that demonstrates that the development will not have any unreasonable acoustic impacts upon adjoining properties. The application and report have been reviewed by Council's Environmental Health Officer, who has raised no objections to the development, subject to conditions.	Yes
CL44 Pollutants	No	The development for the purpose of a boarding house is not anticipated to result in the emission of pollutants that would unreasonably diminish the amenity of adjacent properties, the locality, or waterways.	N/A
CL45 Hazardous Uses	No	Development for the purpose of a boarding house is not found to be a hazardous use.	N/A
CL46 Radiation Emission Levels	No	The development is for the purpose of a boarding house that will not cause excessive radiation emission levels.	N/A
CL47 Flood Affected Land	No	The site is not identified as being flood affected land.	N/A
CL48 Potentially Contaminated Land	Yes	The site has been vacant for an extended period of time and is considered unlikely that the land would be contaminated. Accordingly, the land is suitable for the proposed development.	Yes
CL49 Remediation of Contaminated Land	No	See response to Clause 38 above.	N/A

CL49a Acid Sulphate Soils	No	The site is not identified as being subject to Acid Sulphate Soils.	N/A
CL50 Safety & Security	Yes	The development is found to enhance the safety and security of the area compared to the site's vacant present state. The building will allow for casual surveillance.	Yes
CL51 Front Fences and Walls	No	The architectural plans do not detail any proposed front fence or wall.	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	The subject site is in proximity of a large area of bushland to the north. However, the subject site does not directly adjoin this bushland, as it is separated bound by residential properties on all sides. Notwithstanding this, the development is found not to threaten nearby bushland or public open spaces.	N/A
CL53 Signs	No	The application does not propose the addition of any signage at the development. A condition can be included in the recommendation of this report requiring a DA to be lodged for any signage.	N/A
CL54 Provision and Location of Utility Services	Yes	Utility services can be provided and relevant conditions can be included in the recommendation.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No	The site is not within a locality identified as a 'Medium Density Area'.	N/A
CL56 Retaining Unique Environmental Features on Site	Yes	The subject development site is not considered to accommodate any distinctive environmental features. The development requires the removal of a large number of trees and significant excavation into the landform. However, the development is not considered to unreasonably impact upon rock outcrops, remnant bushland or watercourses. The works will not result in any impacts upon environmental features on adjoining sites, including the large parcel of bushland to the north.	Yes
CL57 Development on Sloping Land	Yes	The topography of the site (as described earlier in this report) warrants Clause 57 of General Principles to be assessed. The development is found to meet the intent of the	Yes

		<p>clause as the building progressively steps down the slope of the land, reducing in height as it does, and is split into three individual pavilions to reduce visual scale. The quantum of excavation is discussed in detail earlier in this report with reference to recent Caselaw that justifies the level of excavation. Additionally, the development application is supported by a Geotechnical Investigation by White Geotechnical Group that determines that the development is suitable for the site.</p>	
CL58 Protection of Existing Flora	Yes	As discussed earlier in this report, the level of replacement planting is satisfactory.	Yes
CL59 Koala Habitat Protection	No	The site is not identified as being a koala habitat protection area, and a review of the site reveals a low chance that koalas would traverse the site.	N/A
CL60 Watercourses & Aquatic Habitats	Yes	Council's Riparian Lands and Creeks and Water Management teams are satisfied that the proposal will not adversely impact upon any watercourses.	Yes
CL61 Views	Yes	Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'. In determining view loss, the principles outlined within the Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Northern Beaches Council (2004) NSWLEC 140, have been used. In Tenacity Consulting Pty Ltd Vs Northern Beaches Council (2004) NSWLEC 140 the Land and Environment Court provided a four (4) planning principles to be used in the assessment of view loss. The development is not found to cause any unreasonable nor adverse view loss from any surrounding public or private properties, and thereby allows for the reasonable sharing of views.	Yes
CL62 Access to Sunlight	Yes	The development ensures a compliant level of solar access remains available to the private open spaces of adjoining sites, thereby satisfying the objectives of this General Principle.	Yes
CL63 Landscaped Open Space	Yes	The provision of landscaped open space provided by the development and the quantum and variety of plants shown on the landscape plan accompanying the application	Yes

		adequately demonstrate that the proposal satisfies the objectives of this General Principle.	
CL63A Rear Building Setback	Yes	<p>The proposed development has a 10m rear setback with a driveway traversing through the rear setback area. The rear setback is consistent with the objectives of this General Principle in that:</p> <ul style="list-style-type: none"> • The proposal does not detract from a sense of openness in that the rear setback area is generally clear of structures; • The proposal does not impinge or impact upon the amenity of adjacent land; • The proposal is consistent with the pattern of driveways upon surrounding allotments; • The proposal does not result in unreasonable privacy impacts for adjacent properties; and • The proposal provides substantial and suitable planting. 	Yes
CL64 Private open space	Yes	The development provides sufficient private open space in the form of communal rooms (totalling 161sqm), a communal deck (120sqm) and garden areas.	Yes
CL65 Privacy	Yes	<p>The subject site is adjoined by a dwelling house to the west (16 Wyatt Avenue), and a vacant lot to the east. The privacy provided by the development is found to be satisfactory by virtue of the increased and appropriate building setbacks, architectural treatment and orientation of the windows, and the proposed landscaping.</p> <p>Accordingly, it is found that the development provides a satisfactory provision of privacy and does not cause unreasonable direct overlooking into habitable rooms and principal private open space of other dwellings (both existing and future).</p>	Yes
CL66 Building Bulk	Yes	The proposal has been designed to ensure the building elements contain articulation and a built form that is contained in three pavilion-like forms. This combined with the increased front, side and rear setbacks ensures the proposal has a bulk and scale when viewed	Yes

		from the public domain maintains the appearance of single residential development, considering the context of the street and area.	
CL67 Roofs	Yes	The roof design of the building is satisfactory in that it contributes to the overall architectural form and facilitates clerestory windows for additional solar access.	Yes
CL68 Conservation of Energy and Water	Yes	The proposal includes energy- and water-saving elements.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	No	The development is not a public or semi-public building.	N/A
CL70 Site Facilities	Yes	The design of the proposal has placed service function structures like clothes drying and waste storage away from the street level, so as not to be visible from the public domain.	Yes
CL71 Parking Facilities (Visual Impact)	Yes	The entrance to the carpark is located at the rear of the site and is not visible from the public domain. The carpark is located in a partially underground, so as to limit view of the car parking area.	Yes
CL72 Traffic Access & Safety	Yes	The development application (including the proposed vehicle access) has been reviewed by Council's Traffic Engineer who raises no objection to the development in relation to traffic impacts, subject to recommended conditions.	Yes
CL73 On-site Loading and Unloading	Yes	The development does not have any formal on-site loading / unloading zone. However, this is found to be satisfactory as such occurrences would be infrequent, and the majority of loading and unloading would generally be restricted to clothing and accessories to fill a single bedroom. Sufficient area exists on site to facilitate the safe loading and unloading of items without impacting on the amenity or traffic safety of occupants of the development.	Yes
CL74 Provision of Carparking	Yes	Schedule 17 of the WLEP 2000 does not include a car parking ratio for Boarding House developments. In this instance, the development was designed in accordance	Yes

		<p>with the SEPP ARH standards that applied at the time of lodgement of the original development (being 0.2 spaces per room, totalling 5 required parking spaces for the amended number of rooms). After lodgement of the original development application, the SEPP ARH parking standards increased to 0.5 spaces per room (totalling 12 spaces for the amended number of rooms). However, as detailed later in this report, SEPP ARH does not apply to this development either. Accordingly, the provision of car parking must be solely assessed against General Principle Clause 74.</p> <p>Clause 74 requires that adequate off-street carparking is to be provided with regard to:</p> <ul style="list-style-type: none"> • the land use • availability of public transport • availability of alternative car parking <p>The development is a Category Two land use and is located in close proximity to several bus stops. Unrestricted car parking is available on Wyatt Avenue. However, reliance on street parking is not a sustainable solution in perpetuity, and can therefore only be relied upon as a bonus or additional parking when a development provides a satisfactory provision of car parking on site.</p> <p>The proposal includes 12 car parking spaces (including one accessible space), eight motorcycle spaces and 18 bicycle parking spaces. This assessment relies upon the traffic and parking assessment provided by the Applicant, and the assessment undertaken by Council's Traffic Engineer. As both of these assessments are favourable to the provision of car parking provided, it is found that the development satisfies this General Principle.</p>	
CL75 Design of Carparking Areas	Yes	Council's Traffic Engineer has reviewed the proposed car park design and is satisfied that it is compliant with the relevant Australian Standards. Conditions of consent requiring compliance with Australian Standards will ensure that the car park is adequately built.	Yes
CL76 Management of Stormwater	Yes	The provision of stormwater management has been assessed by Council's Development Engineering and Stormwater Assets teams who are unsupportive of the proposal for the	No

		reasons detailed in the section of this report relating to referrals.	
CL77 Landfill	Yes	The development will require minimal landfill adjacent to the areas of excavation, to a scale that would not have adverse impacts upon the visual and natural environment or the amenity of adjoining of surrounding properties.	Yes
CL78 Erosion & Sedimentation	Yes	Should the application be approved, standard conditions can be applied requiring adequate erosion and sedimentation fencing and measures to be in place.	Yes
CL79 Heritage Control	No	The site is not within the vicinity of any heritage item.	N/A
CL80 Notice to Metropolitan Aboriginal Land Council	Yes	The original application was subject to a review by the Aboriginal Heritage Office. It was concluded that there were no visible items of Aboriginal history or significance on the site (see referral comments later in this report). Standard conditions can be applied requiring works to stop if any items of Aboriginal significance are located during excavation or building.	Yes
CL82 Development in the Vicinity of Heritage Items	No	The development is not within the vicinity of any heritage items.	N/A
CL83 Development of Known or Potential Archaeological Sites	No	The site is not on land that is known to accommodate any potential archaeological sites. It is not anticipated that any potential archaeological sites or items will be located during the excavation period of this application.	N/A

WLEP 2000 Schedules

Schedule	Applicable	Compliant
Schedule 5 State policies	Yes	Yes
Schedule 6 Preservation of bushland	Yes	Yes
Schedule 7 Matters for consideration in a subdivision of land	No	N/A

Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	N/A
Schedule 10 Traffic generating development	N/A	N/A
Schedule 11 Koala feed tree species and plans of management	N/A	N/A
Schedule 12 Requirements for complying development	N/A	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	N/A	N/A
Schedule 14 Guiding principles for development near Middle Harbour	N/A	N/A
Schedule 15 Statement of environmental effects	Yes	Yes
Schedule 16 Principles and standards for housing for older people or people with disabilities	N/A	N/A
Schedule 17 Carparking provision	N/A	N/A

WLEP 2000 Clause 20

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

General Principles of Development Control

The proposal is consistent with the General Principles of Development Control and accordingly, qualifies for consideration of a variation to the development standards, under the provisions of Clause 20(1). See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency.

Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies for consideration of a variation to the development standards, under the provisions of Clause 20(1). See discussion on “Desired Future Character” in this report for a detailed assessment of consistency.

Relevant State Environmental Planning Policies

The proposal has been assessed as being consistent with all applicable State Environmental Planning Policies (refer to earlier discussion under 'State Environmental Planning Policies'). As such, the proposal qualifies for consideration of a variation to the development standards, under the provisions of Clause 20(1). As detailed above, the proposed development satisfies the requirements to qualify for consideration under Clause 20(1). It is for this reason that the variation to the housing density, ceiling height, and side setbacks, (Development Standards) pursuant to Clause 20(1) is supported.

SITE INSPECTION ANALYSIS

Site constraints and other considerations	
Bushfire Prone?	No
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	Yes
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	No
Does the development require concurrence?	Yes
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No
Does the site inspection confirm the assessment undertaken against the relevant EPI's?	Yes
Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?	No

Are there any existing unauthorised works on site?	No
If YES has the application been referred to compliance section for comments?	N/A

CONCLUSION

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions. As summary of the key issues within this report is as follows:

- The amended proposal is considered substantially the same as the original proposal, as detailed within this report.
- The application received 68 submissions, raising a number of issues with the proposed development, as detailed and addressed within this report.
- This report demonstrates that the proposal is low intensity and low impact, in accordance with the requirements of Category 2 Development in the C8 Belrose North locality.
- The proposed non-compliances with building height, housing density, front setback and side setbacks are reasonable (despite the significant numerical variation to housing density).
- The proposal does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties, with the exception of potentially in relation to stormwater and flood risk (there is insufficient information to be certain in this regard, as detailed in this report).

As such, given the lack of suitable information in relation to stormwater and flood risk, the proposed development is not demonstrated to be suitable for the subject site. The absence of demonstration of suitability means that the consent authority cannot be sure the proposal results in a good or reasonable planning outcome, and is in the public interest. Therefore, the application is recommended for refusal. It is considered that all processes and assessments have been satisfactorily addressed and that the proposed development does not satisfy the appropriate controls.

SITE INSPECTION AND ASSESSMENT UNDERTAKEN BY:



Signed

Date

Claire Ryan, Principal Planner

RECOMMENDATION – REFUSAL

That the Northern Beaches Local Planning Panel as the consent authority:

REFUSE the *Review of Determination of Application DA2018/0401 for Construction of a Boarding house with 27 rooms including a manager's residence* for the following reasons:

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 Clause 76 Management of Stormwater of the *Warringah Local Environmental Plan 2000*:
 - (a) Insufficient information is provided to demonstrate how stormwater will be conveyed along Wyatt Avenue and through the subject site. The proposed works within Wyatt Avenue are not satisfactory.
 - (b) Full hydrological and hydraulic details have not been provided for the pipeline/headwall, in accordance with Council's Building Over and Adjacent to Constructed Council Drainage Systems and Easements Technical Specification Section 3 and 4.
 - (c) A longsection of the proposed drainage with Wyatt Avenue has not been provided.
 - (d) Cross-sectional information of the drainage channel along the eastern boundary has not been provided.
 - (e) The proposed kerb breaks and rip-rap within the road reserve are not supported.
 - (f) Detail has not been provided for the provision of 1.5m wide footpath for the full property frontage. Adjustments to the proposed drainage arrangement will be required to facilitate the footpath.
 - (g) Discharge from the headwall within Wyatt Avenue should be extended to cater for the 1.5m wide footpath and directed towards the existing easement.
 - (h) Detail has not been provided for the provision of a 5.5m wide vehicle crossing for the development.
 - (i) Discharge from the OSD tank to the existing easement is not supported. Stormwater shall be directed to a suitably designed stormwater dispersion system. Total stormwater discharge including bypass and controlled flows shall be limited to the 1 in 5 year ARI "state of nature" storm event (0% impervious), for all storm events up to and including the 100-year ARI.
 - (j) The Flood Risk Management Report does not consider the 5% or 20% AEP storm events in analysis.

- (k) The Report appears to incorrectly identify the existing geometry plan, which shows an impact on the model results.
- (l) The DRAINS model has not been provided for assessment. The DRAINS summary in Figure 10 provides insufficient information for a detailed assessment to be undertaken.

As such, stormwater runoff from development is not demonstrated to have minimal impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake, waterway or the like.

"I am aware of Council's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest":



Signed

Date

Claire Ryan, Principal Planner

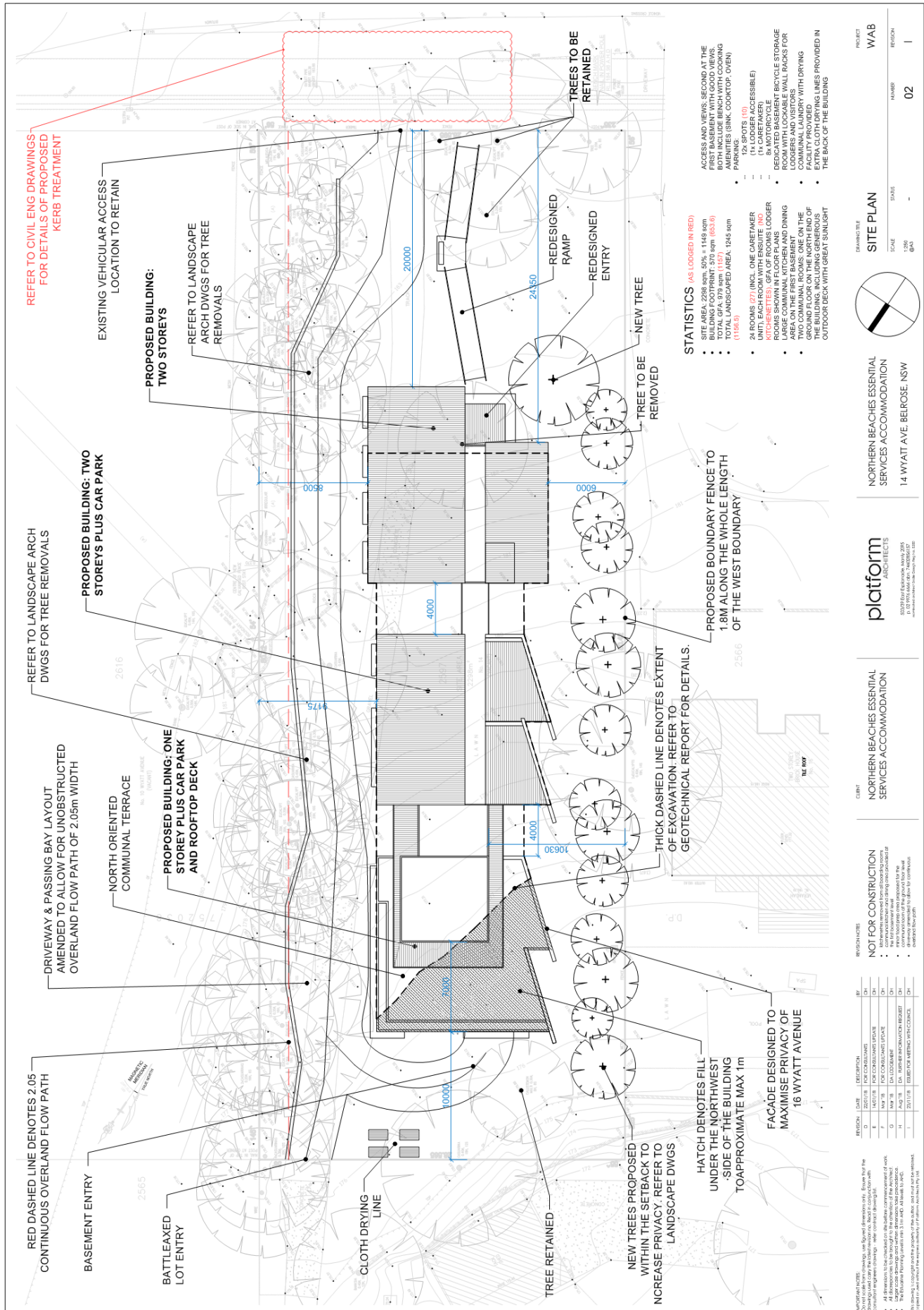
The application is forwarded to the Northern Beaches Local Planning Panel under the delegated authority of:



Signed

Date

Matt Edmonds, Manager Development Assessment



REVISION	DATE	DESCRIPTION	BY
1	14/01/18	FOR CONSULTANTS REVIEW	24
2	14/01/18	FOR CONSULTANTS REVIEW	24
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