

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 15 MAY 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

Paul Vergotis	Chair
Steve Kennedy	Urban Design Expert
Robert Hussey	Town Planner
Phil Jacombs	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 15 May 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 8 MAY 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 8 May 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	MOD2018/0715 - 33 UPPER CLIFFORD AVENUE, FAIRLIGHT - MODIFICATION OF DEVELOPMENT CONSENT DA166/2015 GRANTED FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE AND CONSTRUCTION OF A SWIMMING POOL
REPORTING OFFICER	Anna Williams
TRIM FILE REF	2019/248571
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. MOD2018/0715 for Modification of development consent DA166/2015 granted for alterations and additions to an existing dwelling house and construction of a swimming pool at Lot C DP 102834, 33 Upper Clifford Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0715
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot C DP 102834, 33 Upper Clifford Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA166/2015 granted for alterations and additions to an existing dwelling house and construction of a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stephen John Birch Karen Lesley Birch
Applicant:	Stephen John Birch
Application lodged:	27/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/01/2019 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval

Executive Summary

The original consent (DA0166/2015) was issued by the Manly Independent Assessment Panel (MIAP). The current modification application has been made under Section 4.55(2) of the EPA Act and includes changes to condition ANS05 imposed by MIAP. As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

The application was referred to Council's Landscape Officer with no objection raised in relation to the proposed tree relocation or associated change to condition ANS05.

The proposed modification includes a non-compliance with the height of buildings development standard. Despite the application being a modification made under Section 4.55, an assessment of the proposed variation has been made against the relevant LEP objectives and tests contained within Initial

Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

One of the non-compliant elements included in the modification is the addition of a new roof parapet to the southern side of the dwelling. The parapet is assessed as resulting in unreasonable view loss and is conditioned to be deleted from the plans.

No further assessment issues are raised and the proposal is recommended for 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 Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot C DP 102834 , 33 Upper Clifford Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Upper Clifford Avenue.</p> <p>The site is regular in shape with a frontage of 22.86m along Upper Clifford Avenue and a depth of 39.625m. The site has a surveyed area of 905.8m².</p> <p>The site is located within the R1 General Residential zone</p>

and accommodates an existing dwelling house.

The site slopes 12.26m from the northwestern corner (front) to southeastern corner (rear). The site has a crossfall of 5.13m from west to east at the front boundary.

The site includes terraced garden beds and a number of significant trees within the rear yard.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.

Map:



SITE HISTORY

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

DA0402/2007 - Alterations & Additions to the existing Residential Flat Building including rear extension
- Approved 9 April 2009.

DA0166/2015 - Alterations and additions to an existing dwelling house including redevelopment of an existing double garage, awnings, balconies, deck, swimming pool with spa, internal reconfiguration, addition of a rooftop garden and landscaping - Approved 19 November 2015.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification includes changes as follows:

Rear yard level:

- Reconfigured pool plant room
- New terraced planters and revised stair access

Basement level:

- Swimming pool and spa reconfigured and reduced in height
- Internal alterations
- Changes to windows
- Relocation of existing palm trees

Ground floor level:

- Revised rear deck
- Internal alterations
- Revised external front stair

First floor level:

- Internal alterations
- Revised front courtyard canopy/roof

Roof level:

- Changes to roof profile and roof light
- Parapet added/extended

The original consent (DA0166/2015) was issued by the Manly Independent Assessment Panel (MIAP). As the current modification application has been made under Section 4.55(2) of the EPA Act, the application is required to be referred to the Northern Beaches Local Planning Panel, being the equivalent panel, for determination. Further, the proposed modification includes changes to condition ANS05 imposed by MIAP.

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 DA0166/2015, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0166/2015.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA0166/2015 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and

Assessment Act, 1979, are:

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

Section 4.15 'Matters for Consideration'	Comments
	Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the 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 3 submission/s from:

Name:	Address:
Ms Dianne Julia Spencer	35 Upper Clifford Avenue FAIRLIGHT NSW 2094
Mr Douglas John Chick	48 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Mark Greg Estivo Mrs Sunshine Estivo	38 Upper Clifford Avenue FAIRLIGHT NSW 2094

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



- Detail of plans provided
- Changes to roof profile
- Balcony handrail finishes
- RLs on elevations
- Shadow diagrams / overshadowing of No. 48 Lauderdale Avenue
- Increase to roof height / view loss impact from No. 33 Upper Clifford Avenue

The matters raised within the submissions are addressed as follows:

- Detail of plans provided
Comment:
A revised plan set including a western elevation drawing and revised pool isometric have been submitted by the applicant.
- Changes to roof profile
Comment:
The proposed parapet to the southern roof edge is conditioned to be deleted. The proposed revision to the western eave will not unreasonably impact the amenity of adjoining surrounding properties.
- Balcony handrail finishes
Comment:
The balustrade to the revised ground floor rear balcony appears to be solid. However, this balcony is centrally located and will not result in any visual or amenity impacts to the adjoining properties. No change is proposed to the remaining approved balustrades on the plans or in the statement of modification.
- RLs on elevations
Comment:
The updated plan set includes adequate plan detail to accurately assess the application.
- Shadow diagrams / overshadowing of No. 48 Lauderdale Avenue
Comment:
The shadow diagrams submitted indicate no additional overshadowing of No. 48 Lauderdale Avenue. At 9am and 3pm the angle of the shadow largely avoids No. 48 and at 12pm the line of the shadow does not reach the southern boundary of the subject site.
- Increase to roof height / view loss impact from No. 33 Upper Clifford Avenue
Comment:
The proposed modification does not include any increase to the maximum approved height of RL66.32 and ANS02 remains relevant to the application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Landscape Officer	The modification proposal is acceptable in terms of the landscape outcomes, including the revised pool shape, new terraced planters, and palm trees relocation. Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The property is not identified as being flood affected.

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)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
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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	% Variation	Complies
Height of Buildings:	8.5m	11.7m	No change proposed to overall height	N/A	No
Floor Space Ratio	0.6:1 543.48m ²	0.447:1 404.8m ²	0.455 411.9m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10m roof lights over lift (as approved)
Percentage variation to requirement:	11.76%

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification

application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R21 General Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The proposed revision to the western eave and the roof light do not result in any further height non-compliance.
- No unreasonable impact to adjoining properties will occur as a result of the changes.

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

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The proposed changes to the eave and roof light will improve the internal amenity of the dwelling.
- The proposed changes result in no additional height breach from that approved

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:

Objectives of development standard:

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

Comment:

The proposed modification is generally consistent with the approved DA and the surrounding

topography and streetscape.

b) to control the bulk and scale of buildings,

Comment:

The changes proposed as part of the modification do not result in any significant additional bulk or scale.

c) to minimise disruption to the following:

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

Comment:

The non-compliant elements proposed as part of this modification include the roof light over the lift, and the new parapet to the southern edge of the roof. The proposed parapet element will result in view loss above the approved roof line from No. 38 Upper Clifford Avenue and is not supported. The roof light (skylights) are not considered to result in any unreasonable view loss and no planning issue is raised to these changes. A full assessment of view loss is completed against the objectives of DCP Clause 3.4.3.

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

Comment:

The proposed modification will result in no unreasonable overshadowing impacts. A full assessment of sunlight access and overshadowing is completed against the objectives of DCP Clause 3.4.1.

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

Comment:

N/A

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed modification retains the existing residential use.

It is considered that the development satisfies this objective.

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

Comment:

The proposed modification retains the existing housing type and density.

It is considered that the development satisfies this objective.

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

Comment:

N/A

Conclusion:

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

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 905.8m²	Requirement	Approved	Proposed	Complies
4.1.4.4 Rear Setbacks	8m	19.9m	10.4m (planter)	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area 498.19m ²	72.2% 654.1m ²	75% 678.9m ²	Yes
	Open space above ground 25% of total open space 124.5m ²	9% 59m ²	8% 54.7m ²	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 228.9m ²	55.9% 365.4m ²	47.5% 322.8m ²	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	> 18m ²	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.8m ²	3.2m	No
	1m curtilage side/rear setback	5.5m	3.2m	Yes

	1.5m water side/rear setback	7.15m	5.7m	Yes
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

Condition ANS05 requiring the retention of of an existing Lemon Scented Gum and two Bangalow Palms was imposed by the Manly Independent Assessment Panel.

ANS05

That the following three (3) existing trees: Lemon Scented Gum tree (12m height) and two Bangalow Palms (7m height) listed as proposed for removal on the "Landscape Plan – Sheet 3 – Planting Details, prepared by Lustrous Landscapes, dated June 2015" are not permitted to be removed.

The proposed alterations and additions of the residence shall be re-designed to allow these trees to be retained and their health, structure and amenity value maintained. These specimens shall specimens shall be retained and protected in accordance with AS 4970-2009 Australian Standard for Protection of Trees on Development Sites, to ensure that no damage occurs to their health and structure of the root plate, trunk and canopy, prior to the issue of any Construction Certificate.

Removal of any of these trees shall only be permitted if a more detailed assessment and further written justification can be provided by a suitably qualified arborist, minimum Level 5 AQF (Australian Qualification Framework), to the Accredited Certifier/ Council for approval, listing reasons and justification for their removal other than for the proposed alterations and additions.

If any of these existing trees are approved for removal through subsequent written Council approval, then replacement trees shall be planted on site, in compensation. These replacement trees shall be selected from the species listed Council's DCP Schedule 4 – Part B – Native Tree Selection, installed to meet the Natspec standards, at a minimum 100Litre pot size, in a location on site to suit their dimensions at maturity. Documentary evidence shall be provided to the Accredited Certifier that these specimens have be installed to meet these requirements, prior to the issue of any Occupation

Certificate.

Reason: to retain trees on the site which are listed in the above 'Arboricultural Impact Assessment Report' as having either moderate or high landscape significance and are not required to be removed by the development.

On 8 February 2018, an Arborist Report was provided to Council stating that the Lemon Scented Gum was in poor condition. On 13 February, Council provided written approval for removal of the tree.

Council's Landscape Officer raised no objection to the proposed relocation of the remaining two Bangalow Palms.

3.4.1 Sunlight Access and Overshadowing

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 provide equitable access to light and sunshine.

Comment:

A condition is included to delete the proposed roof parapet to the southern side of the dwelling. The proposed modification, as conditioned, is not considered to result in any unreasonable additional overshadowing. The majority of the remaining changes are at ground level or significantly below the line of the existing dwelling roof. DA0156/2015 results in partial overshadowing of the ground floor eastern windows of No. 35 Upper Clifford Avenue. While it is acknowledged that the proposed change to the western eave/roof will cause some additional overshadowing of these windows, the impact is considered to be minor. The overall impact of the modification is negligible considering the extent of the changes and the vulnerability of the down-slope properties to overshadowing.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal allows adequate sunlight access to the subject site and adjoining properties.

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

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

Comment:

The proposed changes are minor in nature and will result in no unreasonable overshadowing impact.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

No changes are proposed to the approved east or west facing glazing. The proposed rear decks and swimming pool/terrace remain centrally located within the site and significantly set back from the rear boundary. As such, the proposal results in no unreasonable privacy or direct viewing impacts.

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 modification provides sufficient privacy and sunlight access.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Existing opportunities for passive surveillance are retained.

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

3.4.3 Maintenance of Views

Merit consideration:

The view loss assessment of DA0166/2015 concluded that the proposed roof terrace and clerestories are non-compliant and result in view impact from No. 38 Upper Clifford Avenue. Condition ANS01

required the deletion of the proposed roof terrace and ANS02 stipulated that the clerestories were not to exceed RL66.32. The proposed parapet to the southern side of the roof is non-compliant with the building height control and will result in an encroachment to views from No. 38 Upper Clifford beyond any impact resulting from the previous approval. No justification has been provided by the applicant for the inclusion of the new parapet and this planning assessment concurs with the outcome of the view loss assessment completed in relation to DA0166/2015. In order to maintain consistency with the previous assessment and minimise view loss resulting from non-compliant development, the new parapet element to the southern roof edge is conditioned to be deleted from the plans. Condition ANS02 in relation to the proposed clerestories remains relevant to this modification.

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

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

Comment:

The proposed changes, as conditioned, are generally located below the existing roof line and allow for view sharing between existing and proposed development.

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

Comment:

The proposed modification will not unreasonably disrupt views between surrounding development and public spaces.

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

Comment:

The proposal is conditioned to minimise view loss and view creep while allowing development to proceed.

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

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

The proposed rear setback remains compliant. No change is proposed to the approved front and side setbacks.

4.1.9 Swimming Pools, Spas and Water Features

The proposed swimming pool height above ground is non-compliant. However, the RL of the reconfigured swimming pool is reduced as a result of the proposed modification. Further, the pool is consistent with the exceptions provided by Clause 4.1.9.1 (i) & (ii) as it will not unreasonably detract

from the amenity of the neighbourhood and is set back a minimum distance from the property boundaries equivalent to its height above ground.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0715 for Modification of Development Consent DA166/2015 granted for alterations and additions to an existing dwelling house and construction of a swimming pool on land at Lot C DP 102834,33 Upper Clifford 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
DA-A-050 Site Plan	Rev. C, 18 April 2019	Quattro Architecture
DA-A-098 Lower Terrace Plan	Rev. C, 18 April 2019	Quattro Architecture
DA-A-099 Lower Ground / Pool Terrace	Rev. C, 18 April 2019	Quattro Architecture
DA-A-100 Ground Floor Plan	Rev. C, 18 April 2019	Quattro Architecture
DA-A-101 Level 1 Plan	Rev. C, 18 April 2019	Quattro Architecture
DA-A-102 Roof Plan	Rev. C, 18 April 2019	Quattro Architecture
DA-A-150 Pool Detail	Rev. C, 18 April 2019	Quattro Architecture
DA-A-200 Elevation	Rev. C, 18 April 2019	Quattro Architecture
DA-A-250 Section	Rev. C, 18 April 2019	Quattro Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A336197	6 December 2018	Quattro Architecture
Geotechnical Letter	11 December 2018	Jack Hodgson Consultants Pty Limited

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.

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

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

B. Modify Condition ANS05 to read as follows:

ANS05 - Tree Relocation

The two existing Bangalow Palms are to be relocated on the site as indicated on DA-A-099 Lower Ground Pool Terrace.

Evidence of the retention of these relocated trees is to be provided in accordance with the landscaping conditions included elsewhere in this consent.

Reason: To retain trees on the site which are of either moderate or high landscape significance.

C. Add Condition ANS12 - Roof Parapet to read as follows:

ANS12 - Roof Parapet

The proposed roof parapet to the southern roof edge is to be deleted from the plans.

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

Reason: To minimise view loss impacts resulting from non-compliant building elements.

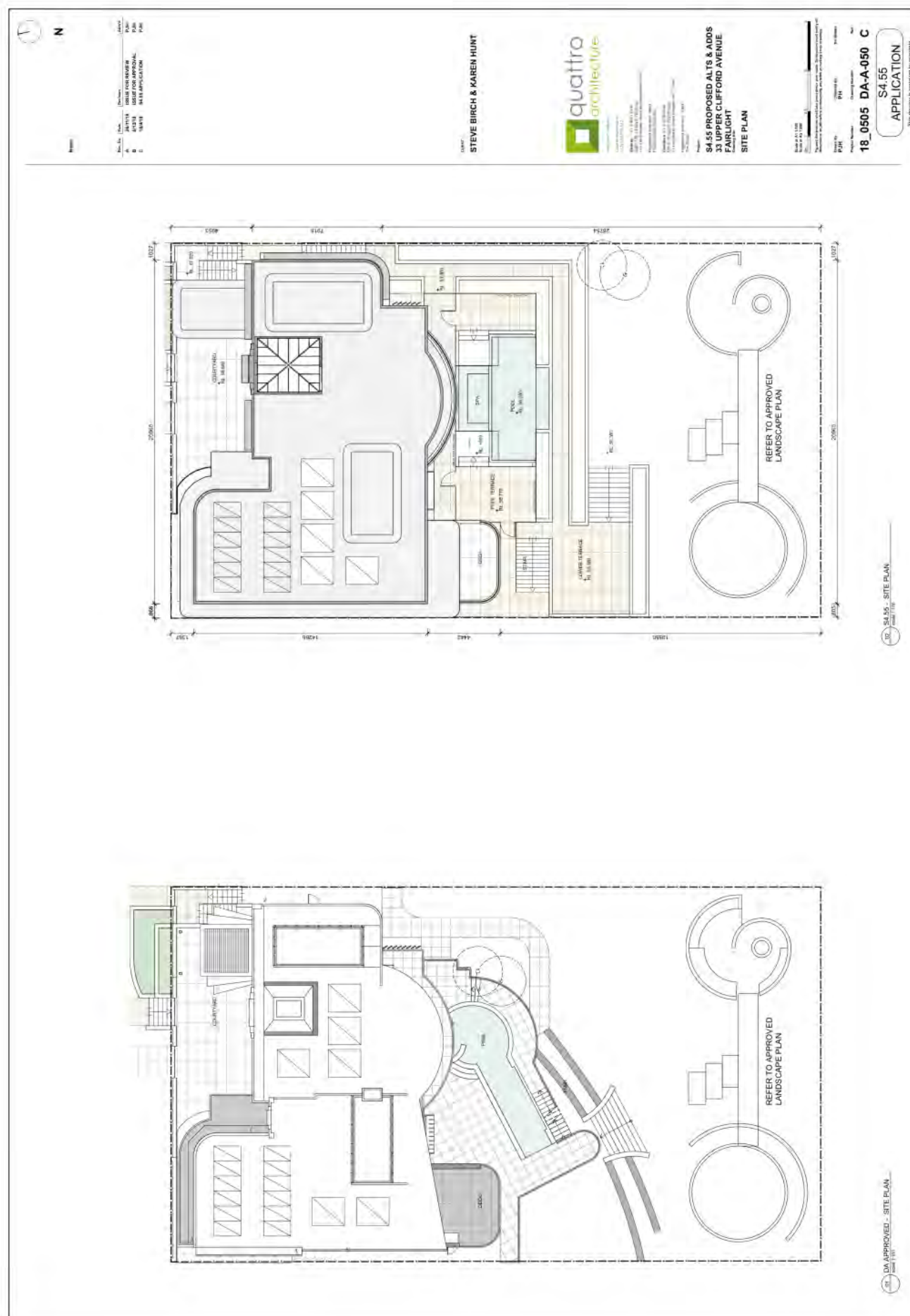
D. Add Condition ANS13 - Planter Landscaping Works to read as follows:

Details must be submitted to the Certifying Authority prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the planters to which landscaping is being provided.

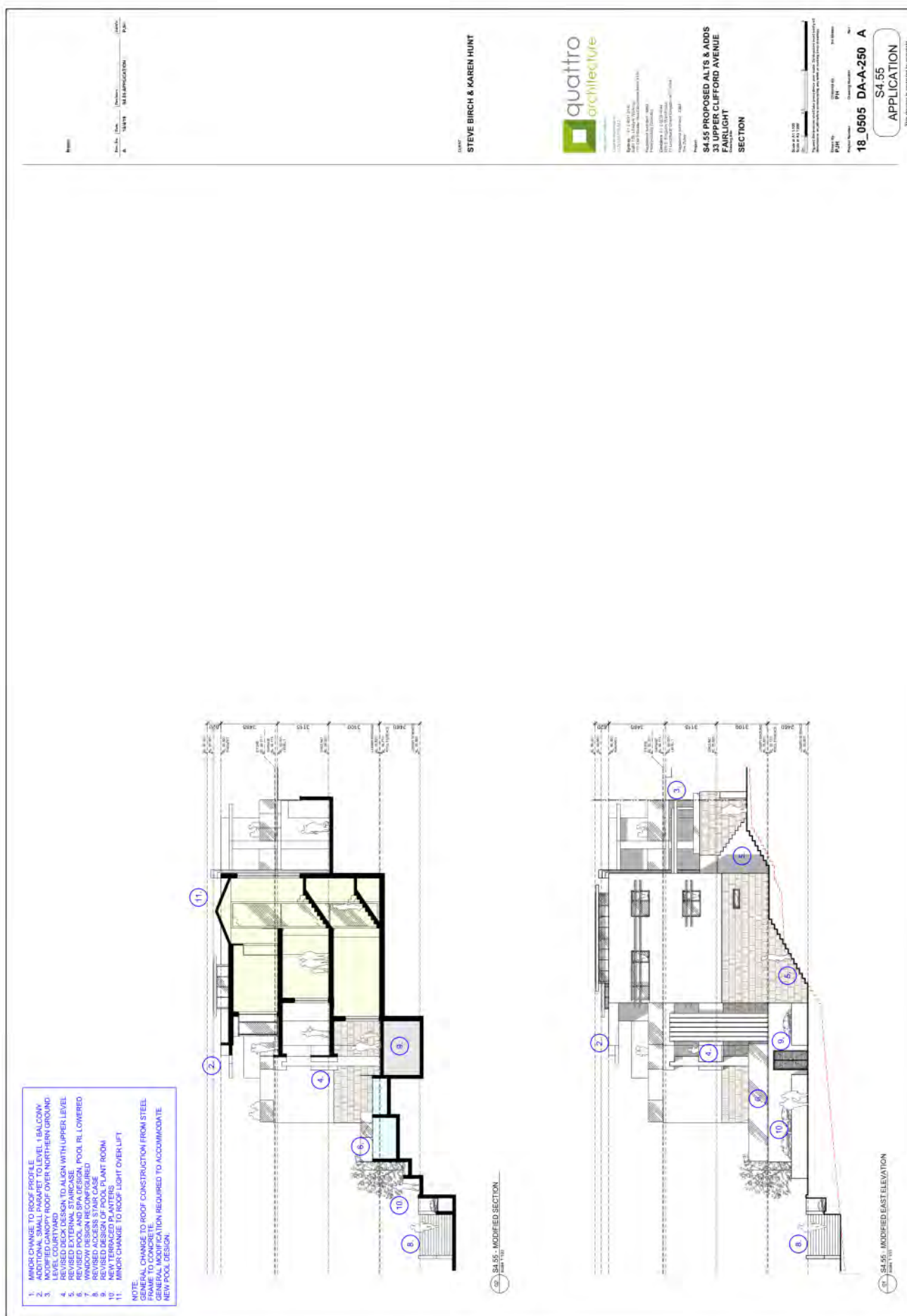
Details shall be prepared to demonstrate that all planting shall be installed with waterproofing and drainage provisions for the planter walling, irrigation and appropriate soilmix to support planting.

The planting shall consist of shrubs capable of attaining a height of 1.5m high, and shall be planted at no more than 900mm apart, and at a minimum 200mm pot container sizes.

Reason: to ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided.







ITEM 3.2

**MOD2019/0034 - 36 BEATTY STREET, BALGOWLAH HEIGHTS -
MODIFICATION OF DEVELOPMENT CONSENT DA0315/2015
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE**

REPORTING OFFICER

Anna Williams

TRIM FILE REF

2019/248572

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. MOD2019/0034 for Modification of Development Consent DA0315/2015 granted for alterations and additions to a dwelling house at Lot 20A DP 350345, 36 Beatty Street, Balgowlah Heights subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0034
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 20A DP 350345, 36 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA0315/2015 granted for alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Bernadette Maria Rushton Christopher Louis Rushton
Applicant:	Dece Design
Application lodged:	05/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/02/2019 to 01/03/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

Executive Summary

The original consent (DA0315/2015) was issued by the Northern Beaches Independent Assessment Panel (NBIAP). The current modification application has been made under Section 4.55(2) of the EPA Act and includes the deletion of condition ANS26 imposed by NBIAP. As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

The proposed modification includes a non-compliance with the height of buildings development standard. Despite the application being a modification made under Section 4.55, an assessment of the proposed variation has been made against the relevant LEP objectives and tests contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The proposed height of buildings non-compliance and the deletion of ANS26 are supported.

No further assessment issues are raised and the application is recommended for 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 Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

SITE DESCRIPTION

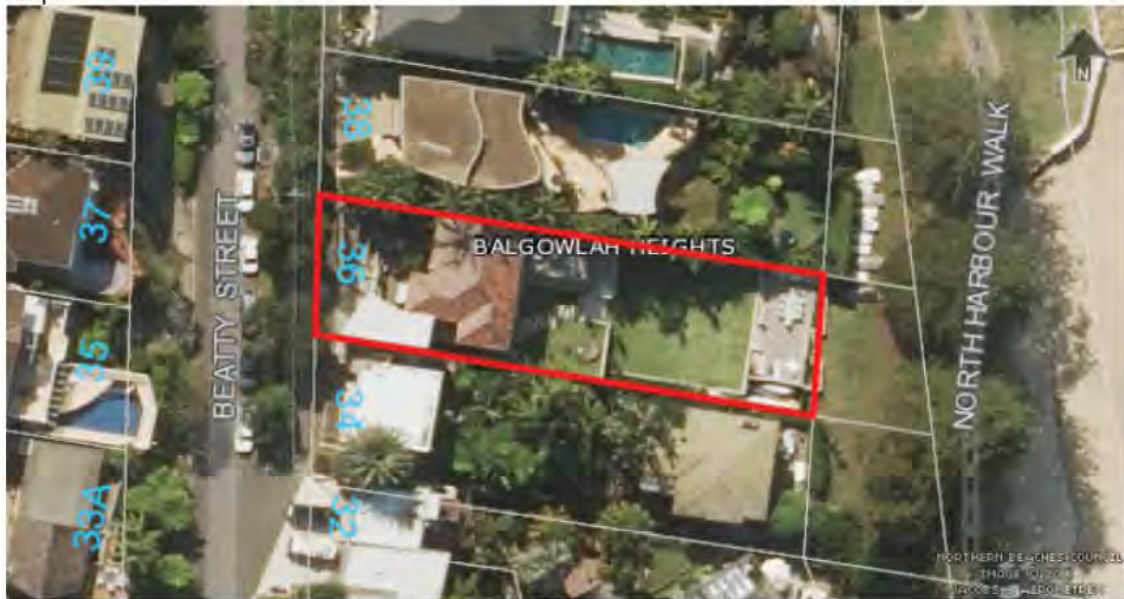
Property Description:	Lot 20A DP 350345 , 36 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Beatty Street.</p> <p>The site is regular in shape with a frontage of 15.411m along Beatty Street and a depth of 52.675m. The site has a surveyed area of 802.6m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates an existing dwelling house.</p> <p>The site slopes approximately 15m from front (west) to rear (east).</p>

The site contains small planted vegetation and gardens. No significant trees are located on the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses. The site adjoins Forty Baskets Beach at North Harbour to the rear (east).

Map:



SITE HISTORY

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

DA0315/2015 - Alterations and additions to the existing dwelling including second floor addition, additions to ground and first floor level, modification of windows, new internal lift, roof and landscaping works - Approved 16 June 2016

DA0315/2015 - Part 2 - Section 96 to modify approved Alterations and additions to the existing dwelling including second floor addition, additions to ground and first floor level, modification of windows, new internal lift, roof and landscaping works - Approved 15 August 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification includes changes as follows:

- Change of use of the approved non-trafficable roof garden to use as a balcony
- New pergola/awning over proposed balcony and removal of central balustrade
- New bin storage platform at front boundary
- Changes to windows

The changes listed above require the deletion of conditions ANS25 and ANS26.

The original consent (DA0315/2015) was issued by the Northern Beaches Independent Assessment Panel (NBIAP). As the current modification application has been made under Section 4.55(2) of the EPA Act, the application is required to be referred to the Northern Beaches Local Planning Panel as the equivalent panel. Further, the proposed modification includes deletion of ANS26 imposed by NBIAP.

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 DA0315/2015, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0315/2015.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA0315/2015 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979,
(i) the regulations, if the regulations so require,	

Section 4.55 (2) - Other Modifications	Comments
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	Environmental Planning and Assessment Regulation 2000, Manly Local Environmental 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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

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

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

A Bushfire Letter has been submitted with the application confirming that the Bushfire Report relating to the approved DA remains applicable to this modification.

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

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)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above

provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

Comment:

The proposed changes are generally within the approved building footprint and will not unreasonably impact the coastal environment area.

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

Comment:

The proposal is consistent with this Clause.

14 Development on land within the coastal use area

- (1) *Development consent must not be granted to development on land that is within the coastal*

use area unless the consent authority:

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not unreasonably impact the coastal use area.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed modifications are generally minor and are not considered likely to cause increased risk of coastal hazards. The previously approved DA and modification were referred to Council's Coastal Officer for comment, with no objections received subject to recommended conditions of consent.

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
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				Variation	
Height of Buildings:	8.5m	12.54m	Pergola: 11.3m (Natural ground)	33%	No
Floor Space Ratio	0.4:1 321.04m ²	0.54:1 440.184m ²	No change proposed	N/A	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	11.3m
Percentage variation to requirement:	33%

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and

the underlying objectives of the E3 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The height non-compliance of the proposed pergola results in no unreasonable visual or amenity impacts to the adjoining properties or public spaces.
- The reasoning provided for requiring the balcony to be made non-trafficable largely related to mitigating privacy impact to No. 34 Beatty Street. Upon completion of the development and inspection of the site by the assessing officer it is apparent that no such privacy issues have arisen from the balcony. Further, no objection has been received in relation to the proposed modification.
- As the balcony will function appropriately in relation to privacy, consideration of the pergola is a reasonable request.

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

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The height of the proposed pergola remains below the overall height of the dwelling.
- The pergola provides weather/sun protection to the balcony and associated glazing with no resultant impact on adjoining properties.
- The weather protection from the pergola increases the amenity and usability of the area for the occupants of the dwelling.
- The pergola structure provides additional articulation to the eastern facade of the building as viewed from the rear yard and adjoining reserve.

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:

Objectives of development standard:

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

Comment:

The non-compliance relates to the proposed pergola/awning and does not significant alter the existing building height or roof form.

b) to control the bulk and scale of buildings,

Comment:

The proposed pergola does not contribute any unreasonable bulk or scale to the existing dwelling.

c) to minimise disruption to the following:

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

Comment:

The proposal will result in no unreasonable disruption to views to, from or between residential development and public spaces.

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

Comment:

The proposal will result in negligible additional overshadowing.

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

Comment:

The proposed pergola is located below the ridge of the existing roof and will not unreasonably impact existing vegetation or topography.

Zone objectives

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposed modifications are within the existing building footprint.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposed works are generally minor and will not have an adverse impact on the above values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed works are considered to be low impact and will not dominate the natural scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposed modification will not unreasonably impact the nearby foreshores or any geological features or bushland.

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

Comment:

The proposed works are separated from the immediate foreshore and do not alter existing pervious/impervious areas on the site.

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

Comment:

The proposed modifications are located below the existing ridge and do not result in any significant additional bulk.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management 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.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

6.5 Terrestrial biodiversity

The proposed changes are within the existing building footprint and will not unreasonably impact the native flora and fauna on the site.

Manly Development Control Plan

Built Form Controls

There are no Development Controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed modification will result in negligible additional overshadowing.

3.4.2 Privacy and Security

Merit consideration:

Condition ANS25 of DA0315/2015 required that windows W13 (W.09) and W14 (W.11) be fixed and translucent glazing. Further, condition ANS26 was imposed by the Northern Beaches Independent Assessment Panel (NBIAP) and required the proposed balcony area to be non-trafficable.

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 proposed east-facing windows W.09 and W.11 are perpendicular to the side boundary and potential privacy impacts are further reduced by the extended wall edge. Additionally, the proposed room uses of these windows (study and gym) are not considered likely to cause unreasonable privacy impacts. The proposed second floor balcony is orientated to the east towards the harbour, and incorporates privacy screens, as approved, to minimise overlooking/direct viewing opportunities to the north and south. Further, the balcony is accessed from the entry hall and main bedroom, and does not directly adjoin any primary living areas,

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 proposal provides sufficient privacy and sunlight access to the subject site and adjoining properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Existing opportunities for passive surveillance are retained.

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

3.4.3 Maintenance of Views

The proposed modification adds no significant bulk to the approved dwelling and will not result in any unreasonable view loss.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0034 for Modification of Development Consent DA0315/2015 granted for alterations and additions to a dwelling house on land at Lot 20A DP 350345,36 Beatty Street, BALGOWLAH HEIGHTS, 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
S4.55.01 Site Plan	7 January 2019	Case Ornsby
S4.55.02 Proposed Second Floor Plan	7 January 2019	Case Ornsby
S4.55.03 Proposed First Floor Plan	7 January 2019	Case Ornsby
S4.55.04 Proposed Ground Floor Plan	7 January 2019	Case Ornsby
S4.55.05 Proposed Basement Plan	7 January 2019	Case Ornsby
S4.55.06 Proposed Roof Plan	7 January 2019	Case Ornsby
S4.55.07 Proposed Elevations - East & West	7 January 2019	Case Ornsby
S4.55.08 Proposed Elevation - North	7 January 2019	Case Ornsby
S4.55.09 Proposed Elevation - South & Section A	7 January 2019	Case Ornsby
S4.55.10 Proposed Section B	7 January 2019	Case Ornsby
S4.55.11 Proposed Section C	7 January 2019	Case Ornsby

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bush Fire Letter	13 February 2019	Bush Fire Planning Services

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.

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

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

B. Delete Condition ANS25 to read as follows:

ANS25
DELETED

C. Delete Condition ANS26 to read as follows:

ANS26
DELETED

4 6 8 10 12 14 16

Affiliations and additions for
C & B R U S H T O N
 36 BEATTY STREET,
 BALGOWLAH HEIGHTS, 2053, NSW

CONSULTANTS

REVISIONS
04/02/19 04:05 A

CASE ORNSBY DESIGN PTY LTD

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W: www.cambridge.com

SCALE 1: 1000000

DATE: 07/01/2010

PROJECT No. 011

SITE PLAN

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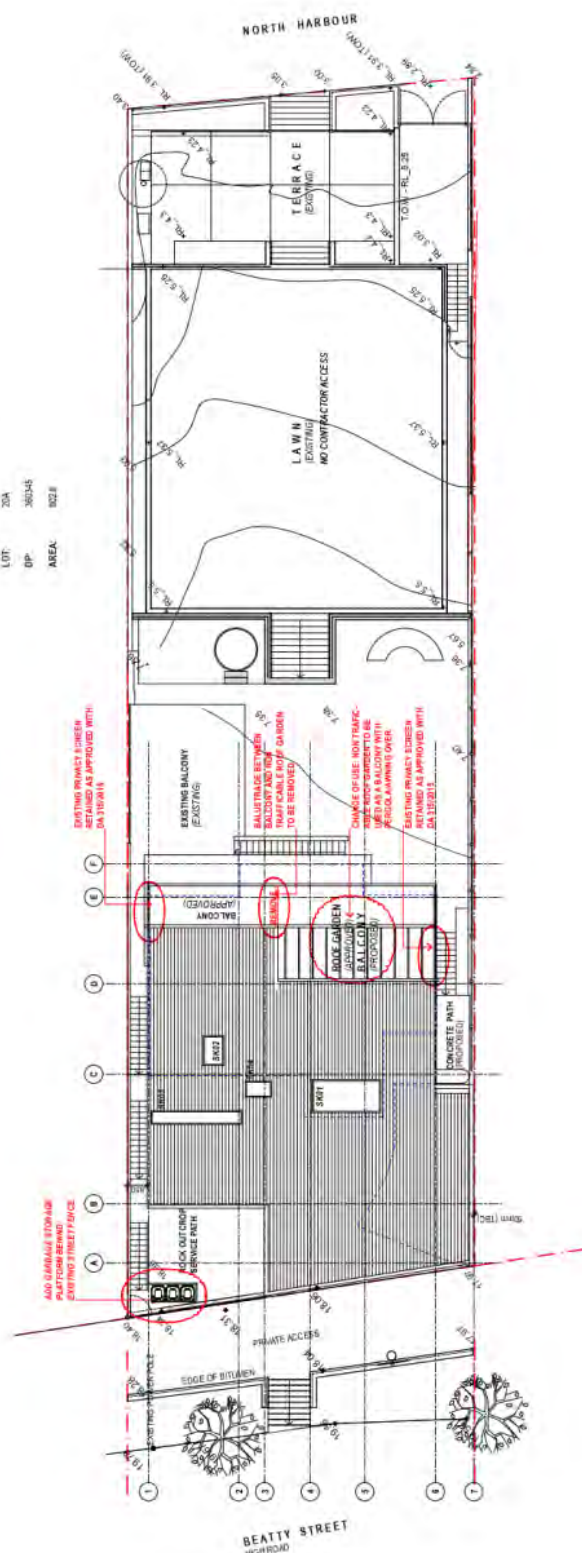
LEGAL DESCRIPTION

ADDRESS: 36 BEATTY STREET, BALGOWLAH HEIGHTS

LOT 107

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AREA: 002.0



CASE ORNSBY

Mergers and additions for
C & B R U S H T O N
 36 BEATTY STREET,
 BALGONGLAH HEIGHTS, 2083, NSW

CONSULTANTS

REVISIONS
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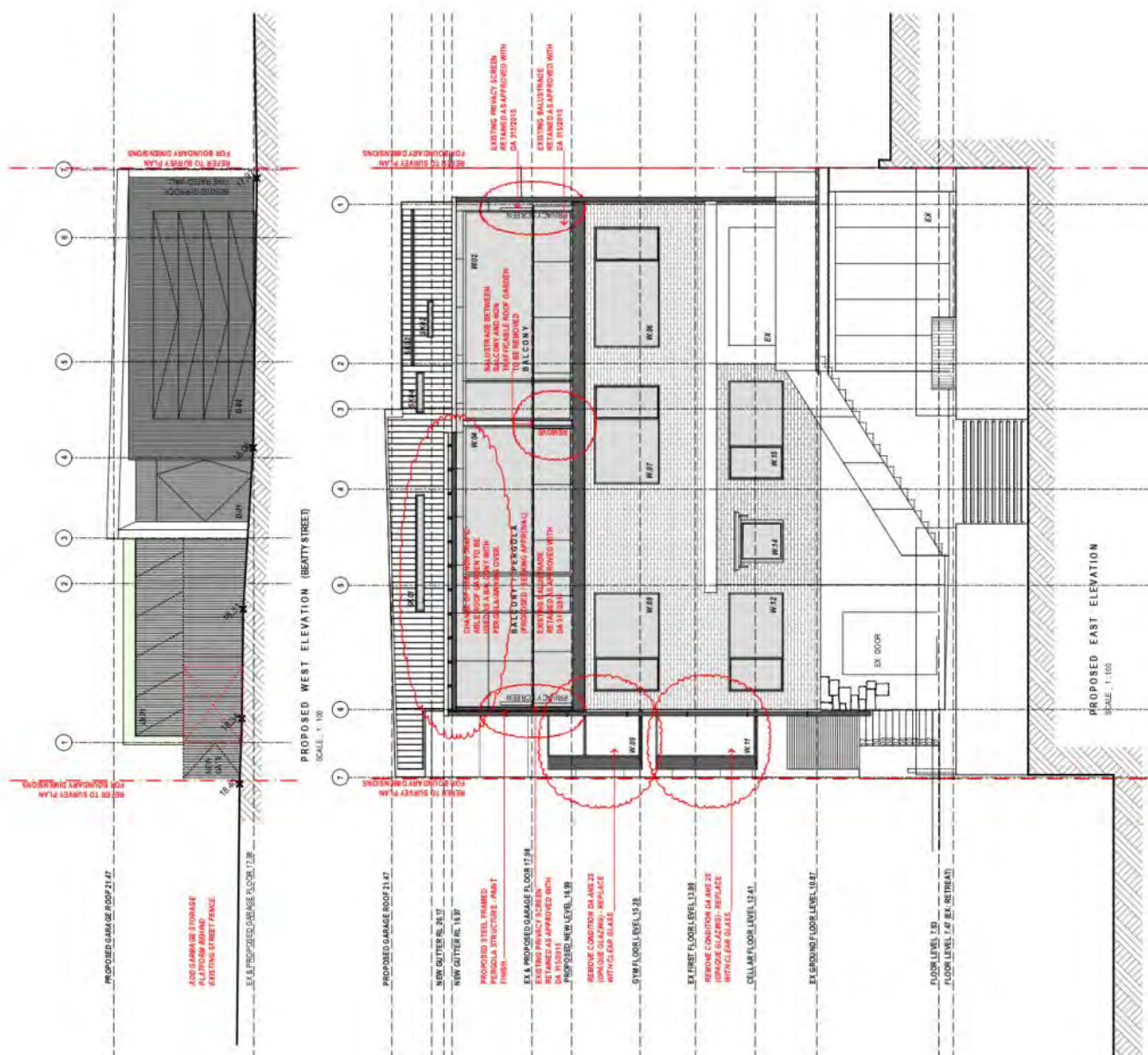
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W. casomby.com

SCALE:	1:1000(A3)
DATE:	07.01.2019
PROJECT No:	031

PROPOSED ELEVATIONS :
EAST & WEST

\$455.07

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Alterations and additions for
C & B R U S H T O N
36 BEATTY STREET,
BALGOWLAH HEIGHTS, 2053, NSW

CONSULTANT5

REVISIONS
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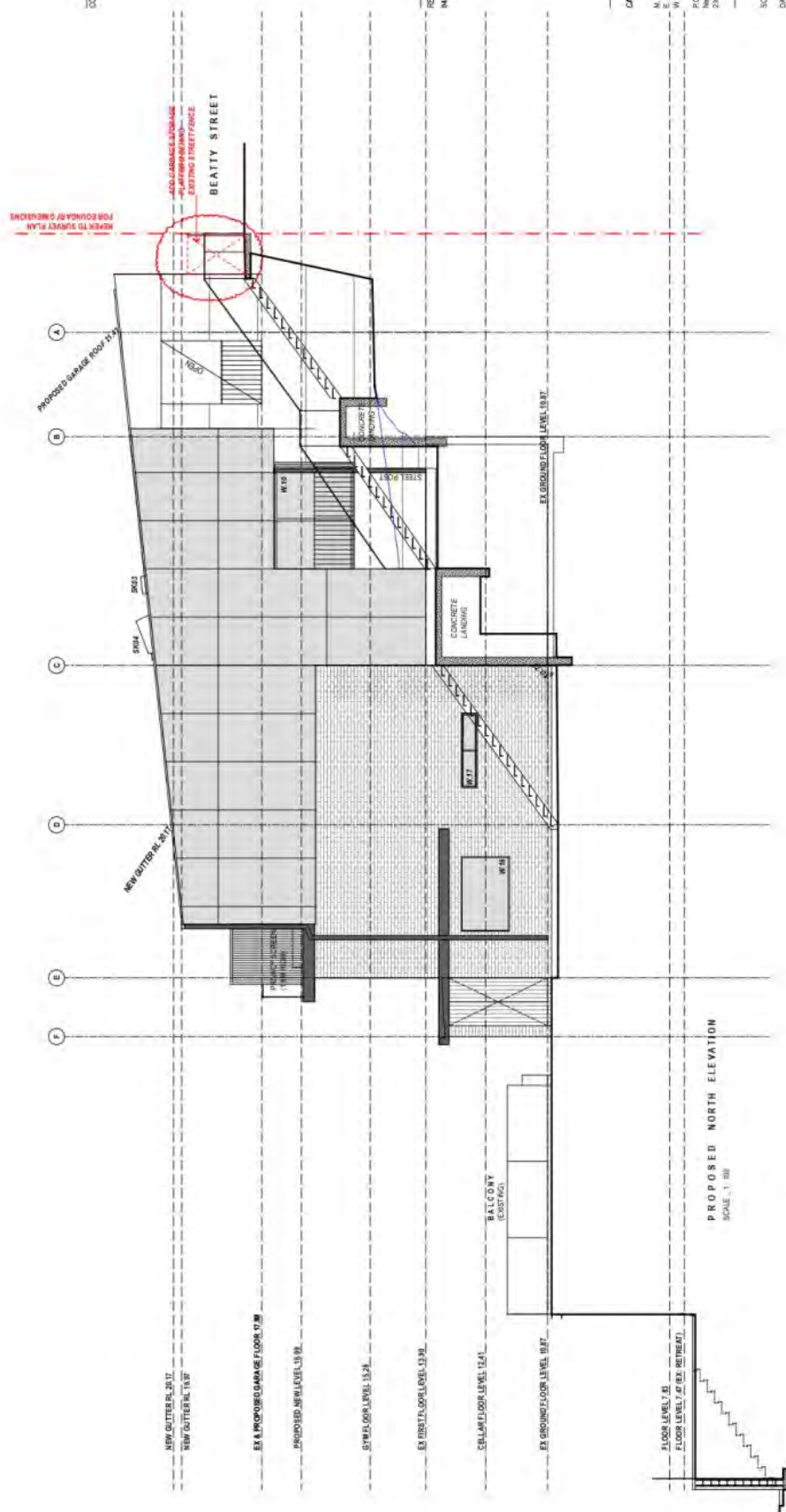
P.O. Box 154,
Akron, Ohio 44306, USA

SCALE:	1:100000
DATE:	07.01.2019
PROJECT No:	031

PROPOSED ELEVATION :
NORTH

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ITEM 3.3

**DA2018/1044 - 12 FERN CREEK ROAD, WARRIEWOOD -
SUBDIVISION OF PART LOTS 11, 12 & 13 DP 1092788 AND
PART LOT 5 DP 73961 INTO THREE 3 LOTS CONSTRUCTION
OF ROADS, DRAINAGE AND ASSOCIATED INFRASTRUCTURE**

REPORTING OFFICER

Anna Williams

TRIM FILE REF

2019/248594

ATTACHMENTS

- 1 Assessment Report**
- 2 Plans**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1044 for subdivision of part lots 11, 12 & 13 DP 1092788 and part lot 5 DP 73961 into three 3 lots construction of roads, drainage and associated infrastructure at Part Lots 11, 12 & 13 DP 1092788 and Part Lot 5 DP 73961, 12 Fern Creek Road, Warriewood subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1044
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 5 DP 736961, 9 Fern Creek Road WARRIEWOOD NSW 2102 Lot 11 DP 1092788, 11 Fern Creek Road WARRIEWOOD NSW 2102 Lot 13 DP 1092788, 13 Fern Creek Road WARRIEWOOD NSW 2102 Lot 12 DP 1092788, 12 Fern Creek Road WARRIEWOOD NSW 2102
Proposed Development:	Subdivision of Part Lots 11, 12 & 13 DP 1092788 and Part Lot 5 DP 736961 into three 3 lots construction of roads drainage and associated infrastructure.
Zoning:	R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential RE1 Public Recreation RE1 Public Recreation RE1 Public Recreation RE1 Public Recreation
Development Permissible:	Yes - Zone R3 Medium Density Residential Yes - Zone RE1 Public Recreation
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Frasers Property Limited
Applicant:	Abax Contracting Pty Ltd
Application lodged:	20/06/2018
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	20/03/2019 to 22/04/2019
Advertised:	23/03/2019
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 550,000.00

Executive Summary

This report provides an assessment of the proposed land subdivision and construction of road and stormwater infrastructure at Nos. 9, 11, 12 and 13 Fern Creek Road, Warriewood. The site is located on the southern side of Fern Creek to the west of Garden Street and will provide an extension of Fern Creek Road. The site is zoned R3 Medium Density and RE1 Public Recreation.

The proposed subdivision will provide lots that reflect the zoning on the site which will facilitate a land swap between Northern Beaches Council and Frasers Property Australia to create public open space adjoining the creek line. The subdivision will create four (4) northern parcels of land (proposed Lots 3, 4, 5 and Part Lot 13) to become public open space, a new road reserve extending Fern Creek Road to the north then an east-west extension and construction of stormwater infrastructure.

As the proposed development involves land owned by Northern Beaches Council, the application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the consent authority.

The assessment of this DA has found that the application is satisfactory in addressing the requirements of PLEP 2014 and addressing the requirements of Pittwater 21 Development Control Plan for the Warriewood Urban Land Release area.

The application is integrated development pursuant to Division 4.8 of the Environmental Planning and Assessment Act, 1979 under Section 100B of the *Rural Fires Act 1997* and the *Water Management Act 2000* as a Controlled Activity. General Terms of Approval (GTA) have been received in this regard.

The application has been publicly exhibited in accordance with Pittwater 21 Development Control Plan. No submissions were received.

Accordingly, it is recommended that the NBLPP, as the determining authority, approve this application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - Strategic and Place Planning (S94 Warriewood Valley)
 Pittwater Local Environmental Plan 2014 - 6.1 Warriewood Valley Release Area
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater 21 Development Control Plan - A4.16 Warriewood Valley Locality
 Pittwater 21 Development Control Plan - B3.13 Flood Hazard - Flood Emergency Response planning
 Pittwater 21 Development Control Plan - C6.2 Natural Environment and Landscaping Principles
 Pittwater 21 Development Control Plan - C6.11 Additional Specifications for development of Sector 901A to 901H
 Pittwater 21 Development Control Plan - D16.1 Character as viewed from a public place

SITE DESCRIPTION

Property Description:	Lot 5 DP 736961 , 9 Fern Creek Road WARRIEWOOD NSW 2102 Lot 11 DP 1092788 , 11 Fern Creek Road WARRIEWOOD NSW 2102 Lot 13 DP 1092788 , 13 Fern Creek Road WARRIEWOOD NSW 2102 Lot 12 DP 1092788 , 12 Fern Creek Road WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The site comprises four allotments being Lot 5 DP 736961 (known as No.9 Fern Creek Road), Lot 11 DP 1092788 (known as 11 Fern Creek Road, Lot 12 DP 1092788 (known as No.12 Fern Creek Road), and Lot 13 DP 1092788 (known as No.13 Fern Creek Road). The sites are irregular in shape, each with a frontage to Fern Creek and forms part of the Warriewood Urban Land Release Area.</p> <p>On the northern side of Fern Creek is the Warriewood Valley Rocket Park Playground. Future works identified for the proposed reserve includes a pedestrian bridge linking the subject site with the northern side of the creek which provides a pathway to Garden street and a variety of transport options and services.</p> <p>The site contains some remnant natural vegetation along the creek line and along the southern boundary of Lot 11. The site is otherwise generally clear of vegetation.</p>

Map:



SITE HISTORY

To support the incoming residents of the Warriewood Valley Release Area, Council identified the need for the creation of a Central Local Park on either side of Fern Creek in Warriewood Valley. To this end, in 2008 Council purchased the land at 9 Fern Creek Road, Warriewood with funds from the Warriewood Valley Development Contributions Plan. It was recognised at the time that the 9 Fern Creek Road property did not correspond exactly with the desired shape of the future park, however, it was necessary to secure this parcel to ultimately enable the future delivery of the park.

In 2013, Frasers Property Limited (Frasers) as the owner of adjoining land parcels 11, 12 and 13 Fern Creek Road presented a land swap proposal to Council to facilitate the achievement of the preferred open space layout on the south side of Fern Creek and provide for the development of the owner's landholdings. A period of consultation followed with adjoining land owners and the Warriewood Valley Residents Association. From this consultation, the Council agreed to a park layout on 18 May 2015, being Council Concept – Sector 8 and 9 Open Space Masterplan and authorised the General Manager to commence negotiations with Frasers. This was formalised via a Memorandum of Understanding (MOU) and Deed of Agreement that was executed following the Council decision on 19 March 2016. The Deed of Agreement represents the final agreed position between the two parties and has attached the agreed land swap plan.

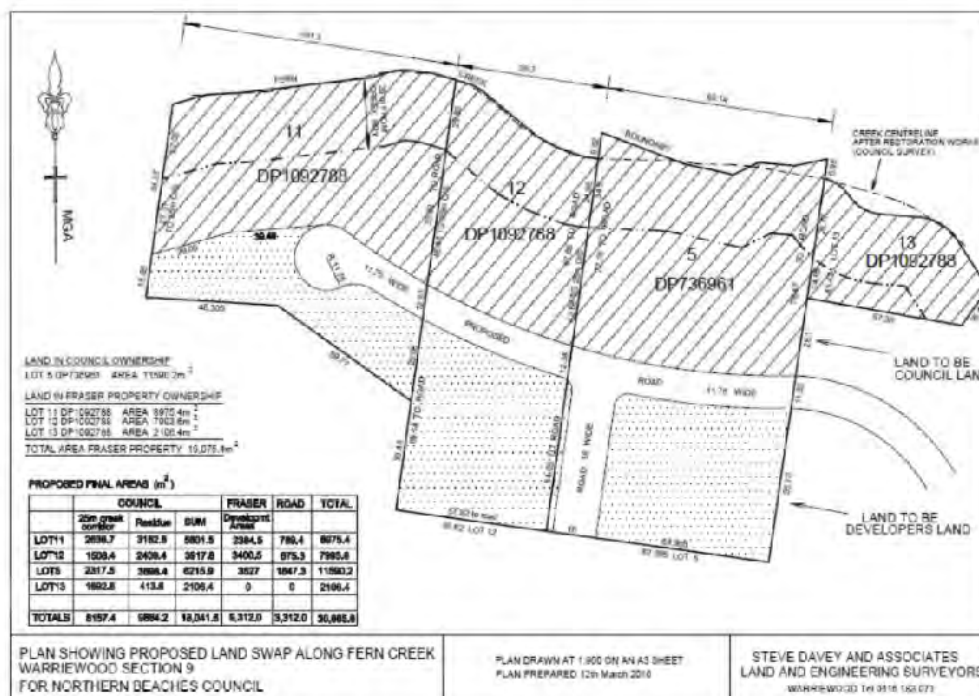


Figure 1 - Plan showing the lands swap arrangements (Source - Northern Beaches Council)

The Deed, signed by the parties on 29 March 2016, contains details of the provision of infrastructure such as extension to Fern Creek Road, a new east-west road, stormwater infrastructure and undergrounding the high voltage power lines. This Deed represents the final agreed position of Council and Frasers Property, with the agreed obligations stipulated under parts 3 and 4 of the Deed.

Development Application No. DA2018/1044 was lodged on 20 June 2018. This development application represents a subdivision creating six (6) super lots to facilitate the new lot boundaries to be transferred between Council and Frasers.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development includes three (3) separate parts:

1. Subdivision of part-lots 11, 12 & 13 DP 1092788 (No. 11, 12 and 13 Fern Creek Road) and part-lot 5 DP 736961 (No.9 Fern Creek Road), to create a northern public open space park adjoining the creek line (proposed Lot 3,4 5 and part Lot 13), and a new road reserve and two (2) new development lots (proposed Lot 1 and 2 with a combined site area of 9375.5m²). (The development lots will be the subject of a future DA for further subdivision and housing.)
2. Construction of a northward extension of Fern Creek Road and a new east-west road, which will terminate to the west as a cul-de-sac and connect with a planned road on the eastern site boundary, in accordance with Council's layout plan for the precinct, and
3. Temporary stormwater drainage works, to drain the land and the roads into the creekline through a new headwall, extending from the eastern end of the east-west road extension.

As the subject site in its entirety includes land owned by Northern Beaches Council (lot 5, No. 9 Fern Creek Road), the application in accordance with referral criteria set by the Minister for Planning and Public Spaces, must be determined by the Northern Beaches Local Planning Panel and is therefore referred for consideration and determination.

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable as part of this application.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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 Pittwater 21 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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

MEDIATION

REFERRALS

Internal Referral Body	Comments	
Environmental Health (Acid Sulphate)	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	What class is the site in on the Acid Sulfate Soils Map?	Class 5
	Is there risk of acid sulfate soil disturbance?	YES
	Will the excavations exceed the depth determined in the risk map?	No
	Does the report adequately address acid sulfate risk mitigation?	YES
	Have you considered disposal of water during excavation, pump out etc.	N/A
	Have you considered disposal of contaminated soil.	YES
	General Comments Likely disturbance at this stage is from road works/drainage/power. Report by GeoEnviro Consultancy Ref: JE17655A-r2(rev) does not expect disturbance of acid sulfate soil but makes provision for appropriate measures.	
	Recommendation APPROVAL - subject to conditions	
Environmental Health (Contaminated Lands)	Was sufficient documentation provided appropriate for referral?	YES
	Is the site potentially contaminated?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Do the reports reflect the requirements of SEPP 55 & Guidelines for Assessing Contaminated Sites?	YES
	Have you considered the list of potential contamination sites where phase 1 is required under SEPP55?	YES
	Does the information submitted, and/or imposition of conditions, allow the the site to be validated safe for its intended use?	YES
	General Comments Testing reveals minimal contamination at this time. Conditions can be added to ensure related issues are complied with. Relevant conditions recommended.	

Internal Referral Body	Comments
	<p>Recommendation APPROVAL - subject to conditions</p>
Landscape Officer	<p>The subdivision application is acceptable subject to the completion of landscaping to the road verge (paths, street trees and turfing).</p> <p>Council's Landscape section have assessed this application against the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain), and Pittwater DCP21 Control C6.4 The Road System and Pedestrian and Cyclist Network.</p>
NECC (Bushland and Biodiversity)	<p>The DA has been assessed against the following Pittwater 21 DCP Clauses:</p> <ul style="list-style-type: none"> - B4.15 Saltmarsh Endangered Ecological Community - B4.18 Heathland/Woodland Vegetation <p>The proposed subdivision, road construction and temporary drainage structures are proposed to be located in a previously cleared area without intact native vegetation. It is therefore considered that the proposal can achieve consistency with the controls.</p> <p>Should removal of native vegetation be required for future dwellings, compliance with the above DCP controls and other relevant environmental planning provisions will be assessed at the development application stage.</p>
NECC (Development Engineering)	<p>Referral response 24/4/2019</p> <p>The revised DRAINS model and amended engineering plans were reviewed are satisfactory.</p> <p>The road layout plan has also been amended to include a temporary turning facility within Lot 2 as previously requested.</p> <p>No objections to the proposed subdivision subject to conditions.</p> <p>Referral response 28/3/19</p> <p><i>The engineering plans have been reviewed and the following further information is required regarding stormwater drainage and the submitted DRAINS model associated with a proposed subdivision.</i></p> <ul style="list-style-type: none"> • <i>Stormwater drainage along Proposed Access Street appears insufficient. It appears there will be significant gutter flow in the 20-year storm event, which will flow overland at the intersection with Proposed Local Street. It is recommended that the Applicant investigate increasing the inlet capacity along this proposed Access Street by providing additional pit/pipe connections, and improving the stormwater arrangement. The capacity of the half-road section should be considered.</i> • <i>The sag point at the proposed intersection is unclear. The longitudinal section of Proposed Local Street is incomplete.</i> • <i>Catchment C3/2 indicates 90% impervious. Please consider whether this is appropriate.</i>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Pipeline 1/L2 to 6/L1 appears to run against the proposed surface levels. A redesign of the drainage arrangement in this area should be considered. • Pipeline 3/L4 to 1/L4 appears inconsistent with the existing Construction Certificate approval for 6 Orchard Street, Warriewood, with respect to pipe sizes, locations and depths. • Tailwater conditions have not been considered from the creek. A preliminary assessment does not raise further concern, but should be considered prior to Construction Certificate. • Detail should be provided regarding the end of road treatment with respect to stormwater management for stormwater discharge to the creek in the 100-year storm event. It appears that the current arrangement will discharge across the adjoining property, which is not acceptable. • In addition the end of road treatment with respect to turning facilities for vehicles and waste services would require a temporary /permanent solution. This could be addressed through the provision of a temporary turning facility and associated Rights of Way. <p>Previous referral response The 2 lot subdivision proposal is not acceptable for the following reasons:</p> <p>1) The engineering concept plans fail to address Councils requirements in regard to storm water drainage both internally and externally to the site. There is a current earth open channel that the runs from the Fern Creek cu de sac to the creek, which is required to be pipe in accordance with Councils Auspec One design standard. The concept plans detail part piping of the channel and discharge to a outlet structure in a location not acceptable to council.</p> <p>The application also requires a hydraulic analysis to determine the upstream flows entering the site both by Councils existing drainage system and as overland flow. The internal pipe is to be designed for a 1 in 20 ARI storm event and overland flow path to the 1in 100 year ARI event to the existing creek. Councils requires a Drains model to determine the flows and hydraulic grade line for this new drainage line.</p> <p>The outlook structure near the creek is to be designed to minimize scour of the creek and impacts on existing flow regimes. Detailed engineering plans in accordance with Auspec One should of been provided to Council.</p> <p>2) The internal drainage system is to demonstrate the provision of On site storm water detention for the proposed housing lots in accordance with the Warriewood Valley water management specification.</p>

Internal Referral Body	Comments
	<p>3) The width of the access street being 11.75m is not in accordance with the Warriewood Valley Masterplan which details a minimum road reserve width of 12.5m.</p> <p>Assessing Officer Comments The application has been satisfactorily amended to address development engineering concerns subject to conditions.</p>
NECC (Riparian Lands and Creeks)	Please refer to the Water Management Comments
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed development is for subdivision to enact a landswap between the proponent and Northern Beaches Council with minor civil works included. In accordance with Clause C6.1 of the Pittwater 21 Development Control Plan a Water Management Report is required for works in the Warriewood Valley Land Release Area. Whilst the future residential allotments are not identified as affected by the Flood Planning Area under existing conditions, Council studies and adjacent developments have identified that an overland flow path under future climate conditions (+30% rainfall intensity + 0.9m sea level rise) traverses the site. Prior to development occurring on the site, the applicant must determine the flooding conditions and confirm compliance with the Pittwater 21 Development Control Plan and Warriewood Valley Water Management Specification.</p> <p>As the civil works proposed are minor and further subdivision is required to enable residential development, a Water Management Report is not considered necessary at this stage. The application is recommended for approval.</p>
NECC (Water Management)	<p>The applicant proposes to discharge stormwater to open ground that will be owned by Council. This is not an appropriate solution, as stormwater must be discharged to a piped network or to Fern Creek, sympathetic to flow direction to prevent scour, and with an outlet that has been designed to defuse flows.</p> <p>The applicant must discuss the appropriate location to discharge stormwater with Council's Parks and Reserves unit, as they will have a preference for where stormwater will pass through Council's land.</p> <p>Assessing Officer Comment The proposed location of the stormwater pipe has been amended following consultation with Council's Parks and Reserves unit who have not raised any concerns. The location and design of the connection into the creek has been provided to the satisfaction of Council's Water Management Section.</p>
Parks, reserves, beaches, foreshore	No objections to the proposed development.
Property Management and	Concern was previously raised by Property that owners consent from

Internal Referral Body	Comments
Commercial	Property, as the asset owner of 9 Fern Creek Road, had not been provided with the development application. This has now been provided and Property have no further issues with the proposal.
Strategic and Place Planning (S94 Warriewood Valley)	<p>Proposed Lots 1 and 2 are created as residential superlots, and anticipated to be subject to a future DA for residential development in accordance with the R3 zoning of the land under Pittwater LEP. As the quantum of dwellings to be accommodated on Lots 1 and 2 are unknown, development contributions will not be imposed on this development application. Advice should be given to the applicant that development contributions will be applicable when a future DA for Lots 1 and 2 are submitted to Council where the dwelling numbers proposed on each of these lots are clearly articulated. Development contributions imposed on new dwellings will be in accordance with the <i>Warriewood Valley Development Contributions Plan Amendment No 16 Revision 3</i>.</p> <p>Proposed Lots 3, 4 and 5 as well as Lot 13 DP1092788 (13 Fern Creek Road) are not anticipated to accommodate future housing given it is zoned RE1 under Pittwater LEP. The creation of these said lots (Proposed Lots 3, 4 and 5, and existing Lot 13 DP1092788) do not generate the need for development contributions in accordance with the <i>Warriewood Valley Development Contributions Plan Amendment No 16 Revision 3</i>.</p> <p>The final development yield is not established as part of this subdivision and will be the subject of a further subdivision application in order to develop the proposed Lot 1 and Lot 2. Accordingly Section 94 Contributions will be captured as part of the future subdivision application for the development yield and are not required for this application.</p>
Traffic Engineer	All dimensions provided are in accordance with the road reserve width requirements as specified in Council's Layout Plan. Traffic staff raise no objection.

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.
Integrated Development – NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	The application was referred to the NSW Rural Fire Service as an integrated development under Section 100B of the Rural Fires Act 1997 requiring General Terms of Approval (GTA). Council received GTA for the development by letter dated 9 October 2018.

External Referral Body	Comments
Nominated Integrated Development – Department of Industry – Natural Resources Access Regulator (Controlled Activity Approval for works within 40m of watercourse)	The proposed development is deemed nominated integrated development requiring a Controlled Activity approval under the <i>Water Management Act 2000</i> as the works include connection of the stormwater and construction of a head wall into Fern Creek. The Natural Resources Access Regulator (NRAR) have issued General Terms of Approval which form part of this consent.

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.

In response to the above requirements of the SEPP, the applicant has undertaken a Phase 1 and 2 contamination assessment and submitted a Remediation Action Plan (RAP) dated 8 May 2018 and prepared by GeoEnviro Consultancy Pty Ltd. In its conclusion, the investigation states:

Clause 7(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Given the claimed potential of contamination on the site as noted in the Phase 1 and 2 Contamination Assessment for the presence of low risk levels of gross ground chemical contamination and buried rubbish fill, a Phase 2 Environmental Site Assessment has been undertaken which confirms the location and type of contaminants on the site and the RAP provides recommendations for the remediation of the site to enable the development to be safely carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R3 : Yes Zone RE1: Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone R3 : Yes Zone RE1: Yes

Principal Development Standards

The Principal Development Standards are not applicable to this application as the proposed subdivision is subject to the requirements of the Warriewood Valley Strategic Review Report 2012 and the Warriewood Valley Strategic Review Addendum Report 2014. The proposal's compliance with these documents is detailed within Part 6.1 of PLEP 2014 and Section D16 of Pittwater 21 DCP.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes

Clause	Compliance with Requirements
7.10 Essential services	Yes

Detailed Assessment

6.1 Warriewood Valley Release Area

Clause 6.1 Warriewood Valley Urban Release Area

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

- (a) *to permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Urban Release Area Map;*
- (b) *to ensure that development in that area does not adversely impact on waterways and creeks;*
- (c) *(Repealed)*

(2) *This clause applies to the land in the Warriewood Valley Release Area.*

(3) *Development consent must not be granted for development on land in a buffer area or sector or at an address mentioned in Column 1 of the table to this clause unless the consent authority is satisfied that the total number of dwellings shown opposite that buffer area, sector or address in Column 2 of that table will be erected.*

Column 1 - Buffer area, sector or address

Sectors 901C, 901G and 9 Fern Creek Road

Column 2 - Number of dwellings to be erected

Not more than 33 dwellings or less than 1 dwelling

(4) *Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the proposed development will not have any significant adverse impact on any of the following:*

- (a) *opportunities for rehabilitation of aquatic and riparian vegetation, habitats and ecosystems;*
- (b) *the water quality and flows within creek line corridors;*
- (c) *the stability of the bed, shore, and banks of any watercourse within creek line corridors.*

(5) *In this clause:*

buffer area means land identified as "buffer area" on the [Urban Release Area Map](#).

creek line corridor means land identified as "creek line corridor" on the [Urban Release Area Map](#).

sector means land identified as "sector" on the [Urban Release Area Map](#).

Warriewood Valley Release Area means the land identified as Warriewood Valley Release Area on the [Urban Release Area Map](#).

In response to the requirements of this clause, the following is provided:

The Warriewood Valley Strategic Review Report 2012 (Strategic Review) and the Warriewood Valley Strategic Review Addendum Report 2014 (Addendum Report) are the planning strategy documents for the Release Area. The Strategic Review, prepared by the NSW Department of Planning and the former Pittwater Council, aimed at reviewing the scale and density of development for all undeveloped lands in the Warriewood Valley Release Area. The Strategic Review identified the subject sites as part of Sector 901A, 901C, 901G and 9 Fern Creek Road and allocated a dwelling density of not more than 33 dwellings or less than 26 dwellings per net developable hectare to the sector.

The recommendations of the Strategic Review as they relate to the subject properties are now reflected in Pittwater Local Environmental Plan 2014 (PLEP 2014).

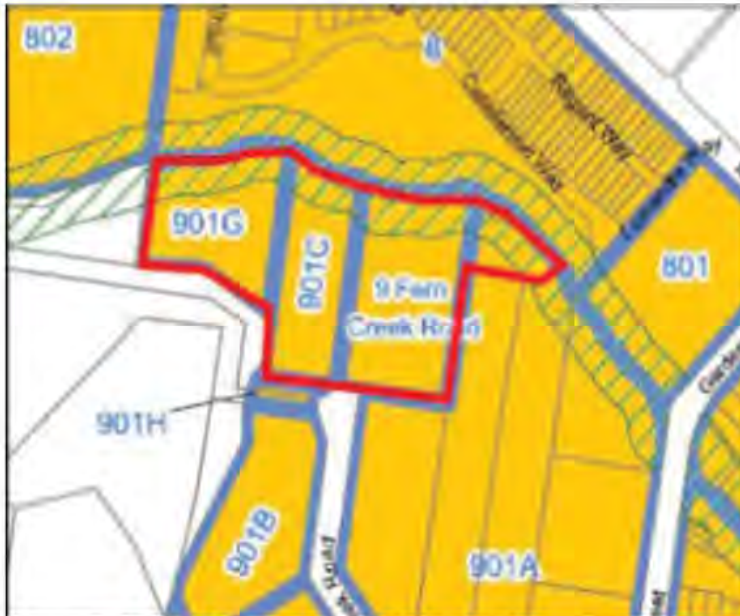


Figure 2 - Relevant excerpt from PLEP 2014 Urban Release Area Map (site area in red).

The Addendum Report details the pro-rata dwelling yield allocation for individual land parcels within Sector 901A, 901C, 901G and 9 Fern Creek Road (excluding land within the creek corridor) to provide certainty should individual properties seek to develop on their own.

The development seeks to subdivide the lots to facilitate a land swap between Council and the land owner. (See Figure 3). These super lots will create four (4) lots being proposed Lot 3, 4, 5 and part Lot 13 on the northern side of the site adjoining the creek line, which are likely to be consolidated in the future to become public reserve. The new lots on the southern side of the Fern Creek Road extension (proposed Lot 1 and 2) will be available for a further subdivision in accordance with the densities outlined in the Warriewood Valley Strategic Review Addendum Report. The dwelling yield stipulated for the subject site is a maximum of 33 dwellings and a minimum of 26 dwellings.

The proposal for subdivision into superlots is not of itself able to demonstrate that the yield required under the LEP will be achieved. Council has requested the applicant to provide an indicative concept plan demonstrating the likely (or at least possible) future form and density of development of the site, to ensure the capacity of the proposed subdivision will meet the minimum or maximum yield permissible under the LEP. Constraints of the site, with particular respect to bush fire considerations may impact on the capacity of proposed lot 1 to be developed depending on the building typology proposed.

The applicant has refused to provide any detail as to its future intentions for the site, or any theoretical concept for the future development of the superlots that would fulfill the requirements of the LEP. The minimum required yield for Lot 1 and 2 together is 26 dwellings. The zoning permits the construction of residential flat buildings with a maximum height of 10.5m. Other relevant controls under the DCP would be required to be complied with by any future proposed development. The applicant maintains that the

minimum yield will be able to be achieved on Lots 1 and 2 notwithstanding the bushfire constraints, and in compliance with the LEP and DCP controls that relate to permissible forms of development on the site. In the absence of any indicative concept plans, this will need to be tested by any future Development Application for the further development and subdivision of Lots 1 and 2.



Figure 3 - Proposed Subdivision (source GDS Group Development Services)

In relation to the proposed subdivision in terms of vegetation rehabilitation, the creekline, and water quality and flows within the creek corridor, Council's Riparian, Bushland and Biodiversity, Stormwater and Reserves sections have reviewed the proposed development and support the works subject to conditions.

The proposal is therefore considered satisfactory in terms of meeting the requirements of Clause 6.1 of PLEP 2014.

7.1 Acid sulfate soils

The subject site is identified as Class 5 on the Acid Sulfate Soils Map and is within 500m of Class 2 land. An Acid Sulfate Soils Assessment has been prepared by GeoEnviro Consultancy Pty Ltd dated 13 June 2018. The assessment concludes that the "*upper sandy soils are not significantly impacted by acid sulfate soils*" and provides recommendations for the site to be monitored during excavation and an acid sulfate soils management strategy should they be identified at any time during construction.

Pittwater 21 Development Control Plan

Built Form Controls

The Built Form Controls do not apply to the subject application as the proposal facilitates the creation of

lots forming part of the land swap and creates two (2) super lots which will be further subdivided under separate application in order to meet the density requirements of the Warriewood Valley Strategic Review Report and Addendum Report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.4 The Road System and Pedestrian and Cyclist Network	Yes	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial development	Yes	Yes
C6.7 Landscape Area (Sector, Buffer Area or Development Site)	Yes	Yes
C6.11 Additional Specifications for development of Sector 901A to 901H	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes

Detailed Assessment

A4.16 Warriewood Valley Locality

The subject site is located within the Warriewood Valley Land Release Area identified on the Urban Release Area Map (Sheet URA_012).

The Warriewood Valley Locality Statement provides the following statement in relation to the future development of land within this area:

"Warriewood Valley Release Area continues to be developed as a desirable urban community in accordance with the adopted planning strategy for the area, and will include a mix of low to medium density housing, industrial/commercial development, open space and community services. The creekline corridors, roads and open space areas form the backbone of the new community, complemented with innovative water management systems, the natural environment, pedestrian/cycle path network, public transport, and recreation facilities."

The subject development to create six (6) new lots, four (4) being dedicated as public reserve and the two (2) southern lots being super lots for future subdivision is considered to successfully address the desired future outcomes for the locality.

B3.13 Flood Hazard - Flood Emergency Response planning

While the subject sites are classified as H3 and H5 in a Probable Maximum Flood event as identified on the Flood Life Hazard Category Maps, the scope of the development does not include any building structures except road and stormwater infrastructure.

C6.2 Natural Environment and Landscaping Principles

As this application is for subdivision to facilitate the land swap for the future public reserve adjoining the creek line and construction of the infrastructure and Fern Creek Road extension, the next application for subdivision detailing the final density distribution will be required to address this clause in detail.

C6.11 Additional Specifications for development of Sector 901A to 901H

The subject site includes lands identified within Sectors 901A, 901C, 901G and 9 Fern Creek Road on the PLEP 2014 Urban Release Map. The subject application addresses the following relevant requirements:

Internal Road Network

The internal road network within Sector 901 should be consistent with the Indicative Layout Plans within this Control.

Comment:

The proposed road layout is consistent with the Indicative Layout Plan with Linear Park and acceptable to Council's Development Engineers.

Land for Public Recreation

Approximately 1 hectare of land is to be provided adjacent to the creekline corridor for passive open space. This open space area is to be connected to the internal road and pedestrian cycleway networks generally in accordance with the Indicative Layout Plan within this Control.

Comment:

The land on the northern side of the proposed internal road extension to Fern Creek Road is made up of part Lot 13 (2107m²), proposed Lot 3 (6215.9m²), proposed Lot 4 (3918.4m²) and proposed Lot 5 (5698.1m²). In total, the land to become public reserve has a total area of 17,939.4m² or 1.79ha. This area adjoins the new east-west access road consistent with the Layout Plan.

Details relating to the other requirements of this control will be required at the next stage of this development where the superlots (proposed Lot 1 and Lot 2) will be further subdivided in accordance with the density requirements within the Warriewood Valley Strategic Review Addendum Report 2014.

D16.1 Character as viewed from a public place

The proposed works associated with this subdivision include road infrastructure works for construction of the Fern Creek Road extension and the construction of stormwater infrastructure extending to the creek. The works satisfy the requirements of this control.

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**Pittwater Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1044 for Subdivision of Part Lots 11, 12 & 13 DP 1092788 and Part Lot 5 DP 73961 into three 3 lots construction of roads drainage and associated infrastructure. on land at Lot 5 DP 736961, 9 Fern Creek Road, WARRIEWOOD, Lot 11 DP 1092788, 11 Fern Creek Road, WARRIEWOOD, Lot 13 DP 1092788, 13 Fern Creek Road, WARRIEWOOD, Lot 12 DP 1092788, 12 Fern Creek Road, WARRIEWOOD, 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
Sheet 3 of 17 - Road and Lot Layout Plan - Rev E	24.04.2019	GDS Group Environment Services
Sheet 4 of 17 - Stormwater Drainage Plan - Rev E	24.04.2019	GDS Group Environment Services
Sheet 5 of 17 - Bulk Earthworks Plan - Rev E	24.04.2019	GDS Group Environment Services
Sheet 6 of 17 - Longitudinal Section and Cross Sections - Rev E	24.04.2019	GDS Group Environment Services
Sheet 7 of 17 - Proposed Access Street Longitudinal Section and Typical Section - Rev E	24.04.2019	GDS Group Environment Services
Sheet 8 of 17 - Proposed Access Street Cross Sections - Rev E	24.04.2019	GDS Group Environment Services
Sheet 9 of 17 - Stormwater Catchment Plan - Rev E	24.04.2019	GDS Group Environment Services
Sheet 14 of 17 - Public Domain Plan - Rev E	24.04.2019	GDS Group Environment Services
Sheet 15 of 17 - Erosion and Sedimentation Control Plan	24.04.2019	GDS Group Environment Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acid Sulfate Soil Assessment	13 June 2018	GeoEnviro Consultancy Pty Ltd
Bush Fire Protection Assessment	20 June 2018	Ecological Australia
Remediation Action Plan (RAP)	8 May 2018	GeoEnviro Consultancy

		Pty Ltd
Flora and Fauna Assessment	June 2018	Ecological Australia

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

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Natural Resources Access Regulator	Referral Response - NRAR - GTA	6 May 2019
NSW Rural Fire Service	Referral Response - RFS - GTA	9 October 2018

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

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

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

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

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

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

6. **Construction, Excavation and Associated Works Bond (Road)**

A Bond of \$350000 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works required to demolish the existing cul de sac in Fern Creek Road and construction of the internal roadworks and footpaths.

Reason: Protection of Council's Infrastructure

7. **Construction, Excavation and Associated Works Bond (Drainage)**

A Bond of \$150000 as security against any damage or failure to complete the construction of Stormwater drainage works as part of this consent.

Reason: Protection of Council's Infrastructure

8. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a Maintenance Bond of \$75000 for the construction of road and drainage infrastructure works. The Maintenance Bond will only be refunded on completion of the six month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing the subdivision certificate .

Reason: To ensure adequate protection of Council infrastructure

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

9. **Road verge landscaping and infrastructure**

A Landscape Plan shall be issued prior to Construction Certificate, containing the following landscape details in accordance with the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain), and the Warriewood Valley Roads Masterplan:

Proposed Local Street

- a) A 1.5m wide footpath to one side in accordance with S-3 of the Warriewood Valley Landscape Masterplan and Design Guidelines, in co-ordination with all civil layouts along the Local Street. This shall be located abutting the kerb and shall be extended, inclusive of kerb ramps, along the existing cul-de-sac, to connect to the proposed footpath alignments for 10 Fern Creek Road and 2 Fern Creek Road,
- b) All underground utility services are to be located under the footpath,
- c) Street tree planting shall be documented in accordance with S-3 of the Warriewood Valley Landscape Masterplan and Design Guidelines, including medium canopy trees to the road verge containing the proposed footpath, and large canopy trees to the road verge containing soft landscaping only,
- d) All street trees for S-3 are to be a minimum 400 litre stock for large canopy trees and 200 litre stock for medium canopy trees, and subject to final approval by Council. All street trees shall be subject to pre-order of plant material.
- e) 400 litre stock shall be delivered as achieving a minimum height of 3.5m, with a minimum caliper of 60mm,
- f) 200 litre stock shall be delivered as achieving a minimum height of 2.5m, with a minimum caliper of 40mm,
- g) Underplanting of native grasses as per S-3 shall be provided under large canopy trees,
- h) All trees to be grown by recognised nursery under natspec growing guidelines,
- i) All street trees shall be spaced evenly to achieve at least 1 tree per lot frontage, or a maximum separation of 7 metres apart,
- j) All street trees shall be installed with tree guards, consisting of 4 timber posts and top & mid timber rails, as per S-3,
- k) All street trees must be maintained for a period of 12 months following the issue of an occupation certificate. Any failure due to lack of maintenance will require replacement. Grassed areas are to be turfed with Couch species (weed free) and even grade to a maximum 4% grade.

All work is subject to a Section 139 approval from Council.

Proposed Access Street

- a) A 1.5m wide footpath to one side in accordance with S-4 of the Warriewood Valley Landscape Masterplan and Design Guidelines, in co-ordination with all civil layouts along the Access Street. This shall be located abutting the kerb and shall be extended, inclusive of kerb ramps,
- b) All underground utility services are to be located under the footpath,
- c) Street tree planting shall be documented in accordance with S-4 of the Warriewood Valley Landscape Masterplan and Design Guidelines, including small canopy trees to the road verge containing soft landscaping only,
- d) All street trees for S-4 are to be a minimum 200 litre stock, and subject to final approval by Council. All street trees shall be subject to pre-order of plant material.
- e) 200 litre stock shall be delivered as achieving a minimum height of 2.5m, with a minimum caliper of 40mm,
- f) All trees to be grown by recognised nursery under natspec growing guidelines,
- g) All street trees shall be spaced evenly to achieve at least 1 tree per lot frontage, or a maximum separation of 7 metres apart,
- h) All street trees shall be installed with tree guards, consisting of 4 timber posts and top & mid timber rails, as per S-4,
- i) All street trees must be maintained for a period of 12 months following the issue of an occupation certificate. Any failure due to lack of maintenance will require replacement. Grassed areas are to be turfed with Couch species (weed free) and even grade to a maximum 4% grade.

All work is subject to a Section 139 approval from Council.

Reason: to enable the long term retention of the desired streetscape character.

10. **Sydney water requirements**

A section 73 Compliance Certificate under the provisions of the Sydney Water Act, 1994 must be obtained from Sydney Water. A copy of any Notice of Requirements letter which may be issued by Sydney Water, is to be provided to the Private Certifying Authority with the Construction Certificate application.

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

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

Reason: Compliance with the Sydney Water Act ,1994 (DACENCPCC4)

11. **Erosion and sediment management plan**

An Erosion and Sediment Management Plan is to be submitted prior to the issue of a

Construction Certificate. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises shall be undertaken through the installation of erosion control devices such as catch drains, diversion drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sedimentation basins. Such plan is to be accompanied by a certification from an appropriately qualified person, that the plans/ details have been designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction* (Landcom 2004). The plan is also to include specific details required to remove fine sediment and clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To ensure appropriate erosion and sediment control practices.

12. **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 of the road and stormwater drainage infrastructure which are to be generally in accordance with the civil design approved with the Development Application (Prepared by GDS Surveyors, Planners, Engineers Drawing Nos 1-19 Ref WW FCR19, Revision E)

a.The engineering plans required under this condition must meet the objectives and requirements of The Warriewood Valley Roads Masterplan; Austroads; AusSPEC #1, Councils standard engineering details and Pittwater 21 DCP, as relevant and achieve a road design and landscaped effect consistent with the Warriewood Valley Concept Masterplan (Public Domain), dated October 2007.

b.Street lighting using Ausgrid standard lights/poles in the proposed roads to be provided to meet Australian Standards.

c.Street name signs (complying to Council's requirements) are to be provided for the proposed roads.

d.All traffic facilities within the proposed roads are to be designed to cater for safe movements by a waste collection vehicle minimum 9.7m in length, to accommodate the existing vehicle type (or greater Australian Standard vehicle class), with no vehicle overhang of nature strips and a minimum 300mm as a clearance of all kerb and traffic islands, for all wheel paths.

e. Road shoulder and road pavement construction including pavement design and treatments in the proposed roads are to be designed for ESA pavement design criteria of 6×10^5 for the full frontage of the site.

The engineering design and plans for road and drainage works must be certified as meeting the requirements outlined above by a suitably qualified and experienced Civil Engineer who is accredited with Professionals Australia as RPENG or equivalent .

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

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

13. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Road and Drainage works is to be approved within Councils Roadway (Fern

Creek Road), including engineering plans and is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the demolition of the the existing cu de sac head and reinstatement as road carriageway. The plans are to be generally in accordance with the Development Application and Council's design specification for engineering works - AUS-SPEC #1 , Warriewood Valley Roads Master plan, and Council's standard engineering plans. The plan shall be prepared by a qualified civil engineer registered as a professional engineer with Professionals Australia or equivalent. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to Council prior to the issue of the Construction Certificate

Reason: To provide public and private safety.

14. **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 relevant utility providers (ie Ausgrid , Sydney Water etc) 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

15. **Construction Management Program**

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. Plans are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community

16. **Engineering Details - overhead power and other utility services**

The engineering plans are to facilitate all utility services including overhead power supply and communication cables located in the adjacent road verge are to be placed and/or relocated underground for the full extent of the site from the frontage of the development site at Fern Creek Road at the full cost to the developer.

Reason: To ensure works met Council standards and specifications

17. **Soil and Water Management Program**

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

18. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

19. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **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.

22. **Progress Certification (Road & Subdivision)**

Compliance certificates are to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Principal Certifying Authority for the following stages of works.

- (a) Silt and sediment control facilities
- (b) Laying of stormwater pipes and construction of pits
- (c) Proof Roll - AUSPEC Standard

- (d) Sub-grade trimmed and compacted **
- (e) Base-course laid and compacted **
- (f) Kerb and gutter construction
- (g) Pavement
- (h) Landscaping and vegetation
- (i) Clean-up of site, and of adjoining Council roadway and drainage system. (**To be tested by a recognised N.A.T.A. approved laboratory). Details demonstrating compliance are to be submitted to the Principal Certifying Authority.
- (j) All layers of the road formation are to be proof rolled to Council's satisfaction

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

23. **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.

24. **Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter
- (e) Subgrade level / basecourse level / sub-base
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

25. **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

26. **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.

27. **Excavation and Erosion Control**

The following measures shall be implemented in the sequence given below to minimise soil erosion:

- Approved runoff and erosion controls shall be installed before site vegetation is cleared (other than that associated with the construction of the controls). These shall be as shown on an ESCP approved by council.
- Topsoil shall be stripped only from approved areas and stockpiled for re-use during site rehabilitation and landscaping.
- Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, waters, footpath, kerb or road surface and shall have measures in place to prevent the movement of such materials onto the areas mentioned. All stockpiled materials are to be retained within the property boundaries.
- Uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas and other areas likely to be disturbed.
- Diversion works shall be adequately stabilised.
- Runoff detention and sediment interception measures shall be applied to the land.

These measures will reduce flow velocities and prevent topsoil, sand, aggregate, or other sediment escaping from the site or entering any downstream drainage easements or waters. The capacity and effectiveness of runoff and erosion control measures shall be maintained at all times to conform to the specifications and standards quoted and to any conditions of approval of those measures.

Measures shall be applied, to the satisfaction of Council, to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development. Measures required in permits issued under the Rivers and Foreshores Improvement Act shall be implemented. This Act requires that people obtain approval for any proposed excavation or fill in or within 40 metres of a watercourse. Permits should be sought from the Department of Natural Resources.

Reason: To minimise soil erosion

28. **Safety Fencing of Excavation and/or demolition**

The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure private and public safety

29. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

30. **Erosion and Sedimentation Responsibilities**

Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the

site has been restored to the satisfaction of council.

Reason: To ensure sediment and erosion controls comply with standards

31. **Site Entry Access way**

An all-weather access way at the front of the property consisting of 50-75mm aggregate or similar material at a minimum thickness of 200mm and 15metres long laid over geotechnical fabric is to be constructed prior to commencement of works and maintenance over the works period.

Reason: To reduce sediment being taken offsite

32. **Cleaning of Vehicles Leaving Site**

Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To reduce sediment being taken offsite

33. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997
2. be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
3. Certification is to be provided to the Principal Certifying Authority by a N.A.T.A. approved laboratory.

Reason: To ensure protection of the natural environment

34. **Compliance with the Contamination Management Plan**

The requirements of the Contamination Management Plan (Remediation Action Plan(RAP) by GeoEnvironmental Consultancy Pty Ltd May 2018 REF: JE17655A-r2(rev) are to be fully implemented from commencement of any excavation, demolition or development works until the site is remediated.

On completion of remediation works a report (from a suitably qualified person/consultant) is to be submitted to Council for its records.

Reason: Protection of the environment, SEPP 55 compliance. (DACHPEDW1)

35. **Acid Sulfate Soil - Excavation- Road works - Power undergrounding**

In the event where acid sulfate soils are identified during construction, the following acid

sulfate soil management strategy must be adopted in conjunction with the recommendations of the report June 2018 by GeoEnviro Consultancy Pty Ltd ;

- If acid sulfate soils are to be disturbed, the acid generation potential of the soil must be managed by neutralising any acid using 3% by weight of lime. Additional lime may be added as required. Alternatively the acid sulphate soil may be removed off-site to a landfill for treatment and disposal.

- The excavated acid sulfate soils must be treated immediately otherwise the excavated soil must be capped to retard the oxidation process.
- All material to be removed from the site must be carried out by a licensed contractor.

This material must be sealed and contained on the truck during haulage using appropriate lining and capping material.

The applicants appropriate consultant shall sign off on compliance (copy to Council) on completion of these works.

Reason: To manage the risk of Acid Sulfate Soil

36. **Off-site Disposal of Contaminated Soil - Chain of Custody**

'Chain of Custody' documentation shall be kept and submitted for the transport of the contaminated material from the site to a disposal site.

Details demonstrating compliance are to be submitted to Council for its records within seven (7) days of transport.

Reason: For protection of environment. (DACPHE03)

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

37. **Certification of Planting, Biodiversity Management and ongoing work**

All recommendations specified in Section 6 of the submitted Flora and Fauna Report (Eco Logical Australia, June 2018) are to be fully implemented at the appropriate stage of construction. Compliance with these recommendations is to be certified by the project ecologist prior to issue of the Subdivision Certificate.

Reason: Environmental protection.

38. **Undergrounding of Telecommunications and Utility Services**

Arrangements are to be made for the provision of underground telecommunications and power supply services to the development. Existing overhead power supply cables are to be relocated underground from the full extent of the site from the frontage of the development site at Fern Creek Road.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACPLF06)

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

39. **Landscape maintenance**

- a) Street tree planting under this consent are to be mulched, watered and fertilized as

required at the time of planting, and to be continued for a period of 12 months prior to release of an occupation certificate.

b) If any tree planted under this consent fails, they are to be replaced with similar species, and of similar pot size, to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: to maintain local environmental amenity

40. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

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

41. **Services**

All utilities/services and street lighting is to be installed by the applicant/developer. Certification is to be provided to Council stating the above requirement has been complied with. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Public safety and to ensure services have been provided for the newly created lots

42. **Council Dedications**

All allotments proposed as Council roads and or reserves are to be dedicated to Council. The subdivision certificate and a certificate of title are to be submitted to Council within one month after registration of the subdivision plan.

Reason: Statutory requirement of the Conveyancing Act 1919

43. **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

44. **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, 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

45. **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

46. **Certification of Utility Services**

The provision of all utilities/services and/or street lighting are to be certified by the relevant authority(s) and/or authorised contractor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure services have been provided in accordance with the relevant authorities requirements

47. **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 (within proposed Lot 3) 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

48. **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

49. **Electrical Substations**

The applicant shall dedicate the land required for an electricity sub-station as a public road, if requested by the energy authority. The dedication is to be detailed on the final plan of subdivision, to be submitted to Council with the application for a Subdivision Certificate.

Reason: To comply with statutory requirements of the energy authority

50. **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

51. **Subdivision certificate documentation**

The following documents and payments are to be submitted to Council in a single package to ensure the efficient release of the relevant Subdivision Certificate:

(a). A copy of the Section 73 Compliance Certificate issued under the provisions of the *Sydney Water Act, 1994*;

(b). Copies of the Subdivision Plans (original plus 6 copies);

(c). The accredited certifiers compliance certificates. Each component of the works as outlined above are to be certified as being carried out in accordance with the relevant plans and documentation by suitably qualified professional persons as outlined in this development consent. Certification is to include:

1. Certification to Council, by an experienced civil engineer who is accredited as RPENG as maintained by Professionals Engineers Australia, that all roads, drainage and other civil engineering works have been carried out and completed in accordance with the engineering plans and specifications required under the Conditions of this Consent.
2. All appropriate infrastructure as outlined in the Conditions of Consent and approved Construction Certificate plans and specifications has been provided to service the proposed residential lots including roads, drainage facilities, landscaping, water management facilities, civil engineering works and services.
3. Security deposit of a value to be determined by Council is to be made to ensure rectification of any defects during the maintenance period.
4. Creation of appropriate easements where service lines or drainage lines pass through private property other than the lot which they benefit.
5. Works-As-Executed plans for all structures or facilities which will be dedicated to Council or which are located within drainage easements or which will require ongoing maintenance by Council. The plans are to be in paper and electronic format (dwg or dxf file) and comprise at least the following:
 - i. Boundary layout;
 - ii. Kerb and gutter, road pavement, footpaths, traffic devices, retaining walls;
 - iii. Signage (including type and wording), line marking;
 - iv. Easements, survey numbers and marks, reduced levels and co-ordinates;
 - v. Stormwater drainage locations, pipe sizes and types, pit sizes and types, subsoil drains;

Reason: Compliance with Councils standard specifications and standards (DACENHPS2)

52. **Certification of drainage work and work as executed data**

A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. CCTV details of all drainage assets to be dedicated to Council are to be in an approved format together with

Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Subdivision Certificate .

Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACENHPS2)

53. Undergrounding of Telecommunications and Utility Services

Arrangements are to be made for the provision of underground telecommunications and power supply services to the development. Existing overhead power supply cables are to be relocated underground fro the full extent of the site from the frontage of the development site at Fern Creek Road.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACENHPS4)

54. Restoration of Damaged Public Infrastructure

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

Reason: To ensure public infrastructure is returned to the state it was in prior to development

55. 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

TABLE OF CONTENTS	
SHEET	DESCRIPTION

1.	COVER SHEET
2.	DRAWING SCHEDULE AND LOCALITY PLAN
3.	ROAD AND LOT LAYOUT PLAN
4.	STORMWATER DRAINAGE PLAN
5.	BULK EARTHWORKS PLAN
6.	FERN CREEK ROAD - LONGITUDINAL SECTION AND CROSS SECTIONS
7.	PROPOSED ACCESS STREET - LONGITUDINAL SECTION AND TYPICAL SECTION
8.	PROPOSED ACCESS STREET - CROSS SECTIONS
9.	STORMWATER CATCHMENT PLAN
10.	HYDRAULIC CALCULATIONS - SHEET 1 OF 2
11.	HYDRAULIC CALCULATIONS - SHEET 1 OF 2
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13.	DRAINAGE LONGITUDINAL SECTIONS - SHEET 2 OF 2
14.	PUBLIC DOMAIN PLAN
15.	EROSION AND SEDIMENTATION CONTROL PLAN
16.	EROSION AND SEDIMENTATION CONTROL DETAILS
17.	EXISTING SURVEY



SITE LOCALITY PLAN

N.T.S.

SUBDIVISION OF LOT 101 IN PROPOSED
SUBDIVISION OF PART LOTS 11, 12 AND 13
DP 1092788 AND PART LOT 5 DP 736961

DATE: APRIL 2019

[illegible]



ITEM 3.4	DA2018/1548 - 24 BONA CRESCENT, MORNING BAY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A BOAT SHED AND JETTY
REPORTING OFFICER	Rod Piggott
TRIM FILE REF	2019/253894
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1548 for alterations and additions to a dwelling house including a boat shed and jetty at Lot 8 DP 21880, 24 Bona Crescent, Morning Bay subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1548
Responsible Officer:	Adam Urbancic
Land to be developed (Address):	Lot 8 DP 21880, 24 Bona Crescent MORNING BAY NSW 2105
Proposed Development:	Alterations and additions to a dwelling house including a boat shed and jetty
Zoning:	E3 Environmental Management
Development Permissible:	Yes - Zone E3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Wendy Jane Chambers
Applicant:	Wendy Jane Chambers
Application lodged:	18/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/09/2018 to 15/10/2018
Advertised:	Not Advertised
Submissions Received:	16
Recommendation:	Approval
Estimated Cost of Works:	\$ 150,000.00

Executive Summary

Development Application DA2018/1548 for alterations and additions to a dwelling house including a boat shed and jetty at 24 Bona Crescent, Morning Bay (Lot 8 in DP 21880), was lodged with Northern Beaches Council on 18 September 2018.

The subject site is located on the south-western side of Morning Bay and has a direct water frontage to Pittwater, measuring 20.21m in width. The site has an overall surveyed area of 1,030m².

The subject land is located within the E3 Environmental Management zone, with the associated waterway located within the W1 Natural Waterways zone of the Pittwater Local Environmental Plan 2014 (PLEP 2014). Development for the purposes of dwelling houses is permitted with consent in the

Land Use Table of PLEP 2014 for land within the E3 Environmental Management zone, and development for the purposes of waterfront structures is permitted with consent in the W1 Natural Waterways zone as an additional permitted use under Schedule 1 of PLEP 2014.

The development application seeks consent for alterations and additions to an approved dwelling house, as well as the construction of a new boat shed, jetty with associated pontoon, and a berthing area for one (1) vessel.

As a result of the public exhibition process, sixteen (16) submissions which object to the proposal were received, with the main concerns being the loss of public foreshore access, the extended length of the jetty, the use of the boat shed, tree removal and the visual impact of the development.

The key issues considered in the assessment of the application have been the maintenance of public foreshore access, the suitability of the extended length of the jetty, the orientation and location of the berthing area, the extent of tree removal, the provision of landscaped area on the subject site and the visual impact of the development on Morning Bay. These concerns have either been assessed as being acceptable or recommended conditions of consent have been included to address the unacceptable areas of non-compliance.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report, which concludes that the proposal is suitable and appropriate for the subject site.

Accordingly, based on the detailed assessment contained within this report, it is recommended that the application be approved, subject to conditions attached to this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - D8.8 Building envelope
Pittwater 21 Development Control Plan - D8.9 Landscaped Area
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 8 DP 21880 , 24 Bona Crescent MORNING BAY NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Morning Bay.</p> <p>The site is irregular in shape with a frontage of 20.21m to the Pittwater waterway and an average depth of 51.45m to Mean High Water Mark (MHWM) by title. The site has a surveyed area of 1,030m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates a partially constructed dwelling house approved under development application DA2018/0022. The land located seaward of MHWM, which is also the subject of this development application, is located within the W1 Natural Waterways zone and currently accommodates a temporary jetty structure.</p> <p>The site has an overall slope of 28.63% and falls 14.62m from the rear of the site to the point of MHWM by title.</p> <p>The site was heavily vegetated with native tree canopy, but has recently been subject to vegetation clearing, with some native canopy trees retained surrounding the approved building footprint.</p> <p>A site inspection was conducted on 23 October 2018. A further site inspection was conducted on 6 May 2019.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses of varying architectural styles within a natural bushland setting. The Ku-ring-gai Chase National Park adjoins the rear of the site. The Pittwater waterway contains existing jetties and berthing areas servicing the adjoining and surrounding residential properties in Morning Bay.</p>

Map:



SITE HISTORY

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

20 June 2018

Development Application DA2018/0022 for the construction of dwelling house and waterfront structures was granted consent. Due to insufficient information for assessment, the proposed waterfront structures were removed through a condition of consent.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for alterations and additions to a dwelling house, specifically the following works:

Dwelling House (currently under construction)

- addition of a bathroom within the footprint of the approved basement level.

Waterfront Structures

- construction of a 4m x 6m boat shed and associated loading platform in the north-eastern corner of the site;
- construction of a 1.5m wide FRP mini-mesh jetty and 3.6m x 2.4m mini-mesh floating pontoon extending from the property boundary into the Pittwater waterway, with associated timber piles; and
- use of a 6m x 5m berthing area located at the end of the pontoon, angled parallel to the shore.

The site inspection revealed that a temporary jetty structure has been installed in front of the subject site and is currently being utilised for construction access for the works approved under DA2018/0022. A

review of Council's records could not locate any approvals for the installation of this structure. This matter has been referred to Council's Building Control Team for further investigation and action, if required.

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration*	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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 Pittwater 21 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report (prepared by Wayne Tucker of Building Code & Bushfire Hazard Solutions Pty Limited, dated 6 December 2017) was submitted with the application, along with a cover letter (prepared by Stuart McMonnies of Building Code & Bushfire Hazard Solutions Pty Limited, dated 23 August 2018) confirming that the original report was still valid for the proposed development. The report stated that the bushfire attack level of the site is "Flame Zone" and the report recommended an

alternative solution to comply with Planning for Bush Fire Protection.

The application was also referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

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 16 submission/s from:

Name:	Address:
Mr Alan George Yuille	3 Wirringulla Avenue ELVINA BAY NSW 2105
Mr Martin James Bayliss	138 Prince Alfred Parade NEWPORT NSW 2106
Ms Jane Jobson	26 - 28 Bona Crescent MORNING BAY NSW 2105
West Pittwater Community Association	9 Sturdee Lane ELVINA BAY NSW 2105
Robert Hawke	7 The Chase Non Existent Boat Access Only LOVETT BAY NSW 2105
Mr Ian Glenmore Mattiske	22 Bona Crescent MORNING BAY NSW 2105
Mr Christian William McVeigh	15 The Chase LOVETT BAY NSW 2105
Ms Susan Kay Wallace	1 Bona Crescent MORNING BAY NSW 2105
Mr Michael James Doherty	37 Bona Crescent MORNING BAY NSW 2105
Dr Daniel Eugene Challis	54 Bona Crescent MORNING BAY NSW 2105
Mr Peter Dulson	52 Bona Crescent MORNING BAY NSW 2105
Dr Bronwyn Gould	36 Bona Crescent MORNING BAY NSW 2105
Mr Ronald Ernest Benson	298 Hudson Parade CLAREVILLE NSW 2107
Mrs Phillipa Anne Guthrie	9 / 26 - 28 Foamcrest Avenue NEWPORT NSW 2106
Mrs Suzanne Landrieu Akerman Mr Piers Stewart Akerman	16 Bona Crescent MORNING BAY NSW 2105
Mrs Edwina Dusseldorp	8 - 10 Bona Crescent MORNING BAY NSW 2105

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

- Coastal/Foreshore Access (Public)
- Length of Jetty/Navigational Issues/Design of Jetty
- Tree Removal/Protection
- Visual Impact/Scenic Protection
- Soil Management/Erosion/Flooding
- Use, Utility and Location of Boat Shed
- View Loss/Height Poles
- Visual Privacy
- Solar Access

- Validity of Supporting Documentation

The matters raised within the submissions are addressed as follows:

- Coastal/Foreshore Access (Public)

Comment:

There is concern that the proposed development will restrict or prohibit public access along the foreshore.

The proposed development, as submitted, does restrict public access along the foreshore and does not meet the requirements of Clause 7.8 Limited development in the foreshore area of the Pittwater Local Environmental Plan 2014.

In order to address this issue, a condition of consent will be placed to ensure that the proposed boat shed loading deck is amended to include stairs on either side, specifically the north-western and south-eastern sides, to maintain public access. This is considered to resolve the concerns raised in the submissions.

This does not warrant the refusal of the development application.

- Length of Jetty/Navigational Issues/Design of Jetty

Comment:

There is concern over the length of the jetty, which extends further into the Pittwater waterway than those on adjoining and surrounding residential properties, the design of the jetty which includes a fixed ramp, and the potential navigational issues due to the extended length.

The extended length of the jetty was a requirement of the NSW Department of Primary Industries - Fisheries in order to protect the seagrass in the immediate vicinity of the proposed development. This is also the case for the associated berthing area, which has been located to avoid overshadowing to the seagrass.

The proposed development has been reviewed by Roads & Maritime Services, who have confirmed that there are no navigational concerns.

The design of the jetty is compatible with those on adjoining and surrounding residential properties, as demonstrated within this report.

This does not warrant the refusal of the development application.

- Tree Removal/Protection

Comment:

There is concern that the additional tree removal required for the proposed development results in an unacceptable environmental impact and that the trees on the site have not been adequately protected during construction works.

Council's Biodiversity Officer has reviewed the proposed development and is satisfied that the additional tree removal is acceptable, subject to recommended conditions requiring the design of the boat shed to be amended to ensure that additional trees can be retained. Additional conditions of consent have been included to ensure that adequate tree protection measures are in place during works and that an Arborist is on site to supervise any works within five (5) metres of existing trees to be retained. The retention of the required trees will be certified prior to the issue of the Occupation Certificate.

The removal of existing trees on the subject site, as approved under DA2018/0022, is not a matter for this development application.

This does not warrant the refusal of the development application.

- Visual Impact/Scenic Protection

Comment:

There is concern that the proposed development will result in unacceptable visual impacts and the loss of the scenic qualities of Morning Bay.

The proposed boat shed and jetty are compatible with the existing development on adjoining and surrounding properties, whilst also complying with the relevant environmental protection and hazard mitigation requirements. The floor level of the proposed boat shed is located just above the Estuarine Planning Level of 2.66 AHD.

The loss of vegetation along the north-eastern (front) boundary and across the site will be compensated through additional landscaping as approved under development consent DA2018/0022, and also enforced as part of this development consent. This will provide for the enhancement of the scenic qualities associated with Morning Bay.

This does not warrant the refusal of the development application.

- Soil Management/Erosion/Flooding

Comment:

There is concern over the impacts of the current excavation works in terms of soil management, erosion and flooding, and the impact of proposed development on the erosion of the foreshore.

The matters relating to the current construction works and processes are not a matter for consideration in this development application.

Council's Project Leader - Water Management has reviewed the application and is satisfied that the proposed development complies with the relevant requirements for soil management and erosion, subject to recommended conditions. A specific condition has been included requiring the installation and maintenance of sediment and erosion control measures during works.

This does not warrant the refusal of the development application.

- Use, Utility and Location of Boat Shed

Comment:

There is concern that the proposed boat shed may be utilised as additional residential accommodation, that the boat shed is not usable based on its location above the water level and overall design, and that the location of the boat shed in the north-eastern corner of the subject site results in unacceptable environmental impacts.

The applicant has stated that the boat shed will be used for the purpose of the storage and routine maintenance of boats, and not for the purposes of separate habitation. A condition has been included to ensure that the proposed boat shed is not modified to include any cooking facilities and is not used for the purposes of residential accommodation.

Whilst the location of the boat shed does not allow for direct water access, it is reasonably considered that small vessels can be carried into the boat shed, as well as any associated equipment. It is considered that larger vessels will be moored in the proposed berthing area.

The overall design of the boat shed, including the proposed sliding doors, is considered to be appropriate, compatible and consistent with existing boat sheds in Morning Bay. Although the location of the boat shed in the north-eastern corner of the subject site necessitates the removal of some vegetation, the proposed location is considered to be appropriate. The application is also supported by an Arborist Report, prepared by Growing My Way Tree Consultants and dated September 2017, which supports the removal of the vegetation. Council's Biodiversity Officer has also reviewed the proposed development and supports the removal of the vegetation, subject to recommended conditions requiring the design of the boat shed to be amended to ensure that trees T34 and T35 (as numbered in the Arborist Report) are retained.

This does not warrant the refusal of the development application.

- View Loss/Height Poles

Comment:

There is concern that the proposed development will result in view loss impacts to the adjoining property at 26-28 Bona Crescent, Morning Bay, specifically from the north-western window to the combined living and dining room.

The view loss has been assessed in accordance with Council's controls and the planning principles established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, and the extent of view loss has been deemed to be minor and acceptable. The request for height poles was considered, but was not required for the assessment of the development application.

Refer to the discussion under Clause C1.3 View Sharing within this report for further detail regarding the view loss assessment.

This does not warrant the refusal of the development application.

- Visual Privacy

Comment:

There is concern that the sliding doors on the north-western elevation of the boat shed will result in an unacceptable visual privacy arrangement for the adjoining property at 22 Bona Crescent, Morning Bay.

The proposed boat shed will be used for the storage of boats and related equipment, and will not be used for residential accommodation. The proposed boat shed is located more than nine (9) metres away from the adjoining dwelling house at 22 Bona Crescent and fully complies with the requirements of Clause C1.5 Visual Privacy of Pittwater Development Control Plan 2014, therefore, it is not considered necessary to implement any visual privacy mitigation strategies.

This does not warrant the refusal of the development application.

- Solar Access

Comment:

There is concern that the proposed development will limit solar access to the living room of the adjoining property at 26-28 Bona Crescent, Morning Bay.

The development application is supported by shadow diagrams which demonstrate that the windows to the combined living and dining room of the adjoining dwelling house will receive a minimum of three (3) hours of sunlight between 9am and 3pm on 21st June, which complies with the requirements of Clause C1.4 Solar Access of the Pittwater Development Control Plan 2014.

This does not warrant the refusal of the development application.

- Validity of Supporting Documentation

Comment:

There is concern that the supporting documentation submitted to Council as part of the development application from the Department of Primary Industries - Fisheries and Roads and Maritime Services may be incorrect or should be verified with these agencies post lodgement of the application with Council.

The correspondence submitted with the development application is valid and Council has not received correspondence stating that the information provided by these agencies is no longer valid or is to be withdrawn from consideration in the assessment of this development application.

This does not warrant the refusal of the development application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>The proposed development is acceptable, subject to conditions.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (unsewered lands)	<p>General Comments</p> <p>The applicant has supplied information that the development will not increase wastewater load and current Wastewater system is adequate</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>The landscape component is assessed and satisfactorily covered within the Natural Environment - Biodiversity referral.</p> <p>The landscape outcomes satisfy the controls of C1.1 Landscaping.</p> <p>No further assessment is provided by Council's Landscape section over and beyond NECC imposed conditions.</p>
NECC (Bushland and Biodiversity)	<p>Council's Bushland & Biodiversity division has assessed the proposal against Pittwater LEP 2014 Control 7.6 Biodiversity Protection &</p>

Internal Referral Body	Comments
	<p>Pittwater 21 DCP 2014 Control B1.4 Aboriginal Heritage Significance, B4.7 Pittwater Spotted Gum Forest EEC, B4.15 Saltmarsh EEC and believes the proposed development complies subject to conditions, as recommended.</p>
NECC (Coast and Catchments)	<p>Estuarine Risk Management</p> <p>The property at 24 Bona Crescent, Morning Bay, has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>Based upon the survey (C.M.S Surveyors Pty Limited dated 9/11/2016) lodged with the DA, the foreshore edge treatment type appears to be predominantly a rock revetment wall with a crest height around RL 1.5m AHD. As such, in accordance with Council's Estuarine Hazard Mapping for Pittwater (2015), an estuarine planning level (EPL) of RL 2.66m AHD applies to the subject site.</p> <p>The new boat shed is proposed to have a floor level of RL 2.70m AHD, which is above the EPL. In accordance with the the relevant B3.7 Estuarine Hazard control for low density residential development the EPL does not apply to jetties, bridging ramps or pontoons located on the seaward side of the foreshore edge. The development proposal is therefore able to satisfy the relevant requirements of the Estuarine Risk Management Policy and related Estuarine Hazard controls.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 12 Development on land within the coastal vulnerability area</p> <p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p> <ul style="list-style-type: none"> (a) <i>if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</i> (b) <i>the proposed development:</i> <ul style="list-style-type: none"> (i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i> (ii) <i>is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</i> (iii) <i>incorporates appropriate measures to manage risk to</i>

Internal Referral Body	Comments
	<p><i>life and public safety from coastal hazards, and</i></p> <p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u> The subject land has not been included on the Coastal Vulnerability Area Map under <i>State Environmental Planning Policy (Coastal Management) 2018</i> (CM SEPP). In regard to clause 15 of the CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application complies with the requirements of <i>State Environmental Planning Policy (Coastal Management) 2018</i> as they relate to development on land identified as a coastal vulnerability area or land that may be affected by coastal hazards.</p>
NECC (Development Engineering)	No Development Engineering objection is raised to the propose development. No OSD will be required with stormwater disposal to comply with Natural Environment - Riparian comments.
NECC (Riparian Lands and Creeks)	<p>The application is recommended for approval.</p> <p>The stormwater drainage plan DO1-A (September 2017) provided by NB Consulting Engineers meets the requirements of Pittwater 21 DCP B5.8 Stormwater Management - Water Quality. Stormwater drainage should be installed as described on these plans.</p> <p>The discharge point underneath the jetty must be constructed in such a way that it doesn't cause scour or shoreline erosion (Pittwater 21 DCP B5.11).</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.
NSW Rural Fire Service – local branch (s79BA EPAA)	The proposal was referred to the NSW Rural Fire Service who provided a response in a letter (Ref: DA18092715298 ME, dated 19 October 2018) stating that the proposal is acceptable subject to recommended conditions. These conditions will be enforced as a condition of consent.
Aboriginal Heritage Office	<p>The application was referred to the Aboriginal Heritage Office who provided a response in an email, dated 2 May 2019, as follows:</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</i></p>

External Referral Body	Comments
	<p><i>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 Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted."</i></p>
NSW Department of Planning (SEPP 71 - Coastal)	<p>The proposal was referred to the NSW Department of Planning. No response has been received within the 28 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p> <p><u>Planner Comment:</u> It is noted that SEPP 71 - Coastal has been repealed and that under the provisions of SEPP (Coastal Management) 2018, which replaced SEPP 71, a referral to the NSW Department of Planning for concurrence is not required.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with development application DA2018/0022 (see Certificate No. 856261S, dated 8 December 2017). The modifications to the dwelling house are consistent with the commitments of this BASIX Certificate and as such, a revised BASIX certificate is not required for this application.

A condition was included as part of development consent DA2018/0022 requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that*

there
are
appropriate
responses
to, and
management
of,
anticipated
coastal
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and
current
and
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coastal
hazards.

Comment:

There is currently no adopted Coastal Vulnerability Area Map under SEPP Coastal Management (2018), however, Council's Principal Officer - Coast & Estuary has reviewed the proposed development in light of the requirements of Clause 12 and is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

13 Development on land within the coastal environment area

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

Comment:

The proposed development is unlikely to cause an adverse impact to the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental values and natural coastal processes, the water quality of the marine estate, or to marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The proposed development, subject to a condition requiring stairs to be incorporated into the proposed boat shed loading deck, is also unlikely to cause an adverse impact to the existing public open space and safe access to and along the foreshore for members of the public. The proposed development does not further worsen access for persons with a disability. The subject site has not been identified to contain

any Aboriginal cultural heritage, practices or places, however, a recommended condition will be placed with the consent to ensure that if any Aboriginal engravings or relics are unearthed as part of the proposed development, works will cease immediately and the relevant authorities will be notified. Furthermore, the proposed development is unlikely to cause an adverse impact on the use of the surf zone.

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

Comment:

As detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause 1.

14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development will maintain the existing, safe access to and along the foreshore, subject to design amendments prior to the issue of a Construction Certificate requiring stairs to be incorporated into the boat shed loading deck, and will not cause any overshadowing, wind funnelling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands, will be preserved. As mentioned above, the subject site has not been identified to contain any Aboriginal cultural heritage, practices or places, however, a recommended condition will be placed with the consent to ensure that if any Aboriginal engravings or relics are unearthed as part of the proposed development, works will cease immediately and the relevant authorities will be notified. The proposed development will also not have an adverse impact on the cultural and built environmental

heritage. As such, it is considered that the proposed development has been designed, sited and will be managed to avoid an adverse impact on the aforementioned cultural and environmental aspects. Furthermore, the proposed development is consistent with the surrounding coastal and built environment, which consists primarily of low-density residential dwelling houses serviced by jetties, and is of an appropriate bulk, scale and size.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The land has not been identified as being affected by any coastal hazards and is not likely to cause increased risk of coastal hazards on other land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone E3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Dwelling House: 8.04m Boat Shed: 5.45m	N/A N/A	Yes (unaltered) Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Clause	Compliance with Requirements
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone W1 Natural Waterways

Development for the purposes of jetties and water recreation structures is prohibited within the Land Use Table of Pittwater Local Environmental Plan 2014 (PLEP 2014) in Zone W1 Natural Waterways, however, Clause 2.5 of PLEP 2014 allows for additional permitted uses on particular land, as described or outlined in Schedule 1 of PLEP 2014. Schedule 1(23) of PLEP 2014 states that development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent in Zone W1 Natural Waterways for land identified as "Area 23" on the Additional Permitted Uses Map of PLEP 2014. The subject land is located within "Area 23" and as such, the proposed development is permitted with consent.

7.8 Limited development on foreshore area

The proposed development does not allow for continuous public access along the foreshore area and to the waterway, and therefore does not meet the requirements of this Clause.

In order to ensure that continuous public access is provided along the foreshore, a condition of consent will be placed requiring amendments to the design of the proposed boat shed loading deck to incorporate stairs on the north-western and south-eastern sides.

The proposed development, as amended through the recommended condition of consent, satisfies and complies with the requirements of this Clause and is acceptable.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation ¹	Complies
Front building line	6.5m	20.03m to Dwelling House	N/A	Yes (unaltered)
		44.38m to Boat Shed	N/A	Yes
Rear building line ²	Foreshore Building Line (~14.25m)	Nil to Boat Shed Deck	N/A	N/A
		0.14m to Boat Shed	N/A	N/A
		14.81m to Dwelling House	N/A	Yes (unaltered)
Side building line	2.5m (SE)	2.95m to Dwelling House	N/A	Yes (unaltered)
		3.25m to Boat Shed	N/A	Yes
	1m (NW)	2m to Dwelling House	N/A	Yes (unaltered)
		12.88m to Boat	N/A	Yes

		Shed		
Building envelope	3.5m (NW)	Outside envelope	N/A	No (unaltered)
	3.5m (SE)	Outside envelope	N/A	No (unaltered)
Landscaped area ³	Maximum Site Coverage: 230m ²	Site Coverage: 277.2m ²	17.03% (47.2m ²)	No
Boat Shed Building Height	Maximum 4.5m above Platform	3.91m	N/A	Yes

Notes:

1. The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation).
2. As the proposed boat shed and loading deck are located within the foreshore area, where such development is also permissible, it is considered that the rear setback control does not apply, as it would not be possible to comply with the rear building line.
3. Clause D8.9 Landscaped Area of Pittwater Development Control Plan 2014 states a maximum area that is not to be provided as landscaped area, rather than a percentage that is to be provided as landscaped area.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	No	Yes
D8.9 Landscaped Area	No	Yes
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D8.12 Companion animals	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

C1.3 View Sharing

A submission was received which raised concern over the potential view loss from the adjoining property at 26-28 Bona Crescent, Morning Bay, as a result of the proposed development, specifically from the north-western corner of the living room.

As per the requirements of this control, the view loss has been considered in accordance with the outcomes of the control and the planning principles established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, as below.

Nature of the Views to be Affected

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

Comment:

The views attainable from the adjoining dwelling house and front yard comprise of water views of Pittwater, including the interface between the land and water, when looking towards the north-west, north-east and south-east, land views of Ku-ring-gai Chase National Park to the north-west and north-east in the immediate vicinity of the site, and distant land views of Clareville, including a partial view of Stokes Point, towards the north-east.



Photo 1: View obtained from the north-western window to the combined living and dining room, taken from a standing position.



Photos 2 and 3: View obtained across the front boundary from the combined living and dining room, and kitchen, taken from a standing position.



Photo 4: View obtained from main bedroom across the front boundary, taken from a standing position.

Part of the Property the Views are Obtained

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

Comment:

The views are obtained from the combined living and dining room, kitchen, main bedroom and hallway of the dwelling house, as well as from the yard and boat shed. The views are predominantly obtained across the front elevation of the dwelling house when in both a standing and seated position, but also across the side boundary from the combined living and dining room.

Extent of Impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

Comment:

There will be an impact on the view obtained from the north-western window to the combined dining and living room, which will be partially obstructed by the proposed boat shed and loading deck. It is important to note that this view is obtained over the side boundary and is currently partially obstructed by vegetation, and as such, it must be recognised that this view is vulnerable to being impacted by development. The degree of view loss is best described as being minor, as the property will continue to enjoy uninterrupted views across the front boundary from all rooms and service areas, including from the combined living and dining room.

Reasonableness of the Proposal

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

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

Comment:

The proposed development is almost entirely compliant with Council's development controls, apart from the length of the jetty which extends beyond those adjoining, the location and orientation of the berthing area and the overall landscaped area provided on the site. The proposal is considered to be reasonable in this case, as the areas of non-compliance are not directly attributing to the view loss, which is to be affected by the entirely compliant boat shed and associated loading deck. A more skillful design would not provide the applicant with the same development potential and amenity, as incorporating a jetty and berthing area elsewhere would limit access to the adjoining properties, and result in additional environmental impacts. Also, providing additional landscaped area would not reduce the impact on the views obtained by the neighbour. The relocation of the compliant boat shed would also not result in the same development potential and amenity, as the boat shed would need to be further elevated or excavated, therefore potentially further limiting access and resulting in a greater environmental impact.

D8.8 Building envelope

The proposed development maintains the approved building which protrudes the prescribed building envelope on the north-western and south-western elevations. As there are no external changes proposed to the building as part of this development application, the non-compliance will not be considered further as part of this assessment.

D8.9 Landscaped Area

Existing Site Coverage (as approved under DA2018/0022): 242.7m²
Required Maximum Site Coverage: 230m²
Proposed Site Coverage: 277.2m²

The proposed site coverage exceeds the maximum site coverage requirement of 230m² for sites with an area greater than 1,000m² under this control, however, the existing site coverage on the site also exceeds this requirement and the proposed development seeks to further increase site coverage. Further consideration of the non-compliance will be given in accordance with the outcomes of the control, as below.

- *To achieve the desired future character of the Locality. (S)*
Comment
The proposed development is consistent with the desired future character of the Lower Western Foreshores and Scotland Island Locality.
- *The bulk and scale of the built form is minimised. (En, S)*
Comment
The proposed boat shed is of a suitable bulk and scale for the subject site, meeting the required size and height requirements, and the bulk and scale associated with the dwelling house is to be maintained, as approved, with the proposed bathroom incorporated within the footprint, therefore, the bulk and scale of the built form is minimised.
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)*
Comment
The proposed development ensures that a reasonable level of privacy, amenity and solar access is provided within the development site, and is also maintained to neighbouring properties by including a bathroom within the approved dwelling house, with no external

changes, and by appropriately siting the boat shed on the subject site.

- *Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation including tree canopy. (En)*
Comment
 The proposed development retains vegetation, where possible, which will be further enhanced through additional landscaping to screen the visual impact of the built form. Upon completion of the landscaping, the building will have the appearance of being secondary to landscaping and vegetation, including tree canopy.
- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*
Comment
 The amount of stormwater run-off on the site is reduced based on the extent of development on the site and will be appropriately managed to prevent soil erosion and siltation of natural drainage channels.
- *To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.*
Comment
 The height and mass of the proposed boat shed has been appropriately distributed to ensure that neighbourhood amenity is preserved, including providing a reasonable level of solar access to adjoining residential properties, which is to be further enhanced through the provision of additional landscaping. The height and mass of the boat shed has been designed to respond to the site characteristics and environmental constraints by being located in an area where excavation is minimal, whilst also complying with the required Estuarine Planning Level (EPL) of 2.66 AHD, with a proposed floor level of 2.7 AHD.
- *To conserve significant natural features of the site and contribute to effective management of biodiversity.*
Comment
 The proposed development conserves the significant natural features of the site, including vegetation where possible, and contributes to the effective management of biodiversity through the implementation of additional requirements, based on the recommendations of the Project Ecologist and the recommended conditions from Council's Biodiversity Officer.
- *The area of site disturbance is minimised. (En)*
Comment
 The area of site disturbance is minimised to provide a dwelling house and associated waterfront structures on the subject site, which is consistent with the extent of development on adjoining and surrounding properties.
- *Soft surface is maximised. (En, S)*
Comment
 The amount of soft surface provided on the site is maximised based on the extent of development on the subject site, and that on adjoining and surrounding sites.

Based on the above, the proposed development is consistent with the outcomes of the control and the non-compliance is supported on merit.

D15.15 Waterfront development

Description of Areas of Non-Compliance

- (a) Jetties, Ramps and Pontoons
The proposed jetty, ramps and pontoon comply with the requirements of this control, with the exception of the jetty, which extends further into the Pittwater waterway when compared to the jetties immediately adjoining the subject site and the majority of those surrounding the subject site, which does not comply with the requirement of this control which states that structures shall generally be no greater in length than existing structures. It is noted that the additional jetty length shall not impede general navigation or equitable access or use of the waterway by adjoining landowners, and that the length of the jetty has been minimised based on the requirements of the NSW Department of Primary Industries - Fisheries in order to protect the seagrass located in the immediate vicinity of the proposed waterfront structures.
- (b) Berthing Areas
The proposed berthing area is located parallel to Mean High Water Mark (MHWM), which is non-compliant with the requirement of this control which states that vessels shall be berthed at right angles to MHWM to minimise visual impact on the foreshore, where practicable. It is noted that due to the existence of seagrass in the immediate vicinity of the proposed jetty, it is not practical to locate the berthing area at a right angle to MHWM in this case. The control also states that where this configuration may restrict navigation, which is not the situation in this case, vessels may be berthed parallel to MHWM provided such vessels are no greater in length than the maximum length of the distance between the lateral limits of the property less 4 metres, and provided that the parallel moored vessel does not restrict navigation. In this case, the proposed berthing area is 6m in length, which is less than the distance between the lateral limits of the property (20.21m) minus 4 metres, being 16.21m. Correspondence submitted with the development application from Roads and Maritime Services confirms that there are no navigational concerns with the proposed waterfront development.

The proposed berthing area is also wholly located beyond the seaward face of the pontoon, which does not comply with the requirement of this control which states that a berthing area shall not extend beyond the seaward face of any related pontoon, piles or jetty steps.

Furthermore, the detail of the draft of the vessel that is to be berthed in the berthing area was not provided with the development application. In order to ensure that vessel is suitable to be moored in the berthing area and does not scrape along the seabed, a condition of consent will be included to ensure that there is sufficient depth of water below the vessel, being 600mm depth at zero low tide (-1.53 AHD), when it is moored in the berthing area. This will ensure that the berthing area complies with the requirements of this control.

Merit Consideration

Further consideration of the above areas of non-compliance will be given in accordance with the outcomes of the control, as below.

- *Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater. (En)*

Comment

The application is supported by an Ecological Impact Assessment, prepared by Narla Environmental Pty Ltd and dated December 2017, which states that the proposed waterfront development will not have an adverse impact on the water quality and estuarine habitat of Pittwater, subject to the recommendations within the report. Council's Senior Environment Officer - Catchments and Principal Officer - Coast and Estuary have also reviewed the

application and are satisfied that the proposed development will not have an adverse impact on the water quality and estuarine habitat of Pittwater, subject to recommended conditions.

- *Public access along the foreshore is not restricted. (S)*
Comment
A recommended condition has been place to ensure that the proposed loading deck associated with the boat shed is modified to incorporate stairs on the north-western and south-eastern sides to maintain public access along the foreshore.
- *Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners. (S, Ec)*
Comment
Correspondence submitted with the development application from Roads and Maritime Services confirms that there are no navigational concerns with the proposed waterfront development. The proposed berthing area and jetty have been set back at least two (2) metres from the lateral limits of the subject site to ensure safe access is maintained for adjoining landowners.
- *Structures blend with the natural environment. (S)*
Comment
The proposed structures blend with the natural environment by being appropriately sited and by utilising dark and earthy tones for the external finishes.
- *Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway. (En, S)*
Comment
The proposed structures are compatible with the existing waterfront development on adjoining and surrounding residential properties. Where the proposal is inconsistent, these are minor and necessary for compliance with the relevant environmental and hazard requirements, and have been minimised as much as possible. It is considered that the structures will not be detrimental to the visual quality of the Pittwater waterway. Council's Senior Environment Officer - Catchments and Principal Officer - Coast and Estuary have also reviewed the application and are satisfied that the proposed development will not have a detrimental impact on the water quality and estuarine habitat of the Pittwater waterway, subject to recommended conditions.
- *To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development. (Ec)*
Comment
The proposed development is for residential waterfront development, therefore, this outcome is not applicable.
- *Waterfront development which does not comply with the outcomes of this clause are removed. (En, S, Ec)*
Comment
As demonstrated above, the proposed waterfront development complies with the outcomes of this clause and is considered to be both appropriate and acceptable.

Based on the above, the proposed development is consistent with the outcomes of this control and the areas of non-compliance are supported on merit.

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

Pittwater Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1548 for Alterations and additions to a dwelling house including a boat shed and jetty on land at Lot 8 DP 21880, 24 Bona Crescent, MORNING BAY, 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
SD1.00 Proposed Site Plan & Site Analysis, Rev E	11/04/2018	Casey Brown Architecture
SD2.02 Basement, Rev D	27/08/2018	Casey Brown Architecture
SD6.1 Boatshed, Rev D	11/04/2018	Casey Brown Architecture
SD6.3 Elevations - Boat Shed and Jetty, Rev D	11/04/2018	Casey Brown Architecture
SD6.4 Sections - Boat Shed and Jetty, Rev D	15/08/2018	Casey Brown Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 Basement Stormwater Drainage Plan, Rev A	September 2017	Northern Beaches Consulting Engineers
D02 Ground Floor and Roof Stormwater Drainage Plans, Rev A	September 2017	Northern Beaches Consulting Engineers
D03 Stormwater Drainage Notes and Details, Rev A	September 2017	Northern Beaches Consulting Engineers
D04 Stormwater Drainage Details Sheet 1, Rev A	September 2017	Northern Beaches Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acid Sulfate Soil Comments (Ref: J1260A)	15 October 2018	White Geotechnical Group
Arboriculture Impact Assessment	September 2017	Growing My Way Tree Consultants
Bushfire Hazard Assessment Report (Ref: 170616/B)	6 December 2017	Building Code & Bushfire Hazard Solutions Pty Limited

Bushfire Hazard Assessment Statement (Ref: 170616)	23 August 2018	Building Code & Bushfire Hazard Solutions Pty Limited
Ecological Impact Assessment (Project No. CBA3, Rev 2.0)	December 2017	Narla Environmental Pty Ltd
Geotechnical Investigation (Ref: J1260)	1 December 2017	White Geotechnical Group

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Construction & Site Waste Management Plan	29 November 2017	Casey Brown Architecture
SD1.01 Waste Management and Sediment and Erosion Control Plan, Rev A	18/12/2017	Casey Brown Architecture

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. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	Referral - RFS - DA2018/1548 - 24 Bona Crescent Morning Bay	19 October 2018
Roads and Maritime Services	Roads and Maritime Services Approval	12 October 2017

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

3. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work,

subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- v) For any work/s that is to be demolished
The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following:

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

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

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

5. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical group (J1260) dated 1 December, 2017 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

6. **Water Quality - Low Density Residential**

To comply with Pittwater 21 DCP B5.8, the applicant must install stormwater quality improvement measures as described in Stormwater Drainage Plan DO1-A (September 2017) provided by NB Consulting Engineers.

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

Reason: Protection of the receiving environment (DACNECPCC1)

7. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes, they will not reduce public access to or diminish the amenity of public foreshore land.

Reason: To minimise potential risks associated with estuarine hazards for development in the coastal zone.

8. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.66m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.66m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.66m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.66m AHD.

Reason: To ensure that aspects of the development likely to be affected by coastal hazards are built at the appropriate level

9. **Additional Tree Retention and Clarification of Plan Inconsistencies**

Trees numbered T34 and T35 (numbering as per supplied and approved Arborist Report authored by Growing My Way - Kyle Hill, dated September 2017) are to be retained and protected. Any excavation works for the proposed boat shed shall be a minimum 3m from the base of the tree stems (including pier excavation). Alterations of the boat shed orientation or dimensions shall occur to ensure all trees noted to be retained are protected. Works shall not occur within 3m of the retained tree stems.

Reason: Natural Environment Protection (DACNECPCC2)

10. **Stormwater Discharge into Waterways and Coastal Areas**

Where a stormwater system discharges into a natural watercourse or coastal area, an outlet structure is required to be installed and designed to defuse the concentrated stormwater discharge to reduce flow velocities to prevent scour, be safe and easily maintained.

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

Reason: Protection of the receiving environment (DACNECPCC2)

11. **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.

12. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

13. **Depth of Water Requirements for Vessel Moored in Berthing Area**

There is to be sufficient depth of water below the vessel, being 600mm depth at zero low tide (-1.53 AHD), when the vessel is moored in the berthing area.

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

Reason: To ensure that the berthing of vessels is of a minimal environmental impact.

14. **Amendments to the Approved Plans**

The proposed loading deck on the north-eastern elevation of the proposed boat shed is to include stairs on the north-western and south-eastern sides to enable public foreshore access. This access is to be maintained at all times.

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

Reason: To ensure that the proposed development enables continuous public foreshore access.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with

vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Road Reserve**

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

Reason: Public Safety.

17. **Ecologist Recommendations to be Implemented**

All recommendations as set out in supplied Ecological Impact Assessment authored by Nala Environmental Pty Ltd, dated December 2017 are to be required to be complied with before and throughout the development period .

Reason: Natural Environment Protection (DACNEEDW1)

18. **Tree Protection - Arborist Supervision of Works**

All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and minimally AQF Level 5 qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

19. **Excavation Near to Trees on Adjacent Properties**

As excavation is required within five metres of an existing significant tree or trees and vegetation on an adjoining site, the excavation is to be supervised by a qualified consulting arborist. In the event that major structural roots or feeder roots are encountered, the arborist is to require the builder to carry out appropriate action to ensure the retention of the tree or other vegetation, and is to advise the Principal Certifying Authority accordingly. Works are not to progress past this point until the Principal Certifying Authority has confirmed that this condition has been satisfied.

Where the subject trees are on neighbouring property and are on Council's list of exempt species, tree removal remains subject to the owner's consent . Council will not be involved in approving or refusing removal/damage to these trees, and any future decisions made in relation to them is a civil matter between the neighbouring parties.

Reason: To ensure the protection and retention of neighbouring property trees.

20. **Stockpiling of Topsoil**

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

21. **Arborist Recommendations to be Implemented**

As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Growing My Way - Kyle Hill, dated September 2017 are required to be complied with before and throughout the development period, particularly with regard to the following:

- a) Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
- b) Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
- c) All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
- d) Signage is to be erected advising all contractors and visitors to the site that no works or storage is to take place within the calculated Tree Protection Zone (TPZ) of existing trees.

Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

Tree numbers T34 & T35 of this report are to be retained and protected (contrary to report recommendations). All excavation is to be a minimum 3m from the base of the stem of these trees.

Reason: To ensure the retention of the Urban Forest/Natural Environment and remain consistent with approved reports.

22. **Tree Protection Zone Fencing to be Certified**

Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report authored by Growing My Way - Kyle Hill, dated September 2017 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites.

Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate.

Reason: To protect and retain trees proposed for retention.

23. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

24. **Construction Access**

Construction access from the National Park at the rear of the site is prohibited. Any materials/machinery required for construction is to be by barge to the subject site, or by obtaining consent from adjoining landowners for construction access via their property.

Reason: To ensure that legal construction access.

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

25. **Geotechnical Certification Prior to Occupation Certificate**

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

26. **Acid Sulfate Soils Management Certification**

Prior to the issue of the Occupation Certificate, written certification from a suitably qualified person(s) must be submitted to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations in the Acid Sulfate Soils Management Plan have been undertaken.

Reason: To ensure compliance with standards.

27. **Documentation of Arborist Site Supervision Required**

Documented evidence of a qualified arborist supervising the works in proximity to trees being retained and ensuring that all tree protection measures as specified in the supplied arborist report and for T34 & T35 is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

Reason: To ensure the retention of the Urban Forest/Natural Environment.

28. **Tree Protection to be Certified by Arborist**

Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report by Growing My Way - Kyle Hill, dated September 2017 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Additionally the project Arborist is to specify protection measures required for T34 and T35 prior to works commencing. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate. Documented evidence of a qualified arborist having supervised the works in proximity to trees being retained and ensuring that all tree protection measures are adopted as specified in the approved arborist report is required. This documentation is to be provided prior to the issue of the Occupation

Certificate.

Reason: To ensure the retention of the Urban Forest/Natural Environment.

29. **Installation of Nest Boxes**

Nest boxes are to be installed as per recommendations within the submitted Ecological Impact Assessment authored by Nala Environmental Pty Ltd, dated December 2017 specifically but not limited to section 4.5.1. Nest box installation is to be certified by an Ecological Consultant / Project Ecologist as being complete and adequate.

Reason: Wildlife habitat replacement.

30. **Practical Completion of Landscape Works**

A landscape practical completion report is to be prepared by the consultant landscape architect/designer and submitted to the Principal Certifying Authority with the Occupation Certificate application. This report is to certify that all landscape works have been completed in accordance with the landscape working drawings and specifications.

Reason: To ensure landscaping is adequate and consistent with approved plans.

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

31. **Acid Sulphate Soils**

All excavation, construction and associated works must be conducted in accordance with the approved Acid Sulfate Soil Management Plan titled Acid Sulfate Soil Comments by White Geotechnical Group dated 15th October, 2018 ref. no. J1260A.

Reason: To ensure management of potential acid sulfate soils.

32. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

33. **Landscape Maintenance Strategy**

Landscape working drawings and specifications are to incorporate a landscape maintenance strategy for the owner/occupier to administer over a 24 month establishment period (or supplied separately). This strategy is to address maintenance issues such as irrigation, soil testing, weeding, plant staking, fertilising, pest and disease control, replanting, remedial pruning and the like.

Further, provision is to be made for the landscape designer to visit the site on a six (6) monthly basis from the date of issue of the Occupation Certificate. After the final inspection, the landscape designer is to issue a report to the owner/occupier certifying that all plant material is healthy and performing to expectation. A copy of this report is to be forwarded to the Accredited

Certifier or Council.

Reason: To ensure landscaping is adequate, consistent with approved plans and will thrive.

34. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

35. **Boat Shed Shall Not be Used as Residential Accommodation**

At no time shall the boat shed be utilised or converted to provide for residential habitation. The boat shed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.

Reason: To minimise potential risks associated with estuarine hazards for development in the coastal zone.

36. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

37. **Control of Domestic Dogs**

Domestic dogs are to be kept from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: Wildlife protection.

38. **Fencing for Wildlife Passage**

Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

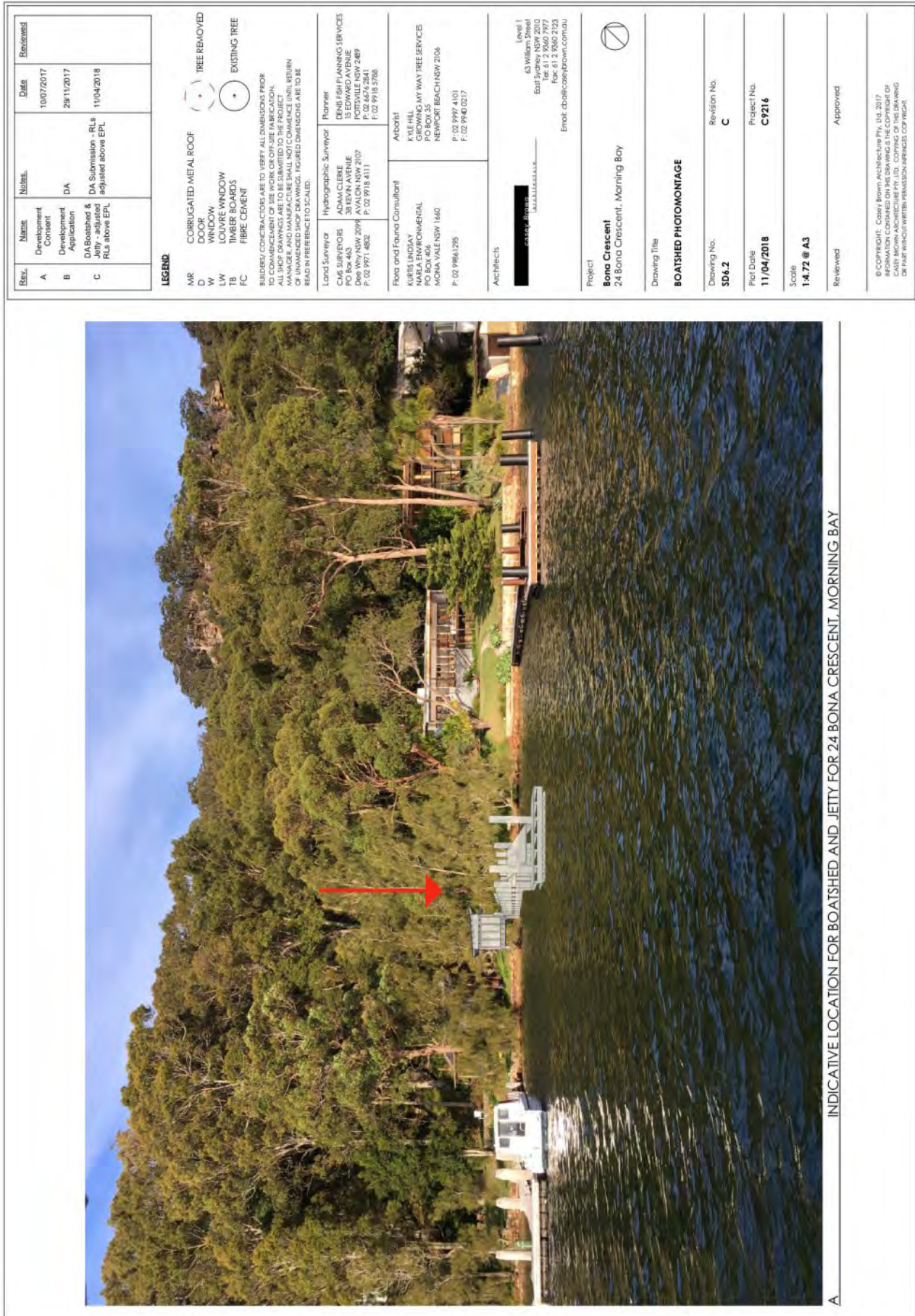
Reason: Management of wildlife corridors

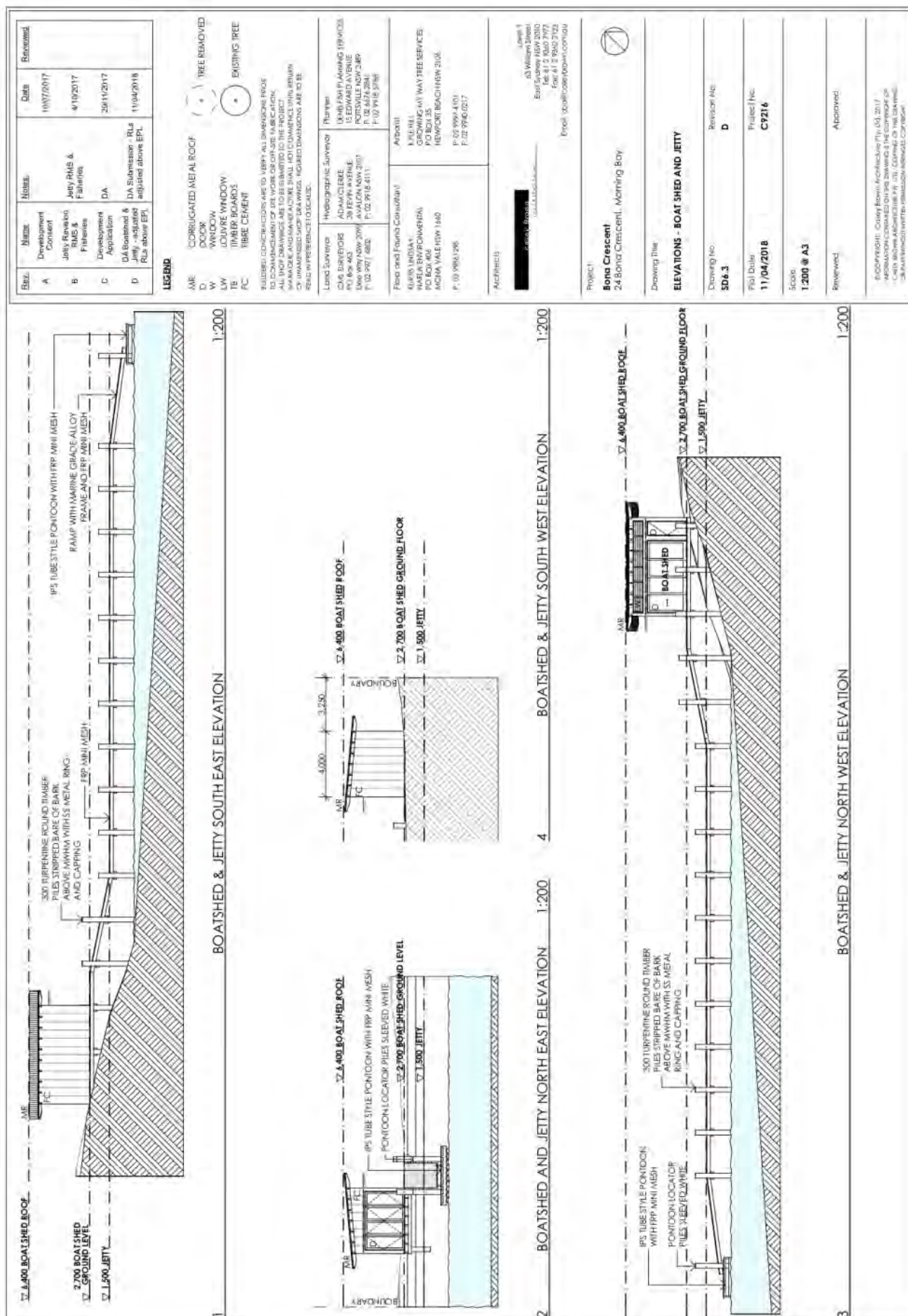
39. **Landscape Plan to be Implemented**

Landscaping is to be implemented in accordance with the approved Landscape Plan authored by Casey Brown Architect, drawing no. SD2.00 Revision D dated 15 December 2017 contained under DA2018/0022. The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.

Reason: To ensure the site is landscaped.







ITEM 3.5

**MOD2019/0083 - 22 LOWER BEACH STREET, BALGOWLAH -
MODIFICATION OF DEVELOPMENT CONSENT DA99/2016
GRANTED FOR DEMOLITION OF EXISTING DWELLING,
CONSTRUCTION OF THREE (3) X TWO (2) STOREY
TOWNHOUSES WITH ASSOCIATED GARAGES AND STRATA
SUBDIVISION**

REPORTING OFFICER**Geoff Goodyer****TRIM FILE REF****2019/253917****ATTACHMENTS**

- 1 Assessment Report**
- 2 Plans**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the original application was determined by an independent panel and it is the subject of 10 or more unique submissions by way of objection. The report has been prepared by an independent planning consultant as there has been compliance action and issues related to the overall building height.

RECOMMENDATION OF INDEPENDENT PLANNING CONSULTANT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. MOD2019/0083 for Modification of Development Consent DA99/2016 granted for demolition of existing dwelling, construction of three (3) x two (2) storey townhouses with associated garages and Strata Subdivision at Lot 7 DP 31047, 22 Lower Beach Street, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0083
Responsible officer:	Geoff Goodyer, planning consultant, Symons Goodyer Pty Ltd
Land to be developed (address):	Lot 7, DP 31047, 22 Lower Beach Street, Balgowlah
Proposed development:	Demolition of existing dwelling, construction of three (3) x two (2) storey townhouses with associated garages and strata subdivision.
Proposed modification:	Amendment to roof pitch and springing point resulting in an increase in building height.
Zoning:	Manly LEP 2013 – Land zoned R1 General Residential
Development permissible:	Yes – multi dwelling housing
Existing use rights:	No
Consent authority:	Northern Beaches Council
Delegation level:	Northern Beaches Local Planning Panel
Land and Environment Court action:	No
Owner:	J & A Copeland and A & L Copeland
Applicant:	Woodhouse & Danks Pty Ltd
Application lodged:	1 March 2019
Integrated development:	No
Designated development:	No
State reporting category:	Residential – New multi unit
Notified:	7/3/2019 to 25/3/2019
Advertised:	Not advertised
Submissions received:	13 submissions representing 11 properties
Recommendation:	Refusal

EXECUTIVE SUMMARY

On 18 August 2016 Council approved the demolition of a dwelling house and the construction of 3 x 2-storey townhouses on the subject site. A condition of consent was imposed requiring the deletion of skylights *"to ensure the retention of views to, from and through the site"*.

On 26 April 2017 the approval was modified. The modified plans deleted the skylights. At the same time, the roof pitch was increased from 1.0° to 3.0° which increased the height of the building by 360mm.

The building has now been constructed, but not in accordance with the approval. The current application seeks to modify the approval so it is consistent with the building that has been constructed. This includes increasing the roof pitch to 3.8° and raising the springing point of the roof by 110mm which results in a building that is 580mm higher than that which was originally approved and 220mm higher than the modified approval.

The principal issue arising with the current modification relates to view sharing.

This report has assessed the view sharing impacts of the proposal against the approval as modified and also, as required by s. 4.55(2)(a) of the EPA Act 1979, against the originally approved development.

The author of this report concludes that the additional impacts on views created by the proposal compared to that which was originally approved are such that, qualitatively, the proposal is not substantially the same development and therefore fails the threshold test in s. 4.55(2)(a) of the EPA Act 1979. Consequently, the proposal is recommended for refusal.

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 (ie: 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 in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013
Manly Development Control Plan 2013 – 3.4.3 Maintenance of Views

SITE DESCRIPTION

Property description:	Lot 7 DA 31047, 22 Lower Beach Street BALGOWLAH NSW 2093
Detailed site description:	<p>The site is located on the northern side of Lower Beach Street 85 metres to the west of its intersection with Woodland Street. The site is rectangular in shape, with a southern frontage to Lower Beach Street of 19.812 metres, eastern and western side boundaries of 45.72 metres, and a northern rear boundary of 19.812 metres. The site area is 905.7m². The site is burdened by an easement to drain water 3.048m wide.</p> <p>The site contains a recently constructed 2-storey multi-dwelling housing development containing 3 townhouses.</p> <p>The surrounding area has been developed for a variety of residential housing types including townhouses and dwelling houses in landscaped settings.</p>

LOCALITY PLAN (not to scale)



Figure 1 – Location of Site

SITE HISTORY

The site has been used for residential purposes for approximately 70 years prior to which it was vacant. A search of Council's records has revealed the following relevant history:

DA 99/2016 was approved on 18 August 2016 for the demolition of existing dwelling, construction of three (3) x two (2) storey townhouses with associated garages and strata subdivision. The approval included the following condition:

ANS02

The proposed skylights are to be deleted and the roof ridge height immediately below continued. Plans are to be suitably amended prior to the issue of Construction Certificate.

Reason: To ensure the retention of views to, from and through the site and ensure the amenity of adjoining properties.

A Section 96(1A) application to modify DA99/2016 was approved on 26 April 2017. The applicant stated that the modifications sought related to the treatment of bedroom windows in Townhouse 3, the setback of the western wall of the study in Townhouse 1, and the treatment of the gallery window in Townhouse 1. The approved proposal also deleted the skylights as required by condition ANS02.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the roof pitch and springing point of the development.

The building was originally approved with a roof pitch of approximately 1.0° and a springing point level of RL36.79 resulting in a maximum roof ridge level of RL36.89. This height was determined by using the level marked as "ROOF+ 36790" on the North Elevation (Drawing A20, Issue A), which does not correspond with the highest part of the roof, and measuring to the highest part of the roof using Adobe Acrobat X Pro (to avoid possible errors arising from paper stretch).

The s96(1A) approval resulted in a building with an approved roof pitch of approximately 3.0° and a springing point level of RL36.79 resulting in a maximum roof ridge level of RL37.25. This height was determined by using the level marked as "CEILING+ 36530" on the North Elevation and South Elevation (Drawing A20, Issue B) and measuring to the highest part of the roof using Adobe Acrobat X.

The current proposal is for a building with a roof pitch of approximately 3.8° and a springing point level of RL36.90 resulting in a maximum roof ridge level of RL37.47.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) Manly Local Environmental Plan 2013
- d) Manly Development Control Plan 2013

REFERRALS

External Referrals

Referral Body External	Comments	Consent Recommended
Ausgrid	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.	N/A

NOTIFICATION & SUBMISSIONS

The subject application was notified to surrounding and nearby properties in accordance with the EPA Regulation 2000 and Manly Development Control Plan 2013.

In response, Council received 13 submissions on behalf of 11 properties. All of the submissions raised objections. Council subsequently received submissions in response from the applicant and one of the owners of the site and from solicitors acting on behalf of one of the objectors. The issues raised in the letters of objection are summarised as follows:

Name:	Address:
Ms Wendy Gillian Cramley	3 / 24 Lower Beach Street BALGOWLAH NSW 2093
Mr Mark David Acton	33 Lower Beach Street BALGOWLAH NSW 2093
Mr Brian Mark Remedios	2 / 131 Woodland Street BALGOWLAH NSW 2093
Mr Matthew Scott Johnstone Mr Ainsley Elizabeth Johnstone	6 / 24 Lower Beach Street BALGOWLAH NSW 2093
Mrs Stephanie Helen Mitchell	6 / 2 A Nield Avenue BALGOWLAH NSW 2093
Mr Brian Royal McEvoy Mrs Janette Joyce McEvoy	6 / 2 B Nield Avenue BALGOWLAH NSW 2093
Mr Victor Gilman Brushe Mrs Jennifer Gay Brushe	1/24 Lower Beach Street BALGOWLAH NSW 2093
Brian Hallett	4 / 24 Lower Beach Street BALGOWLAH NSW 2093
Mr Joshua William Carney	2 / 24 Lower Beach Street BALGOWLAH NSW 2093
Matthew Fletcher	2 / 27 Lower Beach Street BALGOWLAH NSW 2093
Holding Redlich Lawyers Mr Murray Paul Burke State Planning Services - John Mcfadden	5a/24 Lower Beach Street BALGOWLAH NSW 2093

Impact on views

Concerns are raised regarding the impact of the increased building height on views.

Comment: The context in which these objections are raised relates to the history of approvals for the development.

As originally proposed, the development included raised skylights on the roof. A condition of consent was imposed as follows:

ANS02

The proposed skylights are to be deleted and the roof ridge height immediately below continued. Plans are to be suitably amended prior to the issue of Construction Certificate.

Reason: *To ensure the retention of views to, from and through the site and ensure the amenity of adjoining properties.*

The Section 96(1A) application approved on 26 April 2017 resulted in an increase in the roof pitch from 1.0° to 3.0° and a consequential raising of the highest point of the roof by 351mm to RL37.25.

It should be noted, however, that the Schedule of Amendments submitted by the project architect did not include the raising of the height of the building. Notwithstanding this, the plans submitted with the Section 96(1A) application were stamped as approved and are specified as approved in the modified development consent (Condition 1). Condition 1 further stipulates *"In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail"*.

The current proposal seeks to raise the roof pitch to approximately 3.8° and the springing point by 110mm resulting in an overall increase in the building height of 220mm over that which was approved by the Section 96(1A) application and 580mm over that which was originally approved.

View impacts are experienced from Units 5A and 6, 24 Lower Beach Street. These properties are located to the west of the subject site.

Part 3.4.3(d) of MDCP 2013 provides:

(d) The ultimate assessment of views and view loss in this plan must be in accordance with the following planning principle established by the NSW Land and Environment Court as follows:

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

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

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

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

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

The following assessment has been carried out on the basis that the development has not been constructed. This is consistent with the judgement of the Land and Environment Court with regards to unlawful built works (*Ireland v Cessnock City Council* [1999] NSWLEC 250). The assessment is twofold: an assessment against the proposal as originally approved and an assessment against the modified approval.

First step: Assessment of the views that are impacted:

The following pre-development photographs have been extracted from the assessment report for DA 99/2016. The other photographs were taken by the author of this report on 24 April 2019.



Photograph 1: Unit 6, pre-development photograph taken from a standing position on the balcony located off the kitchen / living room located on the first floor.



Photograph 2: Unit 6, 24 April 2019, taken from the approximately same position as photograph 1.



Photograph 3: Unit 5a, pre-development photograph taken from a standing position from the balcony located off the kitchen/living room at first floor level.



Photograph 4: Unit 5a, 24 April 2019, taken from a standing position from the balcony located off the kitchen/living room at first floor level.



Photograph 5: Unit 5a, 24 April 2019, taken from a standing position from the balcony located off the kitchen/living room at first floor level.

The views affected are district views. The foreground view is of housing and landscaping. The background view is of urban development in Fairlight and Manly including the recognisable landforms. A small water glimpse of North Harbour is available from Unit 5a.

In my opinion the view is of a moderately valuable level. The elements of the view that give it this value is the extent of the outlook of the urban area and the completeness of that view. The extent of the view of the water, which is small, forms a very minor element of the overall view and is not sufficient to raise the value of the view above a moderately valuable level.

Compared to the modified approval, the views affected are parts of the urban area of Fairlight, the top of some of the taller buildings in Manly, the top of foreground trees, and the horizon at North Head. In my opinion, these views are of low to moderate value.

Second step: From what part of the property are the views obtained?:

The views are obtained from living areas, kitchens and appurtenant decks. They are obtained from both standing and sitting positions. They are obtained over the side boundary of the subject property. As noted in the Land and Environment Court's judgement, *"the expectation to retain side views and sitting views is often unrealistic"*.

Third step: Assess the extent of the impact:

The proposal will result in the loss of a very significant part of the existing district view. Views of the higher parts of Fairlight will be retained but views of Manly and the lower parts of Fairlight are obscured.

From Unit 6 some district views are retained over the front (southern) portion of the subject site, particularly from the southern living area of Unit 6 which is slightly more elevated than the northern living area.

From both Units 5a and 6 some district views are retained by looking to the left and right but the direct view looking out from those properties is mostly obscured.

No other views are retained from the living areas of either Unit 5a or Unit 6.

In my opinion the extent of the impact is severe. The direct views are mostly obscured although some is retained (eg: the higher parts of Fairlight), as are some minor acute views to the left and right and some of the view from the southern living area of Unit 6.

Compared to the modified approval, my opinion is that the extent of the impact is minor. The impact on the foreground landscape and the elements of Manly and the horizon of North Head are such that the remaining view is of the sky (other than the side view of Fairlight). The loss of view of the horizon and other built and landscape elements is such that interest in the view is diminished.

Fourth step: Assess the reasonableness of the proposal:

The principal elements of any built form that result in impacts are those that define the building envelope, ie: building height and setbacks. To the extent that the proposal results in impacts on views it complies with these controls. In particular, the building is substantially under the building height control.

As noted in the Land and Environment Court judgement, *"with a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours."*

In this case, a more skilful design could incorporate a lower pitch roof and a lower springing point for the roof, both of which were elements of the original approval.

Both of these elements would come at some loss of the development potential of the site.

For example, the lower pitch of the roof is not available with all roofing products although some roofing products are advertised with a minimum roof pitch of 1°, such as was originally approved. There may be an increase in the cost of those roofing products with a lower roof pitch or difficulties in obtaining a manufacturer's warranty.

A reduction in the pitching point of the roof may have a small impact on the internal amenity of the proposed dwellings, possibly through a lower ceiling height, or it may have an impact on building cost and methodology.

Furthermore, in assessing the reasonableness of the proposal, I have considered the realistic expectations of the neighbouring landowners. Firstly, the affected view is over a side boundary and the expectation to retain that view is "*often unrealistic*". Secondly, the proposal complies with the development controls that have a direct impact on views, particularly the building height control, so it is a reasonable expectation that a building would be constructed within that envelope, as is proposed.

In synthesising these considerations I have reached the opinion that a more skilful design is achievable without a significant cost to the development potential of the site. The additional costs of providing a lower roof pitch and lower springing point are not of such significance as to outweigh the loss of views that is experienced by the affected properties. The retention of a portion of views from the affected properties that would be achieved by a more skilful design, whilst also providing for views from the proposed development, represents appropriate view sharing for the development of the subject site.

The iterative impact of the current proposal compared to the modified approval is less than when compared to the originally approved development. This minor to moderate impact to views of low to moderate value is such that, taken on its own, it would, in my opinion, not be sufficient to justify the refusal of the proposal.

Aesthetic appearance of building

Concerns are raised that the roof is reflective, there are number of antennae, vents, etc protruding from the roof, and the building looks bland.

Comment: The development consent as originally issued and as modified under Section 96(1A) does not contain conditions relating to the colour or reflectivity of the roof.

The power to impose conditions on a Section 96 application (now Section 4.55) is examined by McClellan CJ in *1643 Pittwater Road Pty Ltd v Pittwater Council* [2004] NSWLEC 685, who relevantly concluded at paragraph 51:

51 Ultimately the limits of the discretion which may be exercised by a consent authority will be defined by the matters raised for consideration by the application. Accordingly, when an application to modify one aspect of a development is lodged, the consent authority must consider the matters under s 79C(1) relevant to the aspects of the development to which the application relates. Accordingly, if an application is made to modify the height of a building, consideration of any matter which is either directly or indirectly related to height will arise for consideration. If an application is made to change the approved colour of a building, matters relevant to colour must be considered. This could, in an unusual case, extend to the apparent height or bulk of the building. However, an application to change the colour of a building could not provide a basis to reconsider the provision of car parking for the development. The matter of car parking simply does not arise. I do not understand the President to be suggesting otherwise.

In my opinion, the current application is a situation where the proposal to modify the pitch of the roof of the building raises the issue of the colour of the building and the impact created by glare and reflection because it results in a greater area of the roof plane being visible to neighbouring properties.

The roof as constructed is a light colour and results in a high level of glare and reflection. It must be recognised that a balance needs to be achieved between the impacts of the glare produced by roofing materials and the energy and sustainability impacts of dark coloured roofing materials, which absorb heat and therefore make achieving energy targets more difficult.

In balancing these considerations, a reasonable outcome is to require a roof colour classified as "Medium" under the BCA, ie: having a solar absorptance of between 0.40 and 0.60. If this application was to be approved it would be appropriate to impose a suitable condition of consent to address this issue.

The plans submitted with this application contain a number of elements (eg: skylights), omit a number of elements on the as-built building (eg: vents, antennas), and omit or alter a number of elements of the previously approved plans (eg: privacy screens on two west-facing bedroom windows, screen planting on balconies, privacy screen on east facing balcony). If this application was to be approved it would be appropriate to impose a condition clarifying that the approval related only to the roof pitch and pitching point and not to the remainder of the plans submitted with this application.

Privacy

Concerns are raised that privacy impacts remain unresolved.

Comment: The proposal does not seek to amend any aspects of the proposal that would have an impact on privacy.

It is noted, however, that the submitted plans do not show various privacy devices, including screens and planting, that form part of the original development approval. As discussed above, if this application was to be approved it would be appropriate to impose a condition clarifying that the proposal relates only to the roof pitch and pitching point.

Approval process

Concerns are raised that the applicant has not followed the correct approval process by constructing the building not in accordance with the development consent.

Comment: Previous case law has stated that an application may be made to modify a consent where the building as constructed is not in accordance with the development consent as issued. Such an application is confined by the limits imposed on the power to modify consents under section 4.55 of the Environmental Planning and Assessment Act 1979. Consequently, the applicant has the right to lodge the application and Council must assess the merits of the application under the relevant laws and regulations.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	See discussion on “Manly Development Control Plan 2013” in this report.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent on the original approval.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, relates to whether 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>
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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed modification.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is zoned for the proposed purpose and has been developed for this purpose.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” 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.

The relevant matters for consideration under Section 4.55 of the EPAA are:

Section 4.55 'Matters for Consideration'	Comments
Section 4.55(2)(a) – 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)	<p>The power to modify a consent is beneficial and facultative. To be “substantially the same” a comparison is required between the originally approved development and the development as now proposed to be modified. The development must be essentially or materially the same. The comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared.</p> <p>At a basic level, the proposal remains as being for three townhouses. The essential layout of the townhouses, including the number and location of bedrooms and living areas, is unchanged. The</p>

Section 4.55 'Matters for Consideration'	Comments
	<p>arrangements for vehicle access and parking and pedestrian access are unchanged.</p> <p>In quantitative terms the building height is increased by 580mm and the roof pitch is increased by 2.8°.</p> <p>In qualitative terms the modified proposal has a greater impact on views than the proposal as originally approved. A detailed assessment of these impacts is included in this report under the heading "Impact on views" above.</p> <p>In considering the quantitative and qualitative changes that result from the proposed modification I have concluded that the impact of the proposal on views is such that, qualitatively, the proposal is not the same as that for which consent was originally granted. Consequently, Council must not approve the application, pursuant to Section 4.55(2)(a) of the EPA Act.</p>
Section 4.55(2)(b) – Consult with the relevant Minister, public authority of approval body	None relevant.
Section 4.55(2)(c) – Notify the application in accordance with the regulations and MDCP 2013	The proposal has been notified as required.
Section 4.55(2)(d) – Consider any submissions made within the period prescribed by the MDCP 2013	See above under the heading "Notifications and Submissions".
Section 4.55(3) – Consider matters in S. 4.15(1) as are relevant to the proposal.	See above.

ENVIRONMENTAL PLANNING INSTRUMENTS

Local Environment Plans (LEP's)

Manly Local Environmental Plan 2013 (MLEP 2013)

Consideration of proposal against Manly Local Environment Plan 2013:

Definition of proposed development: (ref. MLEP 2013 Dictionary)	Multi dwelling housing
Zone:	R1 General Residential
Permitted with Consent or Prohibited:	Permissible with consent

Objectives of the Zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The development is considered to be consistent with the relevant objectives of the zone for the following reasons:

- The proposal continues to provide for the housing needs of the community.
- The proposal maintains the variety of housing types and densities.

Objectives of the Zone

Principal Development Standards:			
Standard	Permitted	Proposed	Complies
Height of buildings	8.5 metres	~7.87m (Roof ridge RL34.47 over EGL ~29.6)	Yes
Floor space ratio	0.50:1 452.85m ²	0.52:1 473.3m ²	Previously approved

Manly Development Control Plan 2013 (MDCP 2013)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views (see discussion above)	No	No

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

POLICY CONTROLS

Manly Section 94 Development Contribution Plan

The proposal does not result in any additional contributions being payable under Council's 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;
- Manly Local Environment Plan 2013;
- Manly Development Control Plan 2013; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Sections 4.15 and 4.55 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.

The assessment concludes that the proposal does not maintain appropriate view sharing between the subject site and the affected neighbouring sites and should therefore be refused.

RECOMMENDATION

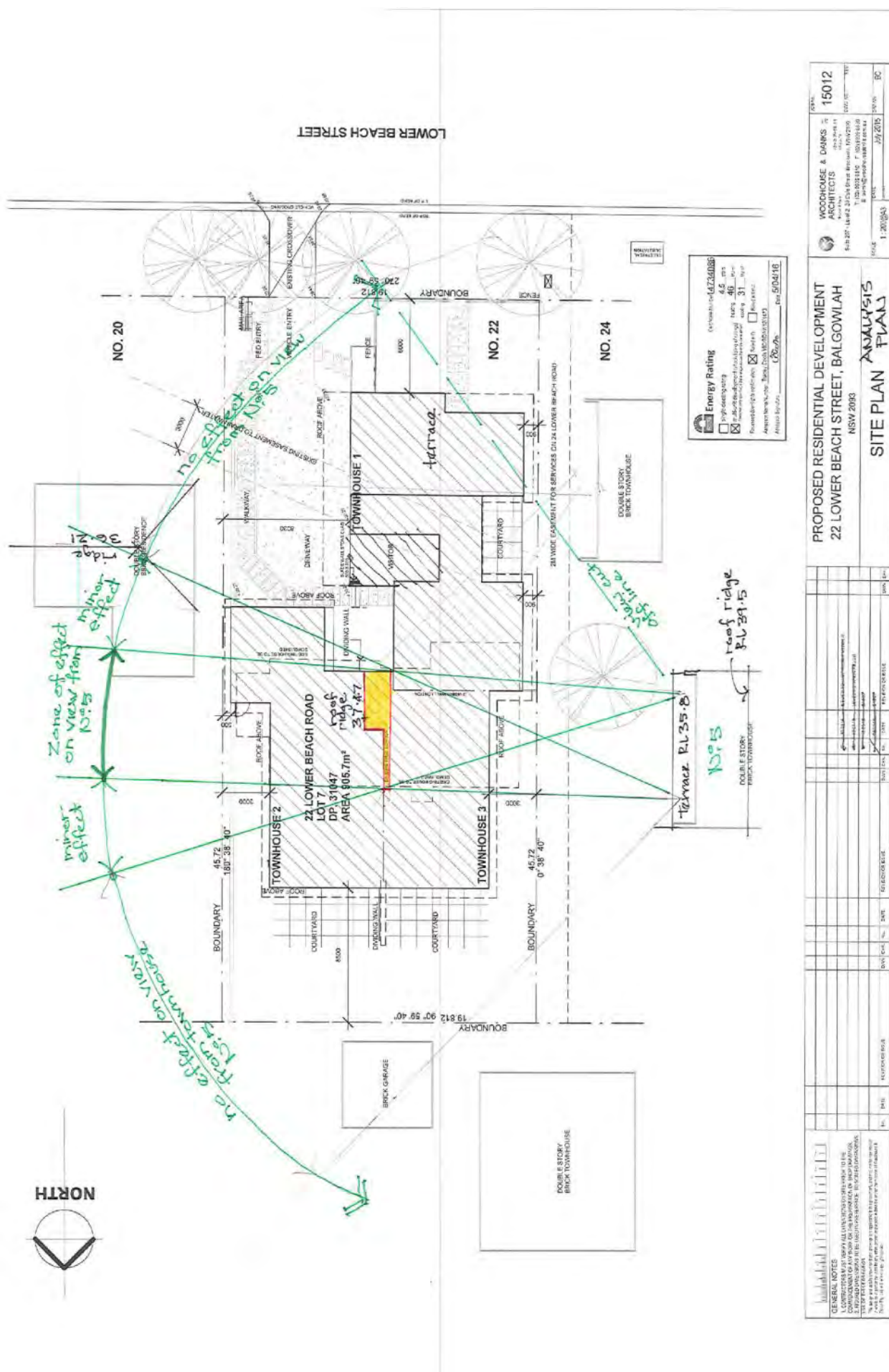
That Council as the consent authority REFUSE Development Consent to Application No. Mod2019/0083 for the modification of Consent DA 99/2016 issued for the demolition of an existing dwelling, construction of three (3) x two (2) storey townhouses with associated garages and strata subdivision, for the following reasons:

1. **Pursuant to Section 4.15(1)(a)(iii) and Section 4.15(b) of the Environmental Planning and Assessment Act 1979 and Part 3.4.3 of the Manly Development Control Plan 2013, the proposal fails to provide for the reasonable sharing of views.**
2. **Pursuant to Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be substantially the same as that for which consent was originally granted and before that consent as originally granted was modified.**









ITEM 3.6	DA2018/1817 - 6 GLADYS AVENUE, FRENCHS FOREST - DEMOLITION WORKS AND TREE REMOVAL, BULK EXCAVATION AND THE CONSTRUCTION OF A HOARDING HOUSE WITH BASEMENT CAR PARKING
REPORTING OFFICER	Matt Edmonds
TRIM FILE REF	2019/253926
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2018/1817 for Demolition works and tree removal, bulk excavation and the construction of a boarding house with basement car parking at Lot 4 DP 25713, 6 Gladys Avenue, Frenchs Forest subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1817
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 4 DP 25713, 6 Gladys Avenue FRENCHS FOREST NSW 2086
Proposed Development:	Construction of a two-storey boarding house over basement car parking
Zoning:	R2 Low Density Residential – WLEP 2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Brian Scott Haynes & Gillian Sudlow-Haynes
Applicant:	Brian Scott Haynes & Gillian Sudlow-Haynes
Date of Lodgement	14 November 2018
Integrated Development:	No
Designated Development:	No
Notified:	21 November 2018 – 15 December 2018
Advertised:	24 November 2018
Number of Submissions	21
Recommendation	Refusal

EXECUTIVE SUMMARY

The proposed boarding house has been found to be inconsistent with the objectives of the R2 Low Density Residential zone and incompatible with the character of the area. The development is too large for the site, necessitates the removal of significant canopy trees, with little space for compensatory plantings to maintain the landscape character of Gladys Avenue or to screen/soften the visual impact of the resultant built form. The development has also been found to result in unacceptable impacts upon the amenity of adjoining properties, and servicing of the site and stormwater management remain unresolved.

In response to the notification of the application, 18 submissions were received in objection to the development, and as such, the application is referred to the Northern Beaches Local Planning Panel for determination.

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.

SITE DESCRIPTION

Property Description:	Lot 4 DP 25713 6 Gladys Avenue, Frenchs Forest NSW 2086
Detailed Site Description:	<p>The site is irregular in shape, with a 22.86m wide frontage to Gladys Avenue, a maximum depth of 61.07m and a total area of 1393m². The site currently contains a single storey dwelling house and swimming pool, with vehicular access to Gladys Avenue gained via a driveway that is situated adjacent to the southern side boundary. The site is generally level and contains a number of significant canopy trees.</p> <p>Gladys Avenue is characterised by one and two storey dwelling houses, surrounded by mature canopy trees. The site is located in close proximity to Northern Beaches Hospital.</p>

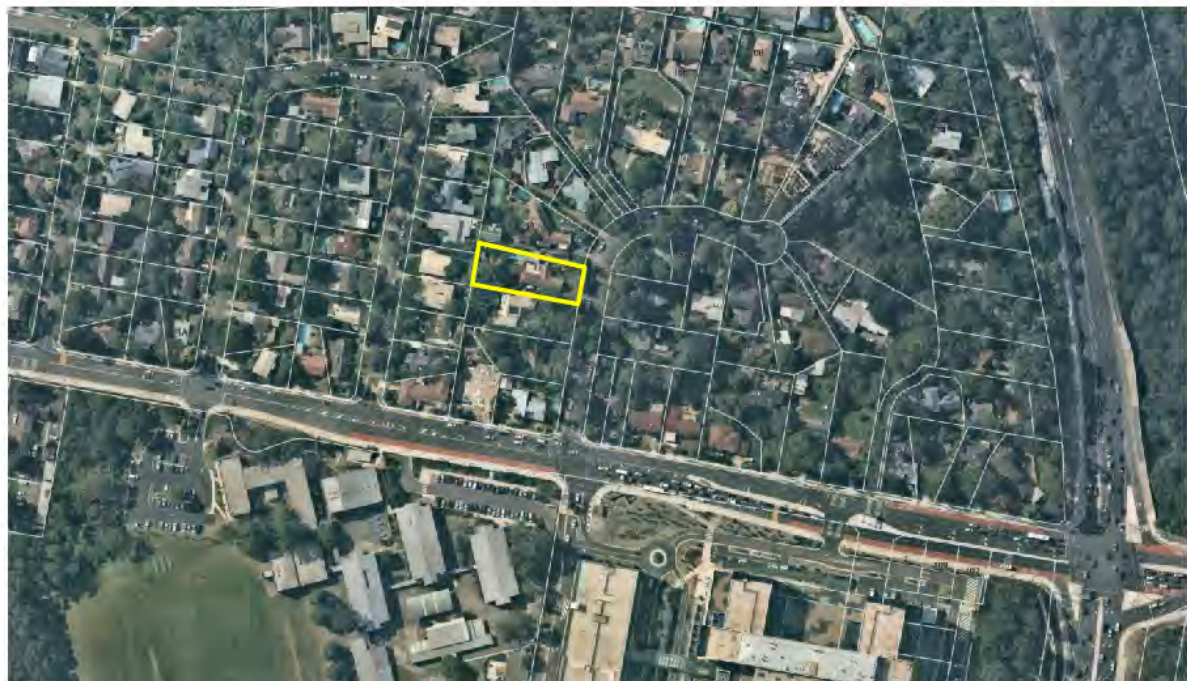


Figure 1 – Aerial image of Site (12.03.2019)
Source - Nearmap

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for a two-storey boarding house over basement car parking at the subject site. The proposed boarding house comprises:

- 30 x boarding rooms, all accommodating up to 2 adult lodgers, with bathroom and kitchen facilities,
- 1 x manager's room,
- 2 x communal rooms (one on each level),
- 16 x car parking spaces, inclusive of 2 x accessible parking spaces and 1 x manager's parking space,
- 1 x communal laundry,
- Associated civil infrastructure, including the construction of a new driveway and cross over, and
- Landscaping.

SITE HISTORY

On 14 November 2018, the development application was lodged with Council.

From 21 November through to 15 December 2018, the development application was advertised and notified to adjoining property owners in accordance with Council's Exhibition Policy.

From 28 November to 19 December 2018, amendments to SEPP ARH to limit the amount of boarding rooms on sites zoned R2 Low Density Residential were publicly exhibited.

On 28 February 2019, the 2019 amendment to SEPP ARH, limiting the amount of boarding rooms on sites zoned R2 Low Density Residential to 12, came into force.

On 25 March 2019, Council wrote to the applicant advising of a number of issues with the development application, including:

- Landscaped area non-compliance,
- Inconsistency with the streetscape character (front setback and landscaping),
- Impacts upon amenity of adjoining dwellings,
- Stormwater management,
- Servicing, and
- Waste management.

The applicant was given a 14 day period to withdraw the development application or to amend the application to address Council's concerns.

On 8 April 2019, a follow up email was sent to the applicant with a request to respond to the earlier correspondence. To date, no response has been received from the applicant.

LEGISLATION, PLANS AND POLICIES

The following planning legislation, environmental planning instruments, development control plans and policies are relevant to the subject application:

- Environmental Planning and Assessment Act 1979 ('the EP&A Act')
- Environmental Planning and Assessment Regulation 2000 ('the Regulation')
- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Draft State Environmental Planning Policy (Affordable Rental Housing) – 2019 Amendment

- State Environmental Planning Policy (Infrastructure) 2007
- Warringah Local Environmental Plan 2014 ('**WLEP 2011**')
 - Zoning Map – R2 Low Density Residential
 - Height of Buildings Map –8.5m
- Warringah Development Control Plan 2011 ('**WDCP 2011**')
- Northern Beaches Hospital Precinct Structure Plan ('**the Structure Plan**')

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The relevant matters for consideration under the EP&A Act, 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	The 2019 amendments to SEPP ARH are a relevant matter for consideration. See further discussion with regard to SEPP ARH.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	WDCP 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the Regulation requires the consent authority to consider “Prescribed conditions” of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 92</u> of the Regulation requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the Regulation requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed throughout 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 not considered to be suitable for scale and density of the proposed development.
Section 4.15 (1) (d) – any submissions made	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of WLEP 2011, SEPP ARH and WDCP 2011 and will result in

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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Regulation and WDCP 2011. As a result of the public exhibition process council is in receipt of 21 submissions from:

Name:	Address:
Mr Armond Glover	1 Gladys Avenue FRENCHS FOREST NSW 2086
Mark L Johnston Pty Ltd	2 Neridah Avenue BELROSE NSW 2085
Mr Klaus Drewnianska	8 Gladys Avenue FRENCHS FOREST NSW 2086
Ms Alicia Gabrielle Beachley	3 Gladys Avenue FRENCHS FOREST NSW 2086
Mrs Nicole Frances Tuynman	15 Gladys Avenue FRENCHS FOREST NSW 2086
Mr David Bruce Weaver	43 Bluegum Crescent FRENCHS FOREST NSW 2086
Anthony John Dreise Sharon Lynne Dreise	4 Gladys Avenue FRENCHS FOREST NSW 2086
Mrs Shirley Lang Stephanie Lang	2 Gladys Avenue FRENCHS FOREST NSW 2086
Christine Carter	1494 Oxford Falls Road OXFORD FALLS NSW 2100
Miles Andrew Tissington Colin Graham Mitchell Janette Mitchell	16 A Gladys Avenue FRENCHS FOREST NSW 2086
Mrs Sandra Elizabeth Young Mr Geoffrey Charles Young Deirdre Hatton	29 Aranda Drive DAVIDSON NSW 2085
Karen Mary Power	34 Aranda Drive DAVIDSON NSW 2085
Dennis Graham Brutnell Mrs Jill Lorraine Brutnell	111 McIntosh Road NARRAWEENA NSW 2099
Mrs Karen Louise Brocklebank	15 Toronto Avenue CROMER NSW 2099
Michele Edwards	39 Grace Avenue FRENCHS FOREST NSW 2086
Kirsty Jane Chapman	20 Eerawy Road ALLAMBIE HEIGHTS NSW 2100
Mrs Diana Weaver	45 Bluegum Crescent FRENCHS FOREST NSW 2086
Ms Gopala Maurer	18 Gladys Avenue FRENCHS FOREST NSW 2086
Mr Peter Wheen	6 Sunlea Place ALLAMBIE HEIGHTS NSW 2100
Jodie Lee Gale	10 Lae Place ALLAMBIE HEIGHTS NSW 2100
Jane Marie Murphy	18 Corkery Crescent ALLAMBIE HEIGHTS NSW 2100

Of the 21 submissions received, 3 are in support of the proposal and 18 are in objection to the development.

Those matters raised in the submissions in support of the application are addressed, as follows:

- **Proximity to Northern Beaches Hospital**

Comment: Submissions were received in the support of the proposal in light of its proximity to Northern Beaches Hospital. Whilst there may be merit in the provision of a boarding house at the

subject site, the assessment has found the design of the proposed boarding house to be inappropriate.

- **Northern Beaches Hospital Precinct Structure Plan**

Comment: The subject site is located immediately adjacent to an area identified for potential up-zoning by the Northern Beaches Hospital Precinct Structure Plan ("the Structure Plan"). The Structure Plan identifies the adjoining sites to the south and those to the east (on the opposite side of Gladys Avenue) as being subject to an R3 Medium Density Residential Zone, with a potential maximum building height of 17.5m - 27.5m. Submissions were received in support of the application, commenting that the proposed development would provide an appropriate transition between the potential increased density and scale identified by the Structure Plan and the low density development along the remainder of Gladys Avenue.

However, whilst the Structure Plan has been adopted by Council and publicly exhibited, it is yet to form part of a draft environmental planning instrument. Furthermore, even if the instrument was to be implemented and the adjoining site to the south was to be up-zoned, it is considered that any transition required between the differing densities/zones should occur on those sites subject to the increased height/density, rather than relying upon the adjoining low density properties to reduce the impacts of the intensified development.

Those matters raised in the submissions in objection to the application are addressed, as follows:

- **Inconsistency with existing character**

Comment: The majority of the submissions received in objection to the development state that the proposed development will be inconsistent with the character of the area. As discussed further throughout the report, the proposed development is considered to be inconsistent with the character of Gladys Avenue and surrounding low density residential areas.

- **Inconsistency with the Structure Plan**

Comment: Submissions received raise concern with the scale and density of the proposed development, with comments suggesting that the proposal presents as a high density development. The submissions highlight that whilst the zoning of surrounding sites may potentially increase under the Structure Plan, the subject site is to retain the R2 Low Density zoning, and as such, the proposal should be designed to align with the scale and density of low density development and not what may be anticipated on an adjoining site. The application is considered to place unreasonable weight upon the recommendations of the Structure Plan, and is inconsistent with the objectives of the R2 Low Density Residential zone.

- **Safety/Traffic**

Comment: Concern has been raised in submissions received regarding the resultant increase in traffic along Gladys Avenue associated with the proposed development, and the impact upon safety of surrounding residents. The application has been reviewed by Council's Traffic Engineer who raises no concerns regarding traffic generation associated with the proposed development. However, concerns are raised in relation to the servicing of the site, as discussed with regard to clauses C2 and C9 of WDCP 2011.

- **Inconsistency with amendments to SEPP ARH**

Comment: Submissions received object to the development's inconsistency with the 12 room maximum for boarding houses on land zoned R2 Low Density Residential prescribed by clause 30AA

of the 2019 amendment to SEPP ARH. The subject application was lodged before the 2019 amendments to SEPP ARH, and as prescribed by savings provisions of SEPP ARH, the application must be determined as if the amending SEPP had not commenced. However, the amendments can and have been considered as part of the assessment of this application.

- **Visual privacy**

Comment: Submissions have been received in objection to the proposal and the potential impacts upon the privacy of neighbouring properties. As discussed in further detail with regard to clause D8 of WDCP 2011, the ground floor of the proposal is considered to result in unacceptable impacts upon the privacy of immediately adjoining properties. Furthermore, whilst the upper level windows comprise privacy screens, the extent of glazing on both side elevations and on the rear facade will be visually overwhelming as seen from the private open space of neighbouring properties.

- **Solar access**

Comment: Submissions have been received raising concerns with regard to the resultant overshadowing associated with the proposal. Whilst the proposed development will result in additional overshadowing of the adjoining property at 4 Gladys Avenue, the development is consistent with the minimum requirements of clause D6 of WDCP 2011.

- **Tree removal**

Comment: Submissions have been received in objection to the extent of tree removal proposed on the site. These concerns are echoed by Council's Landscape Officer, and as discussed throughout the report, the extent of tree removal proposed attributes to inconsistency with the objectives of the R2 Low Density Residential zone and a number of controls and objectives of WDCP 2011.

- **Waste management**

Comment: A submission has been received that highlights a number of inconsistencies with Council's Waste Management Policy. These non-compliance's have also been also been highlighted by Council's Waste Officer. However, these areas of non-compliance are not fatal to the application and could be addressed if the application was to be approved.

- **Devaluation**

Comment: A submission has been received in objection to the proposal with concerns regarding the potential impacts upon the value of surrounding houses. Potential impacts upon the value of properties is not a matter for Council's consideration of this application.

- **BCA Compliance**

Comment: A submission has been received which highlights a number of potential areas of non-compliance with the provisions of the BCA, including those relating to accessibility and proximity of bathrooms to kitchens. The application has been reviewed by Council's Building Assessment team who has also identified areas of non-compliance with the BCA. However, as confirmed further in this report, the areas of non-compliance could be readily addressed/resolved if the application was to be approved.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Approval subject to conditions</p> <p><i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Environmental Health (Industrial)	<p>Refusal</p> <p><i>Environmental Health has been asked to assess this boarding house proposal. Of significance the boarding house will contain 31 rooms and there is provision for 16 motor vehicles and seven motorbikes in the garage underneath. This development abuts a residential dwelling house at No. 8 and the communal yard area and the driveway access are located adjacent to this residential property. The acoustic review by Acoustic Logic dated 5.9.2018 does not address noise from the communal area external area, likewise noise from the vehicles leaving (uphill) from the car park has not been addressed. It is reasonable to expect that the 31 room occupiers and visitors may use the external area and this may require acoustic treatment or hours of use to be restricted and enforceable. Other aspects of noise to internal and external receivers have been noted for assessment during construction however the issues raised here may mean changes to design so are flagged here at this stage.</i></p> <p><i>Therefore, it is recommended that the application be refused, the reasons being the acoustic report and management plan does not address noise from the communal external area in regard to the adjoining residential property.</i></p> <p><i>Similarly, the noise from the car park area (vehicles entering and leaving (potentially 16 motor vehicles and seven motorbikes) and any mechanical garage door) has not been adequately addressed to determine the affect on residential receivers.</i></p>
Environmental Health (Industrial) (cont...)	
Landscape Officer	<p>Refusal</p> <p><i>The landscape outcome of the proposal is not acceptable in its current form, as the proposal does not protect the local character of the area, as required by State Environmental Planning Policy (Affordable Rental Housing) 2009, and the Warringah DCP.</i></p> <p><i>The Gladys Avenue streetscape is visually dominated by tall native canopy trees located either within the road reserve or within the front setback of residential properties. This landscape character is of vegetation as the dominant streetscape element, with built form secondary to vegetation.</i></p>

Internal Referral Body	Comments
Landscape Officer (cont...)	<p><i>The proposal to remove existing tall native trees within the front setback will result in a built form dominance to the streetscape, as the proposed front setback will not adequately support replacement tall canopy trees. The proposal fails to comply with the State Environmental Planning Policy (Affordable Rental Housing) 2009 policy that requires development to be compatible with the character of the local area, as listed under the following sections:</i></p> <ul style="list-style-type: none"> <i>• Division 3 Boarding houses, clause 29, section (2) (b), and</i> <i>• clause 30A Character of local area</i> <p><i>Additionally, the Warringah DCP, clause D1 Landscaped Open Space and Bushland Setting is not satisfied, with the following objectives not achieved by the proposal:</i></p> <ul style="list-style-type: none"> <i>• enable planting to maintain and enhance the streetscape.</i> <i>• conserve and enhance indigenous vegetation, topographic al features and habitat for wildlife.</i> <i>• provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.</i> <p><i>A landscape plan and an arboricultural assessment is provided with the application. The landscape plan provides insufficient front setback area and soil volume to support tree replacement planting to achieve a healthy canopy growth comparable with the existing trees.</i></p> <p><i>The Arboricultural Impact Report prepared by Landscape Matrix identifies existing trees within the front setback assessed with moderate to high landscape significance, worthy of retention. To satisfy State Environmental Planning Policy (Affordable Rental Housing) 2009 and Warringah DCP, all such trees should be retained and protected.</i></p> <p><i>Existing trees identified as T2 - Spotted Gum 22m high x 12m spread (assessed as exhibiting high significance), T3 - Spotted Gum 16m high x 9m spread (assessed as exhibiting moderate to high significance), and T4 - Broad Leaved Paperbark 10m high x 8m spread (assessed as exhibiting moderate to high significance), within the front setback are proposed for removal on the site plans and landscape plan.</i></p> <p><i>The Arboricultural Impact Report in section 4 identifies these trees as trees that should be considered for retention and protection, and recommends for removal based on the location of proposed development works. As such the current development layout impacting upon the existing trees within the front setback is not supported.</i></p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Refusal</p> <p><i>The proposed Stormwater Concept Plan is unsatisfactory. Stormwater drainage for the site shall be in accordance with Council's Stormwater Drainage from Low Level Properties Technical Specifications. In particular, the following matters have been identified:</i></p> <ul style="list-style-type: none"> • <i>Section 2.3, stormwater disposal shall generally be via a gravity fed pipeline where properties fall away from the street. This will require an easement to drain water through downstream property. Evidence of owners consent from downstream property shall be provided with the development application. Insufficient information has been provided to indicate this has been investigated by the Applicant.</i> <p><i>Insufficient information has been provided to demonstrate compliance with Council's Onsite Stormwater Detention (OSD) Technical Specification. The minimum information required to be submitted is detailed in Section 3.3, including the provision of DRAINS model. In particular, the following matters have been identified:</i></p> <ul style="list-style-type: none"> • <i>Section 2.4, the diversion of flows from one catchment to another catchment will generally not be permitted, and as such, this clause has not been satisfactorily addressed. Any proposed drainage outside of its natural catchment would be subject to demonstration that such discharge would not adversely affect downstream lands, drainage system or receiving watercourse. In this regard, the capacity of the kerb and gutter, including any low level driveways, shall be considered.</i> • <i>Section 4.6, the provision of retaining walls and filling of land may concentrate stormwater runoff from adjoining property.</i> • <i>Section 4.8, permissible site discharge shall not exceed 20L/s per 15m run of kerb for all storms up to and including the 100 year ARI.</i> <p><i>The proposed application cannot be supported by Development Engineering due to lack of information to address:</i></p> <ul style="list-style-type: none"> • <i>Stormwater drainage for the development in accordance with clause C4 Stormwater.</i>
NECC (Development Engineering) (cont.)	
Strategic and Place Planning (Strategic context)	<p>Approval, no conditions.</p> <p><i>The application has been referred as the subject site is identified within the 'future investigation area' of the Hospital Precinct Structure Plan (2017), adopted by Council on 1 August 2017.</i></p> <p><i>The site is currently zoned R2 Low Density Residential under WLEP 2011 and development consent is required for demolition of the existing dwelling and construction of a two storey building comprising a 30 room boarding house, Manager's room and basement parking for 16 vehicles, 7 bicycles and 7 motorcycle spaces. The maximum legal capacity of the</i></p>

Internal Referral Body	Comments
Strategic and Place Planning (Strategic context) (cont.)	<p>boarding house is proposed to be 60 lodgers (plus the Manager).</p> <p><u>Hospital Precinct Structure Plan and Frenchs Forest Planned Precinct:</u> Council has adopted the Hospital Precinct Structure Plan (HPSP) to guide future land use planning decisions in Frenchs Forest over the next 20 years. Whilst this is not a statutory document, Council is working with the NSW Department of Planning and Environment to implement Phase 1 of the HPSP into the statutory planning framework as part of the Frenchs Forest Planned Precinct project.</p> <p>Whilst the subject site is not in the area identified for uplift under the HPSP, it is identified for future investigation after the implementation of Phases 1, 2 and 3. Phases 2 and 3 are dependent on the delivery of significant regional infrastructure such as The Beaches Link Tunnel and/or an east-west bus rapid transit system from Chatswood to Dee Why.</p> <p><u>Consideration:</u> The Application is for demolition of the existing dwelling and construction of a two-storey building comprising a 30 room boarding house under SEPP (Affordable Rental Housing) 2009.</p> <p>The Application was supported by a Statement of Environmental Effects (SEE) prepared by J V Urban. The SEE identifies the proposed development as directly adjoining the Phase 1 Structure Plan area. The subject site is identified within the 'future investigation area' of the HPSP, which comprises a timeframe of beyond 20 years of the HPSP. The future investigation area will be subject to further careful analysis and appropriate infrastructure improvements. It is considered that this proposal would pre-empt future planning in this locality. Notwithstanding this, given the timeframe, it is recommended that development of the site is consistent with the current planning controls.</p> <p>Further to the above, it is noted that on 28 November 2011, a proposed amendment to the SEPP (Affordable Rental Housing) 2009 was placed on public consultation. The Explanation of Intended Effect is on exhibition until 19 December 2018. The proposed amendment will amend the boarding house provisions so that a boarding house in the R2 zone can have no more than 12 boarding rooms. Consideration of the proposed amendment is required by Development Assessment.</p> <p>In conclusion, the application is considered acceptable provided that Development Assessment is satisfied with the application's consistency with the proposed amendment to SEPP (Affordable Rental Housing) 2009.</p> <p><u>Other/Further Strategic Investigations:</u></p> <ul style="list-style-type: none"> • Greater Sydney Region Plan - The proposal provides a form of affordable rental housing which addresses housing affordability objectives. • North District Plan - The proposal provides a form of affordable

Internal Referral Body	Comments
	<p><i>housing to address Action 35.</i></p> <ul style="list-style-type: none"> <i>Northern Beaches Hospital Precinct Structure Plan - The proposal would pre-empt future planning in this locality.</i>
Traffic Engineer	<p>Refusal.</p> <p><i>The proposal seeks to demolish the existing dwelling, swimming pool, outbuildings, clear the site and construct a two-level boarding house containing 30 boarding rooms and one managers residence, over basement parking. Access to the site is from Gladys Avenue. The proposal comprises two wings (front and rear separated by centrally located communal open space).</i></p> <p><u>Parking:</u> <i>The parking provisions are in accordance with the SEPP. Adequate car, motorcycle and bicycle parking.</i></p> <p><u>Traffic:</u> <i>The site is anticipated to produce negligible levels of traffic on the local network, in accordance with the RMS Guide to Traffic Generating Developments.</i></p> <p><u>Pedestrian:</u> <i>The applicant has stated that they are to upgrade the pedestrian footway along the frontage of the site. This is deemed acceptable. Internally, the low speed environment will provide a safe pedestrian environment.</i></p> <p><u>Car Park Layout:</u> <i>The car park layout is generally in compliance with AS2890.1:2004. No concerns are raised in this regard.</i></p> <p><u>Servicing:</u> <i>Waste collection is proposed to occur on-street which is deemed acceptable. However, the loading and unloading services (i.e. removalist vehicles) is proposed to occur in the basement. The basement is only designed to accommodate a B99 vehicle. This would equate to a maximum service vehicle similar in nature to a 4WD or Utility Van. This is not deemed suitable. Larger vehicles would be required to move furniture such as beds and couches. In this regard, it would be expected that this type of servicing would still occur on-street. Due to the recent upgrade of the precinct, including the Hospital, the parking demand in the local streets will impact the availability of parking in the local area. As such, for the applicant to rely on the local street parking to accommodate removalist vehicles is not generally accepted.</i></p> <p><i>As such, the applicant should accommodate at least a Small Rigid Vehicle (SRV) to be able to ingress/egress the site. An accompanying Loading Bay Management Plan should be provided to determine how</i></p>
Traffic Engineer (cont.)	

Internal Referral Body	Comments
	<i>the loading/unloading will occur onsite. The applicant therefore should provide additional details regarding the ability to service the site.</i>
Waste Officer	<p>Refusal</p> <p><i>This proposal is unacceptable and should be refused for the following reasons:</i></p> <ol style="list-style-type: none"> 1. <i>Does not comply with the requirements of Council Waste Management Policy. Specifically:</i> <ul style="list-style-type: none"> • <i>The bin storage room is too small to contain the required number of bins - The room will need to accommodate a minimum 24 x 240 litre bins. (Twice a week service is not available to this property).</i> • <i>The bin storage room is in the basement - bin storage rooms are required to be at street level. Council will provide a wheel out/wheel in service for the bins.</i> • <i>Access to the bin storage room is via the vehicular driveway - WHS requirement, bin service staff must be kept separate from vehicles</i> • <i>Access to the bin storage room is via a ramp that is too steep. - WHS requirement - Maximum permitted gradient is 1 in 8.</i> • <i>The bulky goods room is not separate from the bin storage room. - Rooms must be separate.</i> 2. <i>Car parking Provision</i> <i>Waste Management has serious concerns regarding the impact of the additional on street parking that this proposal will generate. Only 16 off street car parking spaces are being proposed for a 30 room boarding house. As the rooms are double this has the potential for 60 residents, meaning up to 60 cars that may need to be accommodated. Gladys Avenue is narrow with a 90 degree bend towards the far end. When cars are parked on both sides it is impossible for the waste collection vehicles to access the street to empty the bins. Adding this many additional vehicles to an existing on street parking problem is unacceptable. The only solution will be to place and enforce parking restrictions along the full length of Gladys Avenue on waste collection day.</i>
Strategic and Place Planning (Urban Design)	<p>Refusal.</p> <p><i>The proposal in its current form cannot be supported. However with some minor changes outlined below the proposal has merit. See comments below;</i></p> <p>SEPP Affordable Rental Housing (ARH) 2009</p>

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design) (cont.)	<p><i>Clause 30 A – Character of Local Area</i> <i>The proposal is within an area of transition. The adjacency with the R3 and R2 zones means the building provides an acceptable transition between the two zones. The contemporary style, material selection and general articulation across all the elevations is generally supported. Smaller scale development of pavilion style buildings will result in additional landscaped open space (see below).</i> <i>The opportunity exists to address the landscape open space with a centralised courtyard type strategy adding to the required allocation of 40% of site area to meet the Landscape Open Space control under the WDCP 2011. Deletion of rooms and relocation of the communal spaces at the ground level to allow for a central courtyard is recommended. Allowance for a landscaped through site connection to provide private internal amenity to the site will provide a relevant transition in scale and bulk between the R3 and R2 zones.</i></p> <p>Built Form Controls:</p> <p>WLEP 2011 <i>The aims of the zone, to ensure residential environments are in harmony with the surrounding single and double storey houses, can be met with the recommended amendments to the proposed scheme (see D9 Bulk and Scale).</i> <i>A considered response to the site coverage and appropriately distributed open landscaped space is recommended to achieve a development that is more in sympathy with the surrounding neighbourhood and the predominant bushland setting of the neighbourhood.</i> <i>As discussed herein the creation of two pavilions that have a clear break in the built form with a through site link is recommended.</i></p> <p>WDCP 2011 <i>B5 – Side Boundary Setbacks</i> <i>Provision of a 2.950m with variation and articulation across the elevations that remains within the side setback controls is supported.</i></p> <p><i>D1 Landscaped open space and Bushland Setting</i> <i>Deck structures and impervious finishes are not to be included in the Landscape open space calculations.</i> <i>Built structures including hard surface paved areas are not to be included in the landscape open space. Refer B7 above for structures/elements that are permissible in the front setback zone.</i></p> <p><i>D9 Building Bulk</i> <i>As discussed herein an opportunity to create internal site amenity should be further explored in terms of building bulk to break down the built form into two pavilions with an internal green courtyard with through site links. The material palette and articulation across the building is generally supported.</i></p> <p>SUMMARY <i>With some minor changes to the planning to make allowance for a central open landscaped courtyard internal to the site the proposed development</i></p>

Internal Referral Body	Comments
	<i>scheme will have merit.</i>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Approval <i>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.</i>

SEPP (INFRASTRUCTURE) 2007

Clause 45 of 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 5m 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 5m of an overhead electricity power line

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.

SEPP No.55 – REMEDIATION OF LAND

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with 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 (AFFORDABLE RENTAL HOUSING) 2009

The application seeks consent for a boarding house under the provisions of SEPP ARH. The relevant provisions of this policy are considered as follows:

Division 3 Boarding Houses

Clause	Requirement	Comment
Clause 26	This Division applies to land within any of the nominated land use zones or within a land use zone that is equivalent to any of those zones	Consistent The site is located within the R2 Low Density Residential zone and therefore this division (Division 3 of SEPP ARH) applies.
Clause 27	This Division does not apply to development on land within the R2 zone within the Sydney region unless it is within an accessible area.	Consistent The site is located within 400m walking distance of bus stops on Frenchs Forest Road that are serviced by multiple regular bus services at least once per hour

	Note: In relation to this application, accessible area means land that is within 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	between 6am and 9pm Monday-Friday and 8am and 6pm on Saturday-Sunday. Given the reliance upon public transport, it is considered that a footpath should be provided to connect the site to the existing footpaths along Frenchs Forest Road. If approved, this could be conditioned.
Clause 28	Development to which this Division applies may be carried out with consent.	Consistent The development constitutes a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of SEPP ARH as development which may be carried out with consent.
Clause 29	Standards/Grounds that cannot be used to refuse development:	
	(1) Density and Scale if the density and scale of the buildings when expressed as a floor space ratio are not more than the existing maximum floor space ratio for any form of residential accommodation permitted on the land.	No FSR in WLEP 2011 There is no FSR prescribed for this site under the provisions of WLEP 2011. As such, the application may be refused due to concerns regarding density and scale.
	(2)(a) Building Height if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land	Consistent The proposal is maintained below the 8.5m maximum building height prescribed by clause 4.3 of WLEP 2011.
	(2)(b) Landscape Area if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located	Inconsistent The landscape treatment of the front setback of the proposal is not compatible with the Gladys Avenue streetscape. See further discussion below.
	2)(c) Solar Access where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	Consistent The communal living rooms receive more than 3 hours of direct sunlight between 9am and 3pm in mid-winter.
	2)(d) Private Open Space if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20m ² with a minimum dimension of 3.0m is provided for the use of the lodgers, (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m ² with a minimum dimension of 2.5m is provided adjacent to that accommodation,	Inconsistent 2 communal areas are provided with areas greater than 20m ² and minimum dimensions in excess of 3m. At 9.9m ² , the area of private open space for the manager exceeds the minimum requirement, however the depth of the area is limited to only 1.5-2.3m.

	<p>(2)(e) Parking (iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>Consistent 15 spaces for residents (inclusive of 2 accessible spaces) 1 space for manager</p>
	<p>(2)(f) Accommodation Size if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.</p>	<p>Consistent The gross floor area of each boarding room exceeds 16m².</p>
Clause 30	A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:	
	(1)(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	<p>Consistent Two communal living areas are provided.</p>
	(1)(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ²	<p>Consistent No boarding room proposed has a gross floor area greater than 25m².</p>
	(1)(c) no boarding room will be occupied by more than 2 adult lodgers,	<p>Consistent Confirmed in Management Plan.</p>
	(1)(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	<p>Consistent A private bathroom and kitchen is proposed within each boarding room.</p>
	(1)(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	<p>Consistent The proposal comprises 30 boarding rooms for lodgers and an additional boarding room for the on site manager.</p>
	(1)(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	<p>Not Applicable</p>
	(1)(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.	<p>Consistent 7 bicycle spaces and 7 motorcycle spaces proposed.</p>
Clause 30A	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is	<p>Inconsistent The proposed development is not compatible with the character of the local area. See further discussion below.</p>

	compatible with the character of the local area.	
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Detailed Assessment

- **Clause 29 (2)(b): Landscape Area**

The application seeks to locate the proposed development forward of other existing dwellings along Gladys Avenue, at a distance of 6.5m from the front property boundary. Whilst compliant with the minimum setback requirement of clause B7 of WDCP 2011, the setback results in the loss of existing mature canopy trees, including native trees of moderate-high landscape significance. The landscape plan proposes the incorporation of two replacement canopy trees within the front setback, however these trees are to be located within the above ground detention basin, immediately above stormwater infrastructure, adjacent to proposed retaining walls and within close proximity of overhead powerlines. As such, the placement of these trees is not viable and is not supported by Council. In accordance with the stormwater management details, turf is generally the only landscaping permitted within the onsite detention basin, resulting in a front setback comprising a double width driveway, access pathways, the turfed detention basin and no shrubs or canopy trees.

The combination of the proximity of the development to the street and the lack of any meaningful landscaping within the front setback is incompatible with the streetscape, which is categorised by one-two storey dwellings with generous setbacks to the street, interspersed amongst established canopy trees. Furthermore, when viewed from the street, it is evident that further canopy trees are located to the sides and rear of existing dwellings along Gladys Avenue and surrounding streets, which will also be absent from the proposed development.

As discussed further with regard to the relevant DCP controls, the limited landscaped area and inadequate landscaped treatment proposed is considered to warrant the refusal of the subject application.

- **Clause 30A: Character of the local area**

Clause 30A of SEPP ARH requires the consent authority to have consideration of whether the design of the proposal is compatible with the character of the area. The 'Surrounding Development' planning principle was established by the NSW Land and Environment Court to assist in the assessment of whether a proposal is compatible with the character of the local area. The matters/principles developed in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268* and expanded upon in *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* are considered as follows:

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

Comment: The two-storey height/presentation of the development is consistent with other development throughout the local area. However, it is the scale of the development, with the two storeys carried over a significant portion of the site (inconsistent with the minimum landscaped area calculations) that is of concern. Further, the development is elevated above ground level and protrudes beyond the prescribed building envelope along both side elevations.

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

Comment: The size of the proposed development is considerably greater than other buildings in the street. Whilst recesses have been introduced halfway along the building, the proposal is still considered to read as one building that continues along the majority of the length site. Furthermore, the proposal seeks to remove all existing landscaping of significance from the site, with little replacement plantings proposed. Overall, the proposed boarding house will be visually dominant as seen from Gladys Avenue.

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

Comment: As above, the proposal seeks to remove all existing canopy trees from the site, including those nominated for priority retention within the arborist report provided to support the application.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment: Whilst the materiality of the development will not be jarring in the streetscape, the form of the building, which features an excavated basement that is visible from the street, is not characteristic of the surrounding housing typologies. The extent of glazing and screening along both side elevations is also antipathetic to the surrounding low density environment.

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

Comment: The design of the proposed boarding house is not well resolved and will not be without impact upon adjoining properties. As discussed further with respect to the relevant DCP provisions, the proposal will result in unreasonable and unqualified impacts upon adjoining properties with regard to visual privacy, visual dominance, overshadowing, and acoustics.

The application appears to place excessive emphasis upon the Structure Plan and an assumed built form outcome that may eventuate on adjoining/neighbouring sites. However, the Structure Plan has not been incorporated into a draft EPI, is not imminent or certain, and has little weight in the determination of the subject application. Furthermore, as a draft DCP is yet to be exhibited, the nominated setbacks shown on the architectural plans can only be assumptions on the part of the applicant. The test of whether the proposal is consistent with the character of the local area should be made in relation to the existing character of the streetscape and not a hypothetical footprint of a development on an adjoining site that may never eventuate.

Overall, the proposal is not considered to be compatible with the character of the local area and the application warrants refusal in this regard.

SEPP (Affordable Rental Housing) 2009 - 2019 Amendments

During the course of the assessment of the subject application, amendments to SEPP ARH were publicly exhibited and have subsequently come into force. These amendments, being clause 30AA of SEPP ARH, restrict boarding houses on land zoned R2 Low Density Residential to a maximum of 12 boarding rooms. The savings provisions of SEPP ARH prescribe that any application lodged (and not yet determined) before the coming into force of this amendment must be determined as if the amendments had not commenced. However, the amendments remain a relevant matter for consideration under Section 4.15 of the EP&A Act, and can be treated in the same manner as a draft environmental planning instrument.

The 12 room limit is a clear indication from the Department of Planning as to the maximum scale of boarding houses anticipated within the R2 Low Density Residential zone, and emphasises the inappropriate nature/scale of the 31 room boarding house currently proposed.

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

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

Principal Development Standards

Standard	Requirement	Proposed	%Variation	Complies
Height of Buildings:	8.5m	8.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

• R2 Low Density Residential zone of WLEP 2011

The proposed boarding house development is permissible with consent within the R2 Low Density Residential zone, as identified in the land use table of WLEP 2011. However, the proposed boarding house is not consistent with the objectives of the R2 zone, as follows:

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

Comment: Whilst the application seeks consent for a new boarding house within the existing low density residential environment of Gladys Avenue, the proposed development has the character of a medium density development and will be antipathetic to the existing context of the site.

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

Comment: This objective is not applicable to this application.

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

Comment: The proposed development does not contribute to the existing low density residential environment, particularly the existing landscaped character of Gladys Avenue, which is dominated by one and two storey dwelling houses interspersed amongst significant canopy trees.

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

Built Form Controls

Built Form Control	Requirement	Proposed	Variation*	Complies
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B1 Wall Height	7.2m	6.9m	-	Yes
B3 Side Boundary Envelope	North – 4m	990mm (max) encroachment	990mm	No
	South – 4m	280mm (max) encroachment	280mm	No
B5 Side Boundary Setbacks	North – 0.9m	Basement – 0.9 - 5.7m	-	Yes
		Building – 2.95m	-	Yes
	South – 0.9m	Basement – 2.5 – 7.7m	-	Yes
		Building - 2.2 – 6.9m	-	Yes
B7 Front Boundary Setbacks	6.5m	Basement – 6.5m	-	Yes
		Building – 6.5m	-	Yes
B9 Rear Boundary Setbacks	6m	Basement – 7.93m	-	Yes
		Building – 5.1m	15%	No
		Decking – 2.8m	53%	No
D1 Landscape Open Space and Bushland Setting	40% (557.2m ²)	21.1% (295m ²)	47%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	No
B9 Rear Boundary Setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	No	No
D3 Noise	No	No
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	No	No
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

• B3 Side Boundary Envelope

The proposed development is not maintained within the side boundary envelope prescribed by clause B3 of WDCP, with a maximum protrusion of 990mm on the northern side elevation and 280mm on the southern side elevation. The proposed non-compliance is not supported with respect to the proposal, as the development is inconsistent with the objectives of the side boundary envelope, as follows:

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

Comment: The height and bulk of the proposed development will be amplified by the proximity to the street and the lack of significant planting within the front building line. The building has the scale and appearance of a medium density apartment building, dominating the surrounding area that is predominately characterised by one and two storey dwelling houses. The height and bulk of the resultant development will be visually dominant along the Gladys Avenue streetscape.

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

Comment: The proposed development is approximately 47.5m long or 77% of the total length of the site. Whilst compliant with the solar access requirements of D6 of WDCP, the proposal will result in considerable additional overshadowing of the adjoining property to the south at 4 Gladys Avenue, and a reduction of natural light into the dwelling. Furthermore, there are unresolved privacy issues with respect to neighbouring dwellings, and the proposal will be visually overwhelming as seen from adjoining properties. As proposed, the application has not demonstrated that there is sufficient spatial separation between buildings to appropriately minimise the impacts of the proposal.

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

Comment: The ground floor level of the proposed boarding house is elevated up to 790mm above existing ground levels. The applicant has not provided any explanation for the elevated nature of the proposal, and it is noted that the extent of elevation is generally similar to the extent of non-compliance proposed. With this in mind, the proposal is not considered to appropriately respond to the natural topography of the site.

The application was supported by a conceptual image of the proposed development. However, the conceptual image does little to discourage concerns regarding the bulk of the development and appears to be based on an alternate design that does not rely upon vehicular access to Gladys Avenue, noting that the double driveway and basement are absent from the visual representation.

Overall, the building envelope protrusions are considered to attribute to the excessive bulk of the development, resulting in a building that will be inconsistent with the character of Gladys Avenue and the application is considered to warrant refusal in this regard.

- **B7 Front Boundary Setbacks**

With a setback of 6.5m to Gladys Avenue, the proposed development is consistent with the minimum front boundary setback prescribed by this development control. However, the proposal is not considered to meet the objectives of the front boundary setback, as follows:

- *To create a sense of openness.*

Comment: As the proposal will sit forward of adjoining dwellings, the development will be counter-productive to the existing sense of openness along this side of Gladys Avenue.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment: The forward protrusion of the development compared with adjoining buildings will disrupt the visual continuity and pattern of buildings along the streetscape. Furthermore, the reduced setback directly attributes to the loss of existing significant canopy trees forward of the existing dwelling, resulting in inconsistency with the landscaped character of the street.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment: The application proposes a development sited with the bare minimum setback to Gladys Avenue, with no landscaping of any significance forward of the overly large building proposed. The proposal does not protect or enhance the visual quality of the street, which is currently dominated by landscaping.

- *To achieve reasonable view sharing.*

Comment: Not applicable in relation to this application.

The forward protrusion of the proposed development and the associated impact upon landscaping is considered to contribute to concerns relating to the character of the development.

- **B9 Rear Boundary Setbacks**

The rear elevation of the proposed development is situated at a minimum distance of 5.1m from the rear property boundary, with elevated decking up to 2.8m from the rear boundary, inconsistent with the 6m minimum rear boundary setback prescribed by this development control. Furthermore, the proposed development is also considered to be inconsistent with the objectives of the rear boundary setback control, as follows:

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

Comment: The resultant areas of deep soil are comparably limited, and are not meaningfully located or landscaped to facilitate compensatory plant growth.

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

Comment: The reduced depth of the rear setback is further constrained by fencing to accommodate four individual areas of private open space. The rear yard is not considered to have a sense of openness, and is in stark contrast to the rear yards of surrounding properties.

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

Comment: The elevated decking and the proximity of the windows associated with individual boarding rooms provides unscreened opportunity for future occupants to overlook the rear yard of the adjoining dwellings, compromising the amenity of these properties.

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

Comment: The proposal will result in the loss of canopy trees from the rear yard in the short-medium term, inconsistent with the predominant landscape character of rear yards of adjoining and nearby properties. Furthermore, whilst other properties in the vicinity of the site have minor structures in close proximity to the boundary fence, these structures have a distinctly lesser size/scale compared to the two storey boarding house proposed.

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

Comment: The reduced setback compromises privacy of the dwelling to the rear.

▪ **C2 Traffic, Access and Safety**

Clause C2 of WDCP 2011 prescribes the need for appropriate facilities for the loading and unloading of service, delivery and emergency service vehicles to be provided in response to the size and nature of the development. Given the intensity and nature of the development, which is likely to have high turnover of tenants within unfurnished boarding rooms, the provision of a dedicated service/delivery space is considered to be necessary. Noting the demand for on-street parking in the vicinity of the site, and parking restrictions along the opposite side of the street, this space is required to be provided on site.

The proposed development fails to make adequate provision for service vehicles to enter, exit and stand at the site, resulting in inconsistency with the provisions of clause C2 of WDCP 2011. Whilst clause 29(2)(e) of SEPP ARH restricts the consent authority from refusing the development on the grounds on car parking (as the minimum number of car spaces prescribed by SEPP ARH are provided), the inability to appropriately service the development is considered to warrant the refusal of the application.

• **C9 Waste Management**

As highlighted by Council's Waste Officer above, the location and design of the proposed garbage store is inconsistent with Council's Waste Management Guidelines, as follows:

1. The bin store room is too small, with capacity for only 17 x 240L bins, as opposed to the 24 x 240L bins required.
2. The bin store room is within the basement, and inaccessible by Council's waste contractors.
3. The bulky goods room is not separate from the bin store room.

Whilst it is appreciated that the proposal does not strictly conform to Council's Waste Management Guidelines, there appears to be sufficient space to accommodate the additional 7 x 240L bins and the Plan of Management provided to support the application confirms that the on-site manager will be

responsible for ensuring that bins are moved to the street for collection. It is considered that the concerns raised by Council's Waste Officer can be readily resolved if the application was to proceed, and inconsistency with Council's Waste Management Guidelines is not considered to warrant refusal of the application in this instance.

- **D1 Landscaped Open Space and Bushland Setting**

A minimum landscaped open space area of 557.2m² or 40% of the total site is required, as shown on the Landscape Open Space and Bushland Setting Map of WDCP 2011. The proposed development provides a landscaped open space area of approximately 295m² or 21.1%, well short of this requirement. The proposed development is also inconsistent with a number of the objectives of the minimum landscaped open space development control, as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment: The streetscape features one and two storey dwelling houses, with generous setbacks to the road and large landscaped areas containing significant canopy trees. The proposed development seeks to cover the vast majority of the site with hard surfaces, necessitating the removal of a number of significant canopy trees that could otherwise be retained if the footprint of the development was reduced. The landscape plan provides some compensatory plantings, however these plantings are pushed to the boundaries and will take a considerable amount of time to mature to the scale of those proposed for removal. The landscaped area proposed does not provide for a landscaped outcome that is consistent with the streetscape, such that it cannot be said that the character of the streetscape is maintained.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment: The proposed development seeks to remove all existing vegetation, resulting in a significant net loss of vegetation and canopy from the site. The proposal does not conserve existing significant vegetation on the site.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment: The proposed landscaping is constrained by the limited area/dimensions proposed and also the proximity to existing and proposed structures and infrastructure. The constraint on growth, combined with the general lack of landscaped area proposed, results in a landscaped treatment that is insufficient in light of the bulk and scale of development proposed.

- *To enhance privacy between buildings.*

Comment: The majority of the northern boundary is unscreened and lacks any plantings to enhance privacy between properties. Furthermore, where landscaping is proposed along boundaries, it either has insufficient maturity height to provide any privacy benefit or its growth is constricted by underground infrastructure, fences and retaining walls, such that it cannot be relied upon.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment: Each occupant of the proposed development will have access to outdoor recreation areas, such that the needs of the occupants will be adequately addressed.

- *To provide space for service functions, including clothes drying.*

Comment: The proposed development does not provide a dedicated communal space for clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment: The water management plans are inconsistent with the landscape plans and demonstrate an intent to use the entire front setback for on-site detention, such that only grass can be accommodated between the proposed development and the front boundary. The proposed landscape and stormwater management solution for the site is not supported by Council.

Clause 29(2)(b) of SEPP ARH prescribes that the consent authority must not refuse a development application for a boarding house on the grounds of landscaped area non-compliance if the landscaped treatment of the front setback is compatible with the streetscape. However, as discussed in detail with regards to this clause of SEPP ARH, the landscaped treatment of the front setback is not compatible with the remaining properties along Gladys Avenue, and as such, the landscaped open space area non-compliance is considered to warrant the refusal of the subject application.

- **D2 Private Open Space**

Clause D2 of WDCP 2011 requires an area of private open space for each dwelling. As each individual boarding room within the proposed boarding house can be defined as a 'dwelling', the control may be construed to require private open space for each of the proposed boarding rooms. Whilst each of the ground floor boarding rooms have dedicated areas of private open space, the top floor rooms are reliant upon the communal areas of open space adjacent to the communal room on the ground floor.

The communal areas of private open space are located in close proximity to adjoining dwellings, and are located on areas of proposed fill, approximately 630mm above existing ground levels, such that the 1.8m existing boundary fence will do little to maintain privacy to occupants of the adjoining dwellings. Furthermore, the application was not supported by an assessment of noise levels associated with the communal use of these semi-enclosed spaces, such that Council cannot be satisfied that the use of these spaces will not have an adverse acoustic impact upon the amenity of adjoining dwelling houses. Overall, the proposal is considered to be inconsistent with the objectives of this development control which aims to 'minimise adverse impact of private open space on adjoining buildings' and 'ensure that private open space receives sufficient solar access and privacy'.

Whilst clause 29(2)(d) of SEPP ARH prescribes circumstances in which a boarding house must not be refused, including those in relation to private open space, the proposal is inconsistent with these provisions, and as such, the inadequacy of the proposed areas of private open space is considered to warrant the refusal of the subject application.

- **D3 Noise**

As above, the application proposes two separate semi-enclosed areas of communal outdoor open space. These areas are elevated above existing ground and are sited in close proximity to adjoining dwellings. The application is currently silent on how these areas are to be managed to ensure that noise levels associated with the use of this space will not result in unreasonable impacts upon the amenity of adjoining dwellings. As such, it cannot be said that the proposal is consistent with the requirements and objectives of this clause, which aim to ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.

- **D8 Privacy**

The proposed development comprises two levels of boarding rooms and communal areas, a number of which are oriented over the side boundaries towards adjoining dwellings. Whilst the top floor rooms comprise privacy attenuation measures, the ground floor rooms do not. Impacts associated with ground floor rooms can ordinarily be ameliorated by typical boundary fencing, however in this instance, the ground floor of the development and the associated external spaces is elevated up to 790mm above existing ground, providing clear views into the adjoining properties. As proposed, the development has not been designed to limit overlooking and the design of the boarding house does not optimise privacy for occupants of the proposal or adjoining dwellings. As such, the proposal is inconsistent with the requirements of clause D8 of WDCP 2011 and the proposal warrants refusal in this regard.

- **D9 Building Bulk**

The bulk and mass of the proposed development is considered to be excessive, and the visual impact of the proposal when viewed from adjoining properties and Gladys Avenue is not appropriately minimised. In particular, the footprint and volume of the proposal is at odds with that of surrounding built form and the minimal landscaping proposed will not screen or soften the resultant built form to a level that is commensurate with the surrounding locality. As such, the proposal is considered to be inconsistent with the objectives and requirements of clause D9 of WDCP 2011.

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

The proposed development seeks to remove all existing canopy trees from the site. Of particular concern is the proposed removal of those trees forward of the existing dwelling, which could otherwise be retained if the development was sited in accordance with the prevailing alignment of dwellings along Gladys Avenue, as opposed to the bare minimum front setback prescribed by clause B7 of WDCP 2011. The proposal, which falls well short of the minimum landscaped area requirements of WDCP 2011 has not been sited and designed to minimise the impact on remnant native vegetation and as such, the proposal is considered to be inconsistent with the requirements this control. Furthermore, the proposal is inconsistent with a number of the objectives of this development control, as follows:

- *To protect and enhance the urban forest of the Northern Beaches.*

Comment: The proposed development does not protect existing mature canopy trees on the site, and even trees nominated for 'priority retention/protection' in the submitted arborist report are proposed for removal. Furthermore, the compromised nature of the proposed landscaping, which features canopy trees within the proposed on-site detention surface basin and in immediate proximity to fencing and retaining walls, will not result in an enhancement of the urban forest on the site.

- *To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*

Comment: The proposal will result in a net loss of canopy on the subject site, and the development cannot be said to protect or enhance bushland on the site.

- *To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*

Comment: As identified above, there are a number of canopy trees proposed in precarious locations, that are compromised and are unlikely to achieve the nominated maturity heights or survive long-term. The landscape solution proposed is not considered to be appropriately resolved and does not promote the safe retention of proposed plantings.

- *To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

Comment: The proposed removal of existing canopy trees will have a considerable impact upon the character of the area, which is categorised by dwelling houses with generous setbacks and landscaped areas, with significant canopy trees and canopy cover.

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 2011;
- Warringah Development Control Plan 2011; and
- Codes and Policies of Council.

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

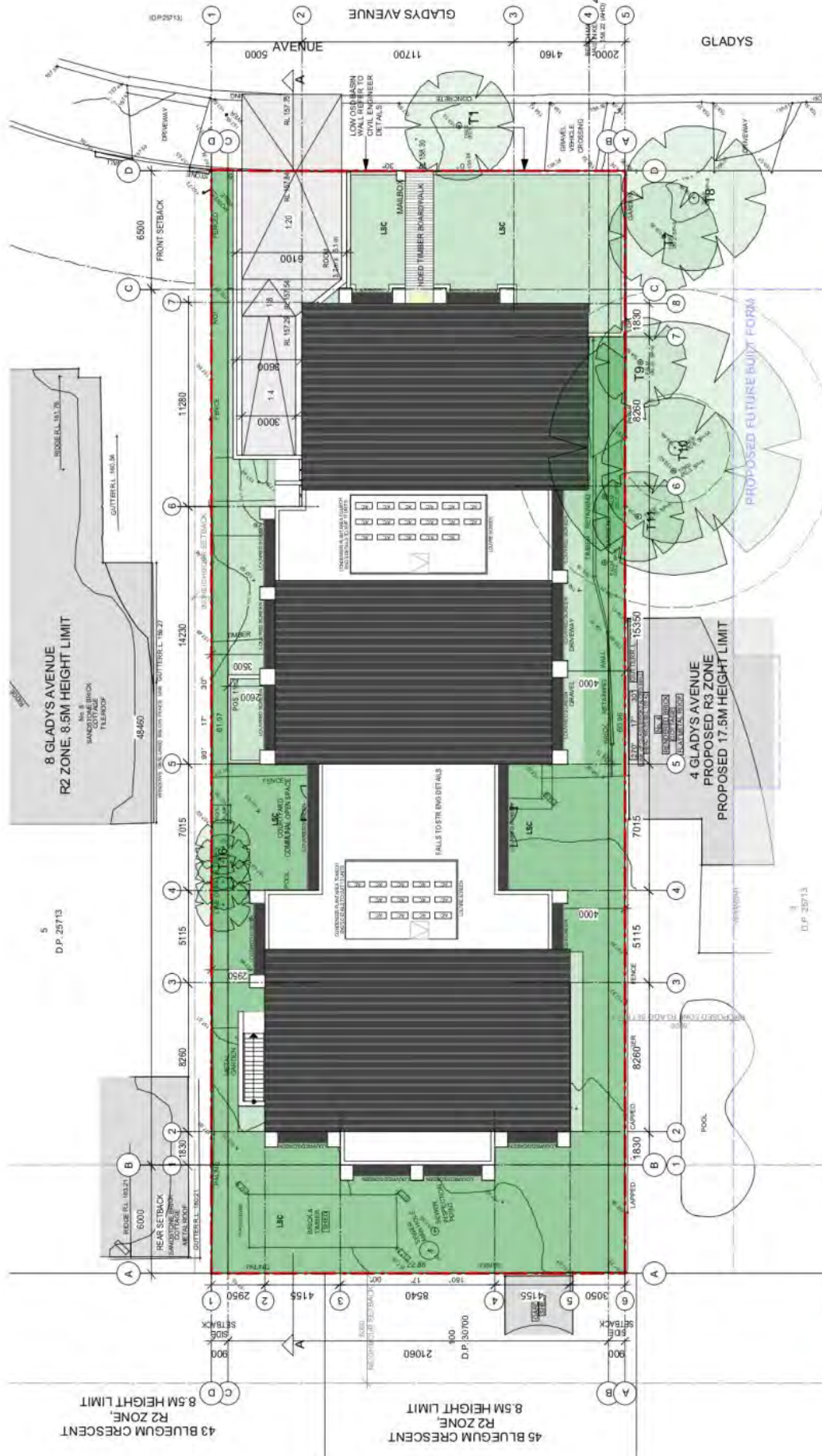
- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

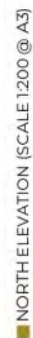
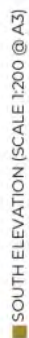
RECOMMENDATION

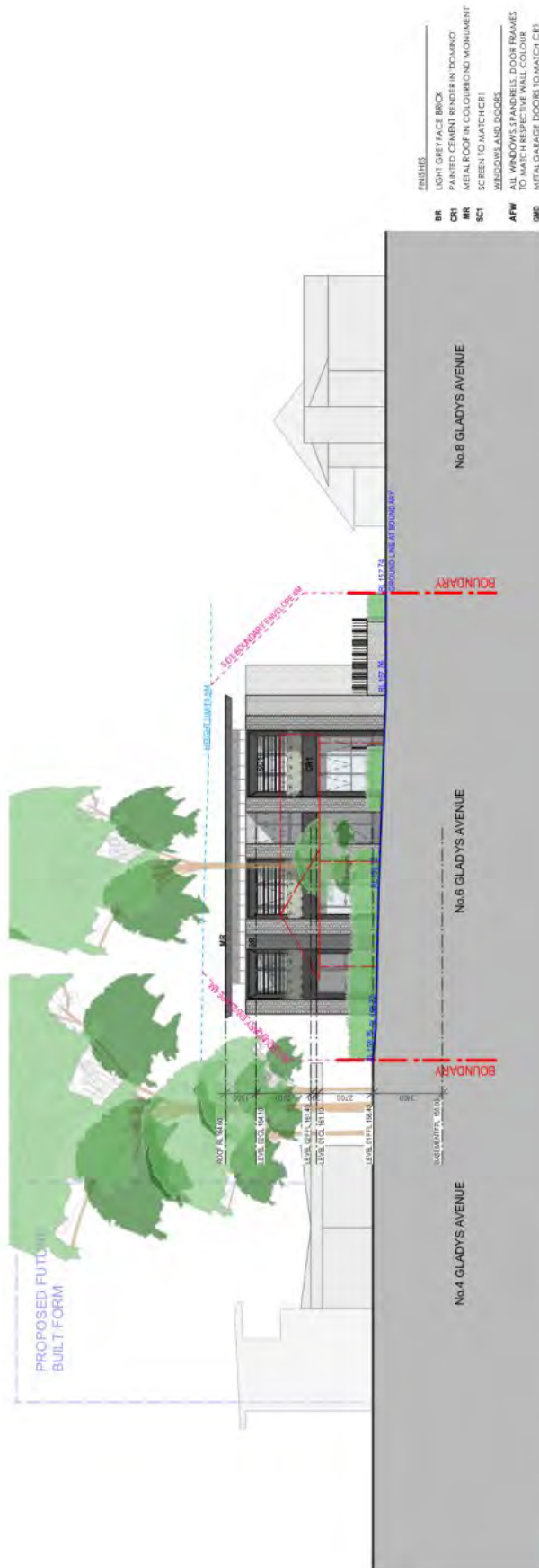
That Council, as the consent authority, refuse development consent to DA2018/1817 for the construction of a two-storey boarding house over basement car parking at Lot 4 DP25713, 6 Gladys Avenue, Frenchs Forest, for the reasons outlined as follows:

1. The proposed development is inconsistent with clause 1.2 (Aims of Plan) of Warringah Local Environmental Plan 2011 and clause A.5 (Objectives) of Warringah Development Control Plan 2011.
2. The proposed boarding house, by virtue of its scale, density, architectural/landscape design and impact upon canopy trees, is not compatible with the character of the local area and results in inconsistency with the objectives of the R2 Low Density Residential zone of Warringah Local Environmental Plan 2011.
3. The application fails to demonstrate that the site can be adequately accessed and serviced by all vehicles reasonably associated with the ongoing use and management of the proposed boarding house, inconsistent with the provisions of clause C2 (Traffic, Access and Safety) of Warringah Development Control Plan 2011.
4. The application fails to demonstrate that the stormwater management solution is appropriate for the site, resulting in inconsistency with the requirements and objectives of clause C4 (Stormwater) of Warringah Development Control Plan 2011.

5. The landscaped treatment of the front setback of the proposed boarding house is not compatible with the character of surrounding dwellings, and the proposed development is inconsistent with the requirements and objectives of clause D1 (Landscaped Open Space and Bushland) and E1 (Preservation of Trees or Bushland Vegetation) of Warringah Development Control Plan 2011.
6. The proposed development will result in unacceptable impacts upon the amenity of adjoining dwellings and future occupants of the development, inconsistent with the requirements and objectives of clauses D2 (Private Open Space), D3 (Noise) and D8 (Privacy) of Warringah Development Control Plan 2011.
7. The built form of the proposed boarding house is excessive, resulting in unreasonable impacts upon the surrounding environment and inconsistency with the requirements and objectives of clauses B3 (Side Boundary Envelope), B9 (Rear Boundary Setbacks) and D9 (Building Bulk) of Warringah Development Control Plan 2011.







EAST ELEVATION (SCALE 1:200 @ A3)



WEST ELEVATION (SCALE 1:200 @ A3)

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East 4 West Elevation

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