

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre, Dee Why

WEDNESDAY 12 JUNE 2019



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 12 June 2019
in the Walamai Room, Civic Centre, Dee Why**

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2.0	MINUTES OF PREVIOUS MEETING	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 22 MAY 2019Error! Bookmark not defined.

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 22 May 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2018/1875 - 59 FAIRLIGHT STREET, FAIRLIGHT - PARTIAL DEMOLITION AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SPA
AUTHORISING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2019/307558
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/1875 for partial demolition and construction of a dwelling house including a spa on land at Lot 9 DP 3742, 59 Fairlight Street, Fairlight, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1875
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 9 DP 3742, 59 Fairlight Street FAIRLIGHT NSW 2094
Proposed Development:	Partial demolition and construction of a dwelling house including a spa
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Adam Jon Tesoriero
Applicant:	Adam Jon Tesoriero
Application lodged:	27/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/04/2019 to 16/04/2019
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 600,000.00

ASSESSMENT INTRODUCTION

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

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



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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 9 DP 3742 , 59 Fairlight Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject property is commonly known as 59 Fairlight Street Fairlight and legally known as Lot 9 Section I in DP 3742. The site is located on the southern side of Fairlight Street. The property is rectangular in shape and has a frontage of 6.68m to Fairlight Street, an average depth of 40.235m and an overall site area of 268.8m². The property currently contains a 1 and 2 storey dwelling with vehicular access via an existing driveway from Upper Clifford Avenue to an existing garage to the rear of the existing dwelling.</p> <p>The property slopes from north to south and includes a crossfall of 2m.</p> <p>The surrounding area includes multi-dwelling housing, one and two storey dwelling houses and residential flat buildings.</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:

PLM2018/0164 - A pre-lodgement meeting was held on the 26 July 2018 for alterations and additions to the existing dwelling house - It was advised in the meeting that the extent of works were more accurately described as demolition and construction of a dwelling house. It was also advised that the extent of non-compliance with the height of buildings, floor space ratio development standards of the Manly LEP 2013 and wall height and setback controls of the Manly DCP 2013 could not be supported. The development application subject to this assessment includes a reduced extent of non-compliance and was submitted as demolition and construction of a dwelling house.

DA143/2017 for alterations and additions to the existing dwelling house - including a first floor addition - Approved 8 September 2017

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the partial demolition and construction of a dwelling house. In particular it will include the following:

Site

- Single garage
- Spa
- Landscaping
- Outdoor bbq/entertaining area



Lower Ground Floor

- Rumpus and storage area

Ground Floor

- Verandah
- Study, bathroom, laundry and open plan living dining and kitchen with attached deck

First Floor

- Three bedrooms, bathroom and master bedroom with ensuite and attached balcony

Amended plans were submitted on the 26 March 2019. The amendments included a reduction of the floor area on the lower ground floor, reduction of the building height non-compliance and deletion of the extension of the wall on the eastern boundary. The amended plans were re-notified until the 16 April 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.



BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr James John Myerscough Mrs Penelope Rachel Myerscough	57 Fairlight Street FAIRLIGHT NSW 2094

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

- Tree protection
- Privacy

The matters raised within the submissions are addressed as follows:

- Tree protection
Comment:
Concern was raised over the development impacts on the tree on the adjoining property at 57 Fairlight Street.

Councils landscape officer has reviewed the application and is satisfied the tree can be protected subject to the recommended conditions of consent. The conditions included the requirement to engage a project arborist to supervise and certify tree protection works.
- Privacy
Comment:
Concerns were raised that the first floor windows will result in overlooking of the adjoining property at 59 Fairlight Street. These windows have been assessed in accordance with clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary this assessment found that the windows would not result in unreasonable privacy impacts, subject to the incorporation of louvres. The plans include a note advising that all eastern facing windows will incorporate louvres. A condition is recommended requiring that louvres be detailed on all eastern facing windows prior to CC. The condition is recommended to ensure compliance with the note.

REFERRALS

Internal Referral Body	Comments
Landscape Officer DA2018/1875	The landscape component of the proposal is acceptable subject to the Page 7 of 35

Internal Referral Body	Comments
	<p>protection of existing trees and vegetation, and completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping.</p> <p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013.</p> <p>No Arboricultural Impact Assessment is provided with the application. A large Gum tree exists within No. 57 Fairlight St, and conditions of consent shall be included to ensure protection of this tree from development works.</p> <p><u>Planning Comments</u></p> <p>The landscape referral included the following condition:</p> <p>"Project Arborist <i>The existing large Gum tree along the northern boundary of the adjoining lot at No. 57 Fairlight Street, shall be protected from damage during construction works.</i></p> <p><i>An AQF Level 5 Project Arborist, qualified in Horticulture is to be engaged to supervise and certify tree protection works in accordance with AS4970- 2009 Protection of Trees on Development Sites, should any of the proposed works require tree canopy pruning or root removal.</i></p> <p>No work is permitted upon the existing Gum tree located within No. 57 unless permission is granted in writing by the owner of No. 57 Fairlight St, Fairlight.</p> <p><i>Removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist. Any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Excavation is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist. No tree canopy nor tree branch may be pruned without consultation with a AQF Level 5 Arborist.</i></p> <p><i>Documentary evidence of any works shall be collected by the Project Arborist including photos and site instructions to record any work upon the existing tree.</i></p> <p><i>Details shall be submitted to the Certifying Authority prior to the</i></p>

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Internal Referral Body	Comments
	<p><i>Occupation Certificate.</i></p> <p><i>Reason: to ensure tree protection is provided and maintained."</i></p> <p>The requirement of owners consent in paragraph 3 was amended as Council cannot grant consent without owners consent. This paragraph was amended to the following:</p> <p><i>"No work, that requires adjoining owners consent, is permitted upon the existing Gum tree located within No. 57."</i></p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of available documents and a site visit</p> <p>The site of proposed development is not heritage listed, however, it is in the vicinity of listed item, the former Manly Reservoir site.</p> <p>Given the nature of the proposal and the item, it is assessed that impact on heritage values will be within acceptable limits.</p> <p>Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required.</p> <p>Kind Regards</p> <p>Zoran Popovic Heritage Adviser</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of



contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A343559 dated 22 March 2019).

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.8m	3.5%	No
Floor Space Ratio	FSR: 0.6:1 (161.3sqm)	FSR: 0.73:1 (196.7sqm)	21.9%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
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:	8.8m
Percentage variation to requirement:	3.5%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:



The Applicant's written request, within the Statement of Environmental Effects, has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

That the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient



environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal includes a maximum RL of 74.63. The property to the east was approved with a maximum RL of 74.3 and the property at 57 Fairlight Street was surveyed with a maximum RL of 75.28. The proposal is of a height that is consistent with the prevailing building height within the locality. Furthermore, the proposal will maintain a two storey appearance as viewed from the street. This will ensure the proposal is of a built form that is consistent with the nearby development. The proposal will result in a development that is consistent with the desired future streetscape character of the area.

b) to control the bulk and scale of buildings,

Comment:

The proposed non-compliance is set to the rear of the development and will not be visually prominent from the street. Furthermore the non-compliance of 0.3m will not result in a development that is of an unreasonable bulk and scale within the locality.

c) to minimise disruption to the following:

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

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



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

Comment:

The proposal will not result in the disruption of views.

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 shadow diagrams demonstrate that the proposal will not result in any unreasonable overshadowing of the neighbouring properties private open spaces and habitable rooms.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal will continue the residential use of the site and ensure the development meets the housing needs of the community.

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

Comment:

The proposal will maintain the existing housing type on the site.

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

Comment

Not applicable.

Conclusion:

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



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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument that are less than a 10% variation. In this regard, given the consistency of the variation to the objectives of the zone, the objectives of the development standard and in light of the applicants written request within the statement of environmental effects, the concurrence of the Secretary for the variation to the Height of buildings Development Standard may be assumed.

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (161.3sqm)
Proposed:	0.73:1 (196.7sqm)
Percentage variation to requirement:	21.9%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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



- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

The Applicant's written request, within the statement of environmental effects, has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*



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

The applicants written request argues, in part:

"That sufficient environmental planning grounds exist to justify the variation including the exceptional design quality of the building and the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the sites' visual catchment. The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought."

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard



The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposal provides a maximum RL of 74.63. The property to the east was approved with a maximum RL of 74.3 and the property at 57 Fairlight Street was surveyed with a maximum RL of 75.28. The proposal is consistent with the prevailing building height and will maintain a two storey appearance as viewed from the street. This will ensure the proposal is of a built form that is consistent with the nearby development. The proposal was accompanied by perspectives that demonstrated that the proposal is of a built form that is consistent with the locality. The proposed development will not result in a bulk or scale that is inconsistent with the existing or desired streetscape character of the locality.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposal will not obscure any important landscape or townscape features.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

There is no defined building character within the locality. However, the proposal is of a built form that is consistent with the development directly to the east. Furthermore the proposal maintain a two storey appearance from the street frontage. The proposal will result in a built form that maintains an appropriate visual relationship between new and existing development.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposal is of a reasonable design to maintain an adequate level of privacy and solar access to the neighbouring properties. The proposal will not result in any unreasonable impacts on the use or enjoyment of the adjoining land and the public domain.

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

Comment:

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Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal will maintain the residential use of the site and ensure the site continues to provide for the housing needs of the community.

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

Comment:

The proposal will maintain the existing housing type on the site.

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

Comment:

Not applicable.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards that are greater than 10% by the Independent Hearing and Assessment Panel, for which Council has an exemption to allow dwelling houses to be determined by the Development Determination Panel.

In this regard, given the consistency of the variation to the objectives of the zone, the objectives of the development standard and in light of the written request within the statement of environmental effects, the application is referred to the Development Determination Panel with a recommendation of approval.

Manly Development Control Plan

Built Form Controls

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Built Form Controls - Site Area: 268.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 6.6m (based on gradient 1:60)	7.6m - 8.5m	29%	No
	West: 7m (based on gradient 1:12)	6.6m - 8.4m	20%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.4m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line - 2.2m 57 Fairlight Street - 2.3m Sydney Water Site - 2.1m	Balcony 3.6m Building 4.8m Consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East Lower Ground 0.5m - 0.8m Ground 1.6m - 1.9m First 2.5m-2.8m West Lower Ground Nil - 0.7m Ground 1m - 1.8m First 2.2m - 2.8m (based on wall height)	East Lower Ground 0.925m Ground 0.9m First 0.9m West Lower Ground Nil Ground Nil First Nil - 0.9m	0% - 100%	No
	Windows: 3m	0.9m	70%	No
4.1.4.4 Rear Setbacks	8m	Garage 0.5m Dwelling 13m	0%- 93.7%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (147.8sqm)	63% (169.5sqm)	N/A	Yes
	Open space above ground 25% of total open space (42.3sqm)	11% (19.4sqm)		
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (59.3sqm)	30.8% (52.2sqm)	11.9%	No
	1 native trees	1 trees	N/A	Yes
4.1.5.3 Private Open Space	18m per dwelling	39.9sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	N/A, does not have direct street frontage	N/A	N/A
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.8m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1mcurtilage/1.5m water	N/A	Yes
4.1.10 Fencing	1.5m where 30% transparent above 1m	2.5m	66%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	50%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide DA2018/1875

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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: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3 Landscaping	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The Manly DCP 2013 permits fences to a maximum height of 1.5m where they are 30% transparent above 1m.



The proposal includes a solid masonry retaining wall to a height of 1.5m and timber slat fence directly above to a height of 1m.

Merit consideration:

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

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

Comment:

The development directly to the east includes a solid masonry wall on top a natural rock outcrop. The proposal will present a transition in scale from the adjoining development from the west to the properties to the east. The proposal is of an appropriate design to ensure no negative visual impacts on the street frontage.

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

Comment:

The proposal is of an appropriate design to compliment the streetscape character of the locality.

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

Comment:

The proposed front fence/wall is satisfactory in this circumstance.

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

3.4.2 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:

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The eastern elevation is setback 0.9m from the side boundary and is adjacent to the driveway/hardstand area of the neighboring property. This property includes some small windows facing the subject site and a southern facing first floor balcony. The proposal includes a large number of windows facing the eastern side boundary. To mitigate the privacy impacts from these windows it is noted on the plans that all eastern facing windows will incorporate external louvres. The incorporation of louvres will ensure that this development does not result in any unreasonable privacy impacts on the neighbouring properties. To ensure compliance with the submitted plans a condition is recommended requiring external louves on all eastern facing windows. The eastern elevation is of a suitable design to minimise direct viewing between adjacent and nearby development.

The southern elevation includes a balcony on the ground and first floor. The ground floor balcony includes screening on the eastern elevation to minimise overlooking. This balcony is suitably designed to minimise overlooking of any principal private open spaces. The first floor balcony is small and adequately setback to ensure no unreasonable privacy impacts within the locality.

The proposed development is of a suitable design to minimise the loss of privacy of adjacent and nearby development.

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 is adequately designed to ensure a reasonable level of privacy without compromising access to light and air. The proposal will provide a balanced outlook from habitable rooms and private open spaces.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

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

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

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

Description of Non-compliance

The Manly DCP 2013 permits a maximum wall height of 6.6m on the eastern elevation and 7m on the western elevation based on the gradient. The proposal includes a maximum wall height of 8.5m on the eastern elevation and 8.4m on the western elevation.

Merit Consideration

The Manly DCP 2013 does not include objectives relevant to Clause 4.1.2.1 Wall Height of the Manly DCP 2013 but refers to the objectives of clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. An assessment of the relevant objectives has been conducted below.



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

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

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

Comment:

The proposal will present to the street as a two storey building that is of a consistent built form and scale of the neighbouring properties. The surrounding area includes a variety of roof forms. As such the proposed roof form will not result in any impacts on the character for the area. The proposal is consistent with the prevailing building height and the desired future streetscape character in the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed non-compliance is due to the mansard style first floor level. The Manly DCP 2013 requires this be incorporated into the wall height measurements. However, the use of the sloping first floor walls will reduce the overall bulk of the development and ensure it does not impose on the neighbouring properties. Furthermore the proposal is consistent with the prevailing building height within the locality. The proposal is of a bulk and scale that is consistent with the locality.

c) to minimise disruption to the following:

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

Comment:

The proposal will not result in the disruption of views.

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 shadow diagrams demonstrate that the proposal will not result in any unreasonable overshadowing of the neighbouring properties private open spaces and habitable rooms.

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



Comment:

Not applicable.

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

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

Description of non-compliance

The Manly DCP 2013 requires walls be setback from the side boundary a distance equal to 1/3 of the wall height. The proposal is not compliant with this control on the eastern and western boundaries.

The Manly DCP 2013 requires an 8m rear setback. The proposal includes the demolition and construction of a garage that is setback 0.5m from the rear boundary.

The Manly DCP 2013 requires new windows be setback 3m from the side boundary. The proposal includes windows within 0.9m of the side boundary.

Merit consideration:

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

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

Comment:

The proposal is designed to follow the existing building footprint and will present to the street as a two storey building. Furthermore the mansard style first floor will provide greater physical separation from the side boundary. The proposal will maintain the existing spatial proportions of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

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

- The proposal has been assessed above with regard to clause 3.4.2 Privacy and security. This



- assessment has found that the proposal will provide privacy within the locality.
- The proposal was accompanied by shadow diagrams that demonstrate that the development will not result in any unreasonable overshadowing of the neighbouring properties private open spaces or habitable rooms.
 - The proposal will not result in any unreasonable view impacts.
 - The proposal is of a reasonable design within the streetscape and will maintain the streetscape character of the locality.
 - The proposal will not impact traffic conditions within the locality.

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

Comment:

The proposed flexibility is appropriate in this circumstance due to the absence of unreasonable amenity impacts and the consistency of the development with the streetscape.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal includes the provision of enhanced landscaping on the site including deep soil plantings.

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

Comment:

Not applicable

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The Manly DCP 2013 requires 35% of the total open space be provided as landscaped area. The proposal includes 30.8% landscaped areas.

Merit consideration:

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



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

Comment:

The subject site is currently landscaped with mostly lawns. The proposal will enhance the landscaping on the site with native shrubs and trees. The proposal does not include the removal of any important landscape features

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

Comment:

The proposal provides greater than required total open space, in accordance with the Manly DCP 2013 this results in an increased requirement for landscaped areas. If the proposal provided the compliant level of total open space, the proposed landscaped area would be compliant. Regardless, the proposed soft landscaped areas are an enhancement on the existing situation and are adequate to maintain the landscape character of the locality. The proposal will bring the site into compliance with minimum tree plantings and is compliant with the maximum permitted above ground open space. The proposal is consistent with this objective.

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

Comment:

The proposal has been assessed with regard to amenity and has been found to maintain a reasonable level of amenity within the locality.

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

Comment:

The proposal will maximise water infiltration on the site.

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

Comment:

The proposed landscaping will minimise the spread of weeds and the degradation of private and public open space.

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

Comment:

The proposal will maximise wildlife habitat on the site.

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



in this particular circumstance.

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

Description of non-compliance

The Manly DCP 2013 requires two parking space per dwelling to be provided. The proposal includes the demolition and replacement of the single garage.

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

Comment:

The proposed parking is accessible from the dwelling. The provision of one parking space is considered as acceptable as it is currently serves the existing dwelling and the site is in close proximity to public transport and services.

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

Comment:

The proposal will maintain the existing demand for on-street parking.

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

Comment:

The existing access arrangements will be maintained. The provision of more parking is not feasible given the narrow site and the access arrangements.

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

Comment:

The proposed parking does not require excavation.

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

Comment:

The proposed garage will utilise the existing access arrangements.



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

Comment:

The proposed garage is located over the site of the existing garage. The proposal will limit impervious surfaces and screen internal accesses.

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

Comment:

Not applicable.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any



unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1875 for Partial demolition and construction of a dwelling house including a spa on land at Lot 9 DP 3742, 59 Fairlight Street, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA200E Site Plan and Site Analysis Plan Issue E	19/03/2019	Elizabeth Leong Architects
DA2003J Ground Floor Plan Issue J		
DA2004J First Floor Plan Issue J		
DA2005 B Excavation and Fill Plan Issue B		
DA2007B Demolition Plan Issue B		
DA3001J.1 East Elevation Issue J.1		
DA3003J South Elevation Issue J		
DA3004J West Elevation Issue J		
DA3006H North Elevation Issue H		
DA4000J Section AA Issue J		
DA4001G Section BB Issue G		

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within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	26 September 2018	Ascent Geotechnical Consulting

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Site Plan, Specification and Details Rev B	30/10/2018	Serenescapes
Zone A Landscape Plan Rev B	30/10/2018	Serenescapes
Zone B Landscape Plan Rev B	30/10/2018	Serenescapes

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

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

2. Prescribed Conditions

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

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



- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not



commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety



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

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

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

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

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

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

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

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

5. On-site Stormwater Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater management in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by Taylor Consulting, drawing number Sheet-1/A dated 15/10/2018.

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



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

6. Compliance with standards (Demolition):

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 Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

7. Amendments to approved plans

The plans are to be amended to detail external louvres to all east elevation windows. The amended plans are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the approved plans and minimise the loss of privacy within the locality.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

8. Project Arborist

The existing large Gum tree along the northern boundary of the adjoining lot at No. 57 Fairlight Street, shall be protected from damage during construction works.

A AQF Level 5 Project Arborist, qualified in Horticulture is to be engaged to supervise and certify tree protection works in accordance with AS4970- 2009 Protection of Trees on Development Sites, should any of the proposed works require tree canopy pruning or root removal.

No work, that requires adjoining owners consent, is permitted upon the existing Gum tree located within No. 57.

Removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist. Any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Excavation is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist. No tree canopy nor tree branch may be pruned without consultation with a AQF Level 5 Arborist.

Documentary evidence of any works shall be collected by the Project Arborist including photos and site instructions to record any work upon the existing tree.

Details shall be submitted to the Certifying Authority prior to the Occupation Certificate.

Reason: to ensure tree protection is provided and maintained.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. 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.

10. Tree and vegetation protection

A) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site as identified on the site plans, excluding exempt trees under the relevant planning instruments or legislation,
- ii) all trees and vegetation located on adjoining properties, and particularly the existing Gum located within No.57,
- iv) all road reserve trees and vegetation,

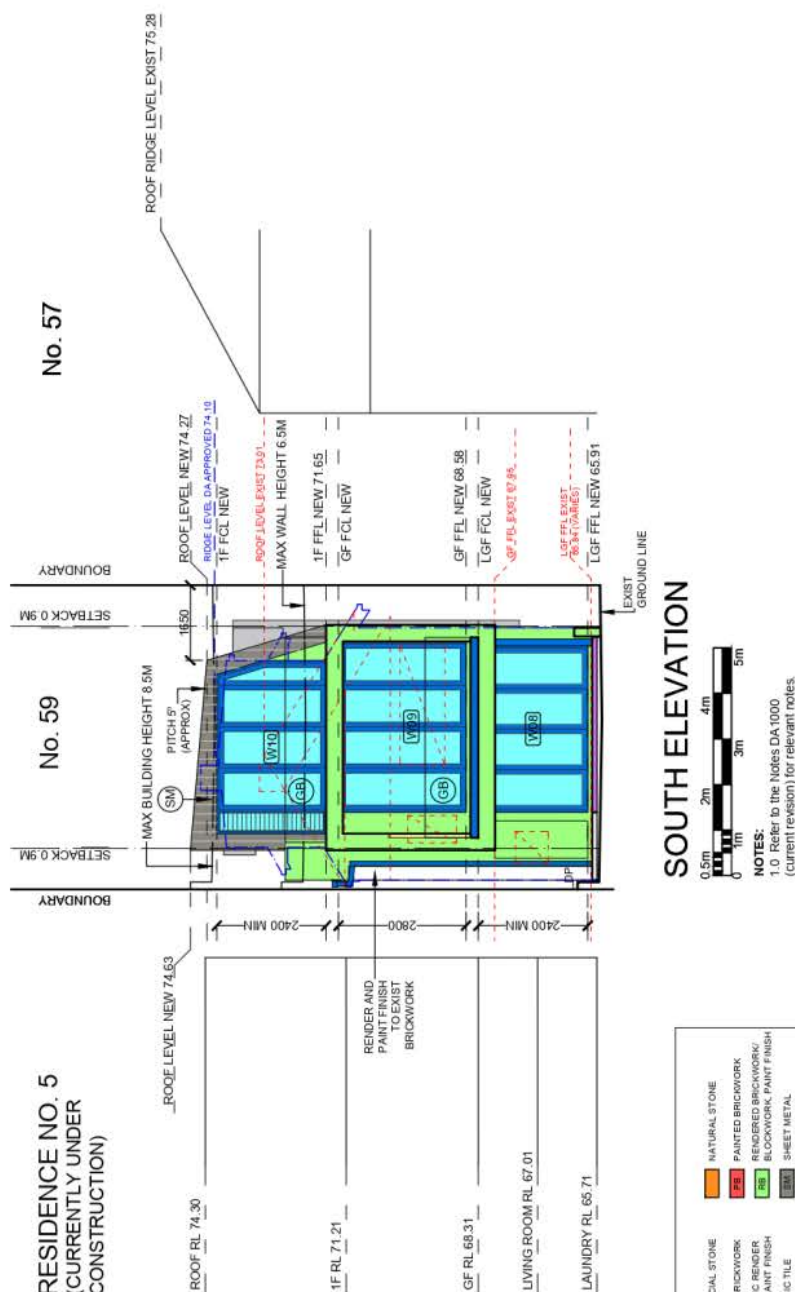
B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,
- viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.











































































































































































Reason: to retain and protect significant planting on development and adjoining sites.







LEGEND:

EXIST WALLS		EXIST DOOR		EXIST WINDOW		EXIST SKYLIGHT NUMBER		BASIC SKYLIGHT NUMBER		BASIC WINDOW NUMBER		NEW WALLS - MASONRY		NEW WALLS - TIMBER		FACE BRICKWORK		ARTIFICIAL STONE	
	EXIST WALLS TO BE DEMOLISHED/UN		EXIST DOOR		EXIST WINDOW		EXIST SKYLIGHT NUMBER		BASIC SKYLIGHT NUMBER		BASIC WINDOW NUMBER		NEW WALLS - MASONRY		NEW WALLS - TIMBER		FACE BRICKWORK		ARTIFICIAL STONE
	EXTENT OF EXIST WINDOW TO BE REMOVED		EXTENT OF EXIST WINDOW		EXTENT OF EXIST WINDOW		EXTENT OF EXIST SKYLIGHT		EXTENT OF EXIST SKYLIGHT		EXTENT OF EXIST WINDOW		EXTENT OF EXIST MASONRY		EXTENT OF EXIST TIMBER		PAINTED BRICKWORK/ SMOOTH PAINT FINISH		NATURAL STONE
	EXIST WALLS TO BE DEMOLISHED/UN		EXIST DOOR		EXIST WINDOW		EXIST SKYLIGHT NUMBER		BASIC SKYLIGHT NUMBER		BASIC WINDOW NUMBER		NEW WALLS - MASONRY		NEW WALLS - TIMBER		PAINTED BRICKWORK/ SMOOTH PAINT FINISH		NATURAL STONE
	EXTENT OF EXIST WINDOW TO BE REMOVED		EXTENT OF EXIST WINDOW		EXTENT OF EXIST WINDOW		EXTENT OF EXIST SKYLIGHT		EXTENT OF EXIST SKYLIGHT		EXTENT OF EXIST WINDOW		EXTENT OF EXIST MASONRY		EXTENT OF EXIST TIMBER		PAINTED BRICKWORK/ SMOOTH PAINT FINISH		NATURAL STONE
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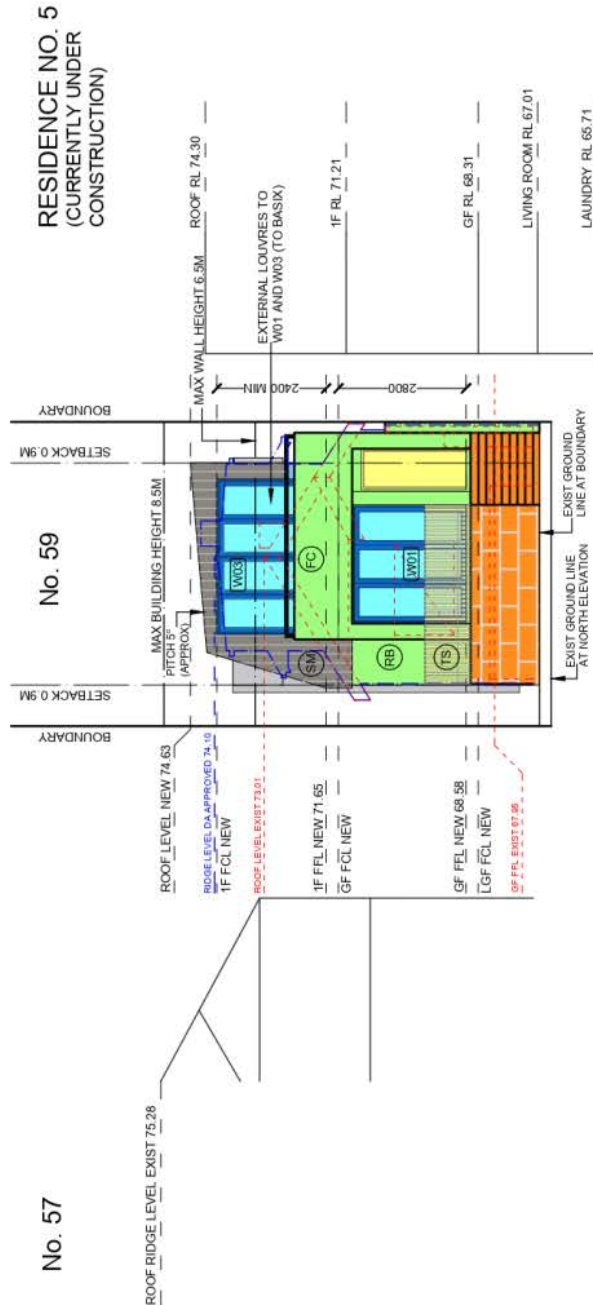


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ISSUE DETAILS	applicant: Nicola & Adam Tesoriero	project 18/092
59 FAIRLIGHT STREET, FAIRLIGHT, NSW 2094		
13.09.18	59 FAIRLIGHT STREET, FAIRLIGHT, NSW 2094	
21.09.18	Lot 9, Sec 1, DP3742	
15.11.18	South Elevation	
27.02.19	date June 2018	
19.03.19	scale 1:100@A3	dwg no DA3003J





NORTH ELEVATION



NOTES:
1.0 Refer to the Notes DA1000
(current revision) for relevant notes.

LEGEND:

FINISHES:	
EXIST WALLS	ARTIFICIAL STONE
EXIST WALLS TO BE DEMOLISHED UN	PAINTED BRICKWORK
NEW WALLS - TIMBER	RENDERED BRICKWORK/ BLOCKWORK, PAINT FINISH
NEW WALLS - MASONRY	SHEET METAL
NEW WALLFLOOR - CONCRETE	TIMBER
BASIX WINDOW NUMBER	TIMBER BALUSTRADE, PAINT FINISH
BASIX SKYLIGHT NUMBER	TIMBER GLAZING, PAINT FINISH
EXTENT OF EXIST WINDOW TO BE REMOVED	PAINT FINISH
EXIST WINDOW	TONED GLASS
EXIST DOOR	TIMBER DECKING
EXTENT OF DA APPROVED WORKS	TIMBER SLATS, STAINED OR PAINT FINISH
	TERRACOTTA TILE
	WESTERN RED CEDAR
	METAL

<div><div></div><div><div>elizabeth leong architects pty ltd</div><div>architecture + interior design</div><div>ABN 59 100 247 649 NSW Registered Architects No. 100247649</div><div>30 Essex Street, KILMORE NSW 3071</div><div>M 0427052223 elzeng@elzarchitects.com.au</div></div></div>	<div><div><div>© elizabeth leong architects pty ltd 2018</div><div>The design, drawings, specifications and the copyright are the property of elizabeth leong architects pty ltd. The documents must not be transmitted, copied or partly, without prior approval of elizabeth leong architects pty ltd.</div><div>All dimensions must be verified on site prior to the commencement of work. Do not scale this drawing. Figure dimensions are to be taken in preference to the scale drawing.</div></div></div>	<div><div><div>applicant: Nicola & Adam Tesoriero</div><div>project 18/092</div><div>59 Fairlight Street, Fairlight, NSW 2094</div><div>Lot 9, Sec 1, DP3742</div><div>North Elevation</div><div>date Jun 2018</div><div>scale 1:100@A3</div><div>dwg no DA3006H</div></div></div>	<div><div>ISSUE DETAILS</div><div><div>D</div><div>ISSUE FOR APPROVAL</div><div>13.09.18</div></div><div><div>E</div><div>AS PER CLIENT COMMENT</div><div>19.09.18</div></div><div><div>F</div><div>MATERIALS ADDED</div><div>21.09.18</div></div><div><div>G</div><div>ISSUE FOR DA APPROVAL</div><div>13.11.18</div></div><div><div>H</div><div>ISSUE FOR REVISED DA</div><div>19.03.19</div></div></div>
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4.0 STATUTORY PLANNING FRAMEWORK

4.1 General

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 79C of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.2 Manly Local Environmental Plan 2013

4.2.1 Zone and Zone Objectives

The subject site is zoned R1 General Residential pursuant to the provisions of Manly Local Environmental Plan 2013 ("MLEP"). Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

- *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 proposal is permissible and consistent with the stated objectives in it provides for a variety of housing types and densities to meet the housing needs of the community.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.2.2 Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

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

- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

building height (or ***height of building***) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

It has been determined that the southern eastern edge of the upper level roof form has a maximum height of 8.7 metres representing a minor non-compliance of 200mm or 2.3%. The balance of the works sit comfortably below the standard as depicted in Figures 8, 9 and 10 over page 6.

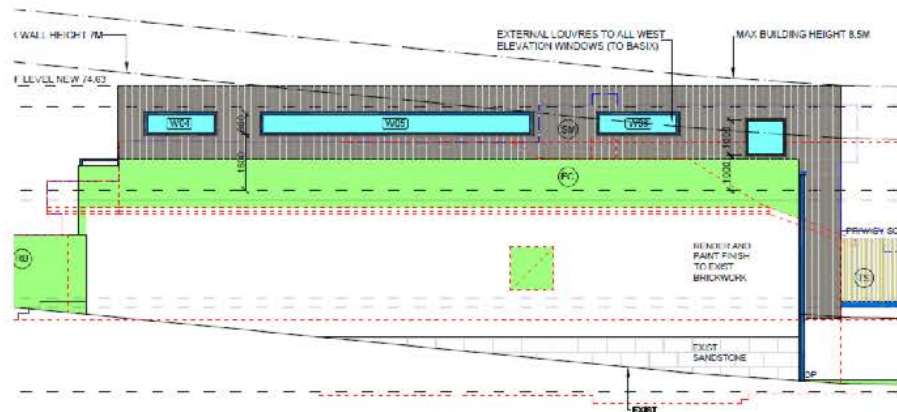


Figure 8 – Western elevation showing strict compliance with 8.5 metre height standard

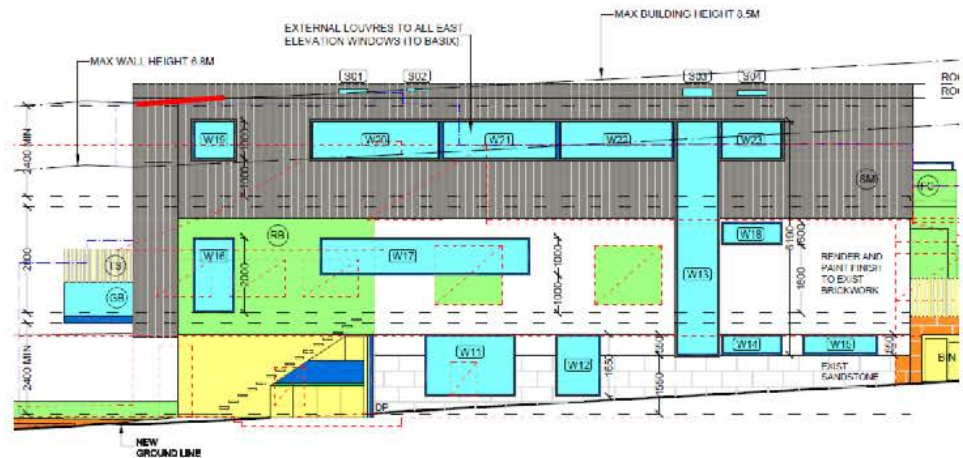


Figure 9 - Eastern elevation showing minor height non-compliance south eastern edge of roof form

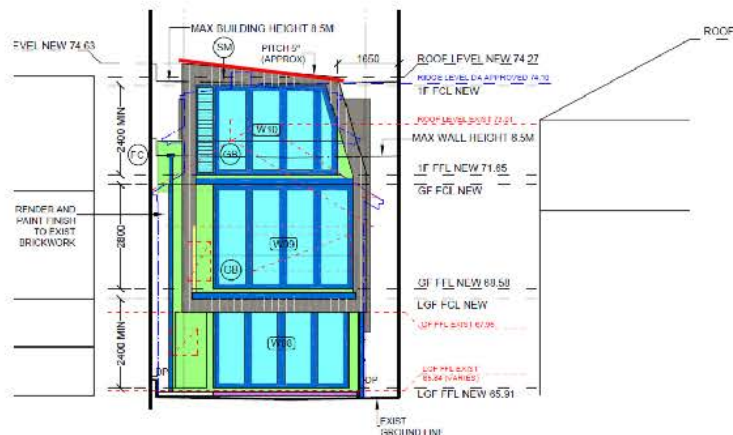


Figure 10 – Southern elevation showing minor height non-compliance south eastern edge of roof form

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

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

which the development is proposed to be carried out, and

- (b) the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

Claim for Variation

Zone and Zone Objectives

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 3.2.1 of this statement.

Height of Buildings Standard and Objectives

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (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,*

Response: The building floor plates, heights and roof form have been designed to reflect the topographical characteristics of the site. We note that the non-compliance is limited to the thickness of the roof form over a relatively confined portion of building footprint with site topography contributing to the non-compliance.

The overall height of the development as it presents to Fairlight Street is well below the 8.5 metre height standard with a minor non-compliance as viewed from the rear lane. The building height proposed is entirely consistent with the prevailing heights established on both immediately adjoining properties and development generally within the sites visual catchment as depicted in the Figures 4 – 7. Such circumstance is accurately depicted in the photomontages at Figures 11 and 12 below.



Figure 11 – Photomontage showing the consistency of the proposed building height with that of adjoining development



Figure 12 – Photomontage showing the consistency of the proposed building height with that of adjoining development

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, in particular areas of roof form which breach the 8.5 metre height standard, offensive, jarring or unsympathetic in a streetscape, lanescape context nor having regard to the built form characteristics of development within the sites' visual catchment.

Council can be satisfied that the development provides for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

This objective is satisfied.

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

Response: The non-compliance is limited to the thickness of the roof across a relatively small area of building footprint such that it could not be said that such area contributes unacceptably to the bulk and scale of development anticipated through strict compliance with the standard. The building height and floor space are appropriately distributed across the site such as to achieve an acceptable bulk and scale.

This objective is satisfied.

(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),*

Response: In the context of the impacts arising from the area of roof form which exceeds the height standard we have formed the considered opinion that the non-compliance will not disrupt views to nearby residential development from public spaces, views from nearby residential development to public spaces and views between public spaces.

This objective is satisfied.

- (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,*

Response: The accompanying shadow diagrams demonstrate that the shadow cast from the minor area of building height non-compliance does not fall on the west facing windows of No. 57 Fairlight Street or the adjacent open space areas. As such the minor area of building height non-compliance does not result in unacceptable shadowing impacts to the adjacent residential properties or the public domain.

This objective is satisfied.

- (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.*

Response: Not applicable.

Further, sufficient environmental planning grounds exist to justify the variation in circumstances where the minor non-compliance is directly attributed to the topography of the land. Compliance with the objectives of the standard and the absence of environmental impact also give weight to the acceptability of the variation sought.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and

- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

4.2.3 Floor Space Ratio – Exceptions to Development Standards

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 161.28 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposal has a gross floor area of 198 square metres, as defined, representing a floor space ratio of 0.73:1 and therefore non-compliant with the FSR standard by 36.72 square metres or 22.7%.

Again, clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied with such clause applying to the clause 4.4 Floor Space Ratio Development Standard.

Claim for Variation

Zone and Zone Objectives

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 3.2.1 of this statement.

Floor Space Ratio Standard and Objectives

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Response: The height, bulk and scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally within the sites visual catchment as depicted in Figures 4 – 7. Such circumstance is accurately depicted in the photomontages at Figures 13 and 14 over page.



Figure 13 – Photomontage showing the consistency of the proposed building height with that of adjoining development



Figure 14 – Photomontage showing the consistency of the proposed building height with that of adjoining development

In this regard, it is apparent that development within the site visual catchment displays an existing FSR, and in many cases building height, which exceed the standards with the proposed development clearly consistent with the existing streetscape character.

It is also apparent that the area of this particular site is significantly less than a majority of properties in the immediate area with the FSR variation reflecting such circumstance and the desire for a reasonable level of floor space to achieve the orderly and economic use and development of the land.

That said, with the exception of a minor building height breach in the south eastern corner of the proposed roof form, which is not discernible as viewed from Fairlight Street, the proposal complies with the 8.5 metre height standard ensuring that in terms of building height the proposal is consistent with the desired streetscape character as anticipated by the height standard.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

Accordingly, we have formed the considered opinion that this objective is satisfied.

- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Response: Having inspected the site and its surrounds we have formed the considered opinion that the development will not obscure any important landscape or townscape features with a compliant open space/ landscape area curtilage maintained.

Accordingly, we have formed the considered opinion that this objective is satisfied.

- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Response: As depicted on landscape plan DA2001F the proposed development is within 8.66 square metres of compliance with the total open space control with strict compliance achieved with the landscaped area provision of the DCP. The proposed landscaping will maintain an appropriate visual relationship between adjoining development with the landscape regime proposed ensuring that the existing landscape character of the area is maintained, if not enhanced.

Accordingly, we have formed the considered opinion that this objective is satisfied.

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

Response: In relation to shadowing impact the application is accompanied by shadow diagrams which show the impact of shadowing on adjoining development in particular No. 57 Fairlight Street. We note that this property has its living room and adjacent terrace orientated to the south to take advantage of views and outlook.

Such southern orientation has placed greater weight on outlook rather than solar access with no direct solar access to the south facing glazing at any time between 9am and 3pm on 21st June. The shadow diagrams demonstrate that the existing level of solar access received to the west facing windows will not be further compromised between 9am and 3pm on 21st June. Reasonable levels of solar access will be maintained to the rear yard of this adjoining property.

In relation to privacy, we confirm that the concerns previously expressed in relation privacy have been addressed through building design, the appropriate design and location of fenestration and the provision of integrated privacy screen treatments where considered necessary. The proposal will not give rise to any unacceptable public or private view affectation.

This objective is satisfied.

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

Response: This objective is not applicable.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the exceptional design quality of the building and the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the sites' visual catchment. The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development

standard is unreasonable or unnecessary in the circumstances of the case, and

- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

4.2.4 Heritage Conservation – Heritage Impact Assessment

Pursuant to clause 5.10(4) of MLEP 2013 the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Further, pursuant to clause 5.10(5) the consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

The subject property is not heritage listed or located within a heritage conservation area however is located adjacent to the heritage listed within the vicinity of the Schedule 5 MLEP 2013 heritage listed Manly Reservoir. We note that the heritage significance of this item has been materially altered through the recent approval and construction of a multi dwelling housing development on this adjoining site.

ITEM 3.2	DA2018/1988 - 54 ELLERY PARADE, SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2019/308449
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the height standard.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to DA2018/1988 for demolition works and construction of a dwelling house on land at Lot 49 DP 7750, 54 Ellery Parade, Seaforth, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1988
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 49 DP 7750, 54 Ellery Parade SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew Hatzis
Applicant:	Suburban Town Planners
Application lodged:	17/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	31/12/2018 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,655,000.00

Executive Summary

A pre-lodgement meeting was held between Council and the Applicant in relation to the proposal on 28 August 2018. Specific concerns raised at the time included visual bulk, streetscape and view loss impacts.

Three submissions in objection to the proposal were received on behalf of four properties, in response to the notification of the application. View loss concerns were raised on behalf of two properties to the rear of the subject site (No. 59 & No. 61 Peacock Street). Council requested height poles be erected on the subject site following initial site inspections of the objecting properties.

Assessment of the architectural plans submitted and further inspections of the site and height pole templates concluded that the proposed new dwelling is excessive in bulk and scale and results in unreasonable view loss impacts. The proposed non-compliant building height is not consistent with the objectives of Clause 4.3 and the Clause 4.6 written request is not considered to adequately justify the



variation to the development standard. The proposed wall height and side setback non-compliances also contribute to the excessive scale of the development.

The proposed variation to the height of buildings development standard is 11.76%. As such, the application is referred to the Development Determination Panel for determination.

No geotechnical assessment of the site has been submitted for assessment in relation to the significant excavation proposed on the site. This issue remains unresolved.

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 - 6.2 Earthworks
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 49 DP 7750 , 54 Ellery Parade SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Ellery Parade.

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The site is regular in shape with a frontage of 15.09m along Ellery Parade and a depth of 48.16m. The site has a surveyed area of 726.7m².

The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.

The site slopes 6.97m from rear (north) to front (south).

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

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwelling houses and dual occupancies.

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:

DA0195/2011 - Alterations and additions to an existing dwelling including a first floor addition and alterations to the ground floor - Approved 17 May 2012.

DA0259/2009 - New swimming pool and associated landscaping - Approved 17 September 2007.

DA0259/2009 - Part 2 - Section 96 to modify approved Swimming Pool and associated landscaping - Approved 21 December 2007.

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PreLodgement Meeting

A prelodgement meeting was held on 28th August 2018. The relevant notes discuss a number of issues relating to visual bulk, streetscape and view loss, and conclude that:

"The proposed parapet is excessive in height and results in unreasonable visual impact as viewed from the street frontage. The parapet design requires amendment in order to maintain consistency with existing three storey dwellings within the surrounding streetscape"

The prelodgement notes provide some qualified comments in conditional support of a height breach up to 9.15m and reduced compliance with some setbacks. Notwithstanding this, the erection of height profiles during the assessment process has facilitated a more specific assessment of height, views, scale and streetscape issues. The streetscape impact in particular has been found to be unacceptable as assessed against DCP provisions.

Additionally, the extent to which the proposed dwelling is appropriate given the character of the street has been further explored. With the additional information available to the assessment process, the policy breaches relating to height and side setbacks result in a dwelling that is inconsistent with the predominant 2 storey character of the neighbourhood.

In response to the applicants concerns regarding consistency of approach, an investigation of the small number of 3 storey development in the immediate locality finds that the majority of those developments are were not approved under the current applicable planning instruments and policies. The most recent approval (2013) at No. 44 Ellery Parade relates to an application for alterations and additions to an existing dwelling to provide a basement level without changing the height of the existing structure. The proposal under this application is for a new dwelling with no constraint to compliance.

In any event, the prevailing character of the street comprises well modulated dwellings of 2 storeys, with upper levels or significant portions of front facades setback to relieve the streetscape of excessive bulk. This assessment finds the proposed dwelling remains inconsistent with this character.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition of the existing dwelling and construction of a new dwelling consisting of:

Lower floor:

- Double garage
- Workshop
- Store
- WC
- Entry and internal stair

Mid floor:

- Theatre & studio
- Breakfast room
- Office
- Bedrooms 2, 3 & 4

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- Bed 4 ensuite
- Bathroom
- Laundry
- WC
- Front patio

Upper floor:

- Kitchen & pantry
- Dining
- Lounge
- Library
- Bed 1 with ensuite and walk in robe
- Bathroom
- Front balcony
- Rear alfresco

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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 matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This 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> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will 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 unsuitable 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Manly LEP and DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in



Section 4.15 Matters for Consideration'	Comments
	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:
Tomasy Planning	1073 Pittwater Road COLLAROY NSW 2097
Mat Dervish	52 Ellery Parade SEAFORTH NSW 2092
Amanda Jane Peirce Luke Rowland Jackman	56 Ellery Parade SEAFORTH NSW 2092

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

- Bulk and scale
- Landscaping, excavation
- View sharing/view loss
- Inadequate information
- Floor plans / FSR
- Overshadowing / shadow diagrams
- Ground level
- Privacy impacts
- Boundary fencing
- Photo montage

The matters raised within the submissions are addressed as follows:

- Bulk and scale / non-compliances
Comment:
The proposed dwelling is assessed as resulting in excessive bulk and scale with significant numerical non-compliances, including building height. Based on the proposed non-compliances and associated impacts, the proposed development is not supported and is recommended for refusal.
- Landscaping, excavation
Comment:

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The proposed total open space area is marginally non-compliant and the landscaped area exceeds the minimum requirement. As such, the proposed open space and landscaped areas are supported. The proposal includes significant excavation of the site within the building footprint, for which no geotechnical assessment has been submitted. This issue remains unresolved, however the application is not recommended for approval.

- View sharing/view loss
Comment:
A detailed assessment of view loss has been completed by Council, including the requirement for the erection of height poles/templates on the site. The view loss is considered to be unacceptable as assessed under Clause 3.4.3 Maintenance of views, and the proposal is recommended for refusal.
- Inadequate information
Comment:
Following review and assessment of the application, the relevant information for Council to make an accurate assessment of the application has now been provided. Council has conducted an independent assessment of view loss.
- Floor plans / FSR
Comment:
Detailed floor plans have been submitted with the application, but are not made publicly available by Council.
- Overshadowing / shadow diagrams
Comment:
The alignment of the provided shadow diagrams to magnetic north rather than true north is noted. The shadow diagrams provide adequate information to make an assessment of overshadowing in this case. The adjoining walls of No. 52 and No. 56 Ellery Parade will experience additional overshadowing. However, the proposal will not result in any additional overshadowing of private open space of these properties and sufficient sunlight access is retained.
- Ground level
Comment:
The natural ground levels shown on the elevation and section drawings appear to be consistent with the survey levels provided. The drawings also indicate the extent of proposed excavation of the site. The proposed building height measured from natural ground level is non-compliant and is not supported.
- Privacy impacts
Comment:
The proposed western windows are not considered to unreasonably impact the privacy of No. 56 Ellery parade, as discussed in detail under Clause 3.4.2 Privacy and Security.
- Boundary fencing
Comment:
No change is proposed to the existing boundary fencing. An access path and stair is proposed adjacent to the western boundary.
- Photo montage
Comment:
The photo montage submitted is indicative of the proposed form of the dwelling. However, this assessment relies on the scaled architectural drawings and height poles erected on the site.

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	11.76%	No
Floor Space Ratio DA2018/1988	0.45:1	0.43:1	N/A	Yes



	327m2	310.9m2		
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Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	No
6.2 Earthworks	N/A
6.4 Stormwater management	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:	9.5m
Percentage variation to requirement:	11.76%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.



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

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

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

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

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

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

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

Comment:

The Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The applicant's written request (attached to this report as an Appendix) claims consistency with the objectives of the height of buildings development standard.

The written request is not considered to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

- The proposal does not provide for a building height that is consistent with the topographic landscape, prevailing building height or desired streetscape in the locality. The applicant's written request argues that the non-compliance is a natural consequence of the slope of the land from the rear of the site towards Ellery Parade. This justification is not considered to be adequate as objective (a) requires that building heights remain consistent with topography.
- The nearby examples of existing three-storey dwellings pointed to within the applicant's written request are stepped with the slope of the land to minimise bulk and building height. Council will take into account the character and existing developments of the surrounding area. However, development applications are assessed on their individual merit and scattered examples within a locality or suburb do not constitute a predominant building form. Further, developments will not be supported where they result in unreasonable impact on adjoining properties, the streetscape or surrounding areas, regardless of compliance with numerical controls.
- The proposed dwelling is excessive in bulk and scale in relation to the streetscape. The proposed dwelling facade does not provide adequate articulation or setbacks to reduce the bulk as with existing dwellings in the street. Articulation of the facade is limited to the central entry



stair and balconies. As this feature is located in the middle of the facade, it does not effectively break up the appearance of the structure or materially reduce the building envelope. In addition to this central entry stair and balconies, the large internal staircases and associated voids result in a cumulative 76.9m² that is not defined as gross floor area, but contributes further to the bulk of the dwelling.

- The proposed building height non-compliance directly results in significant view loss from adjoining properties, as assessed under Clause 3.4.3 Maintenance of Views.

In this regard, the applicants written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request (attached to this report as an Appendix) has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The



applicant's written request claims that there are sufficient environmental planning grounds to justify contravening the development standard.

The written request is not considered to adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The proposal is assessed as resulting in unreasonable environmental and amenity impacts, specifically in relation to view loss and bulk and scale.
- Based the numerous and significant proposed non-compliances and associated impacts, particularly the departure from the height of buildings development standard, the proposal is not considered to be a well designed or orderly development.

As such, the applicant's written request has not demonstrated that the proposed development is consistent with cl 1.3 of the EPA Act.

In this regard, the applicants written request has not adequately demonstrated the that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6(3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed building height is not consistent with the topographic landscape, prevailing building height or desired streetscape, as discussed above under Clause 4.6(3)(a).



b) to control the bulk and scale of buildings,

Comment:

The proposed building height and DCP non-compliances result in a dwelling of unreasonable bulk and scale. The proposed design lacks sufficient setbacks and articulation to reduce the visual impact of the 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 proposed building height non-compliance results in unreasonable view loss from adjoining properties. In addition to the height non-compliance, the bulk of the dwelling and insufficient side setbacks do not allow for reasonable retention of views over or through the site.

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 maintain adequate sunlight access to the subject site and adjoining properties.

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 R2 Low Density Residential zone are:

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

Comment:

The proposal maintains the existing residential use and density.

It is considered that the development satisfies this objective.

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

Comment:

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N/A

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

As the application seeks to vary the development standard by more than 10% the concurrence of the Secretary is assumed subject to determination by Council's Development Determination Panel.

6.2 Earthworks

The proposal includes excavation to a depth of approximately 3m. No preliminary assessment of site conditions or geotechnical assessment has been submitted with the application. This issue remains unresolved, however, the application is recommended for refusal based on other concerns raised in this report.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 726.7m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	East: 7.5m	Mid: 4.9m	Yes
		Upper (rear): 7.9m	Yes
		Upper (front): 9.1m	No
	West: 8m	Mid: 4.9m	Yes
		Upper (rear): 7.9m	Yes
		Upper (front): 9.2m	No
4.1.2.2 Number of Storeys	2	3	No
4.1.2.3 Roof Height	Height: 2.5m	1m	Yes
	Parapet Height: 0.6m	1m	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	8m	Yes

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4.1.4.2 Side Setbacks and Secondary Street Frontages	East (mid): 1.63m	1.5m	No
	East (upper- rear): 2.6m	2m	No
	East (upper-front): 3.03m	1.5m	No
	West (mid): 1.63m	1.5m	No
	West (upper-rear): 2.6m	2m	No
	West (upper-front): 3.07m	1.5m	No
4.1.4.4 Rear Setbacks	8m	20.66m	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 400m2	51.4% 373.3m2	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 130.66m2	42.2% 157.5m2	Yes
4.1.5.3 Private Open Space	18m2 per dwelling	> 18m2	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
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	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	No
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	No	No
4.4.5 Earthworks (Excavation and Filling)	N/A	N/A

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance
DA2018/1988



The proposal is inconsistent with objective 2 below.

Merit consideration:

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

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

Comment:

The proposed car parking will not unreasonably impact the streetscape.

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

Comment:

Notwithstanding compliance with the front setback control, the scale of the proposed new dwelling is excessive in relation to surrounding development and does not complement the streetscape. The maximum proposed building height non-compliance occurs at the front building line of the dwelling and is not supported. Further, the proposal does not provide sufficient side setbacks or articulation to minimise the bulk of the dwelling.

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

Comment:

The front fence is existing.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

3.1.1 Streetscape (Residential areas)

Description of non-compliance

The proposal is non-compliant in relation to Clause 3.1.1.1(a)(ii) & (iii), and 3.1.1.1(b).

Merit consideration:

3.1.1.1 Complementary Design and Visual Improvement

- a) Development in the streetscape (including buildings, fences and landscaping) should be de:
 - i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;
 - ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private



land;

iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;

iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;

v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;

vi) visually improve existing streetscapes through innovative design solutions; and

vii) incorporate building materials and finishes complementing those dominant in the

locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

Setback Principles in Low Density Areas

b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.

See also paragraph 3.3 Landscaping and paragraph 4.1.5 Open Space and Landscaping.

Comment:

The locality contains a variety of architectural styles, however the proposed bulk and design is considered to detract from the scenic amenity of the surrounding area. The maximum proposed building height non-compliance occurs at the front building alignment and is not compatible with adjacent development. The lack of adequate side setbacks and building articulation results in the proposed dwelling dominating the site.

3.3.2 Preservation of Trees or Bushland Vegetation

No significant trees or vegetation are proposed to be removed.

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:

The proposal does not result in any unreasonable overshadowing of adjoining properties. At 9am and 10am there is additional overshadowing of the front setback and eastern windows of No. 56 Ellery Parade. At 2pm and 3pm there is additional overshadowing of the front setback and western windows of No. 52 Ellery Parade. Despite the additional overshadowing impacts, the eastern courtyard of No. 52 Ellery Parade will allow sufficient morning sunlight access throughout the morning and the elevation of No. 56 Ellery Parade above No. 58 will allow northern and western sunlight to be retained throughout the middle of the day and afternoon.

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 sufficient sunlight access to the private open spaces and windows of 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 development site and adjacent properties retain sufficient sunlight penetration and no properties adjoin the subject site to the south.

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:

The proposed design will not unreasonably impact the privacy of the subject site or adjoining properties. The proposed eastern windows are limited in size and generally have high sill heights. The proposed mid floor western windows are highlight windows and the proposed upper floor windows are significantly higher than those of the adjoining dwelling to the west. The proposed rear alfresco area is screened to the side boundary and sufficiently separated from the rear boundary.

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 design provides privacy to the adjoining properties and sufficient light and air access to the proposed dwelling.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides opportunities for passive surveillance.

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:

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 new dwelling does not provide 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).

An assessment of view loss has also been undertaken with reference to the Views 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.

Comment:

Views over the subject site are currently available from No. 59 and No. 61 Peacock Street. The views are land views of Mosman and skyline views of the CBD. The available views from No. 59 Peacock Street are largely obscured by vegetation on that site, and so are partial views. The views from No. 61



Peacock Street are minimally obscured and are considered to be whole views.

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 from No. 59 are obtained from the rear ground floor terrace area and upper floor master bedroom from a standing position across a rear and side boundary. Views from No. 61 Peacock Street are obtained from the living/dining room, kitchen, study and rear deck across a rear boundary. All views from No. 61 are generally available from a sitting and standing position.



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Figure 1. View from rear terrace of No. 59 Peacock Street.



Figure 2. View from living room of No. 61 Peacock Street.

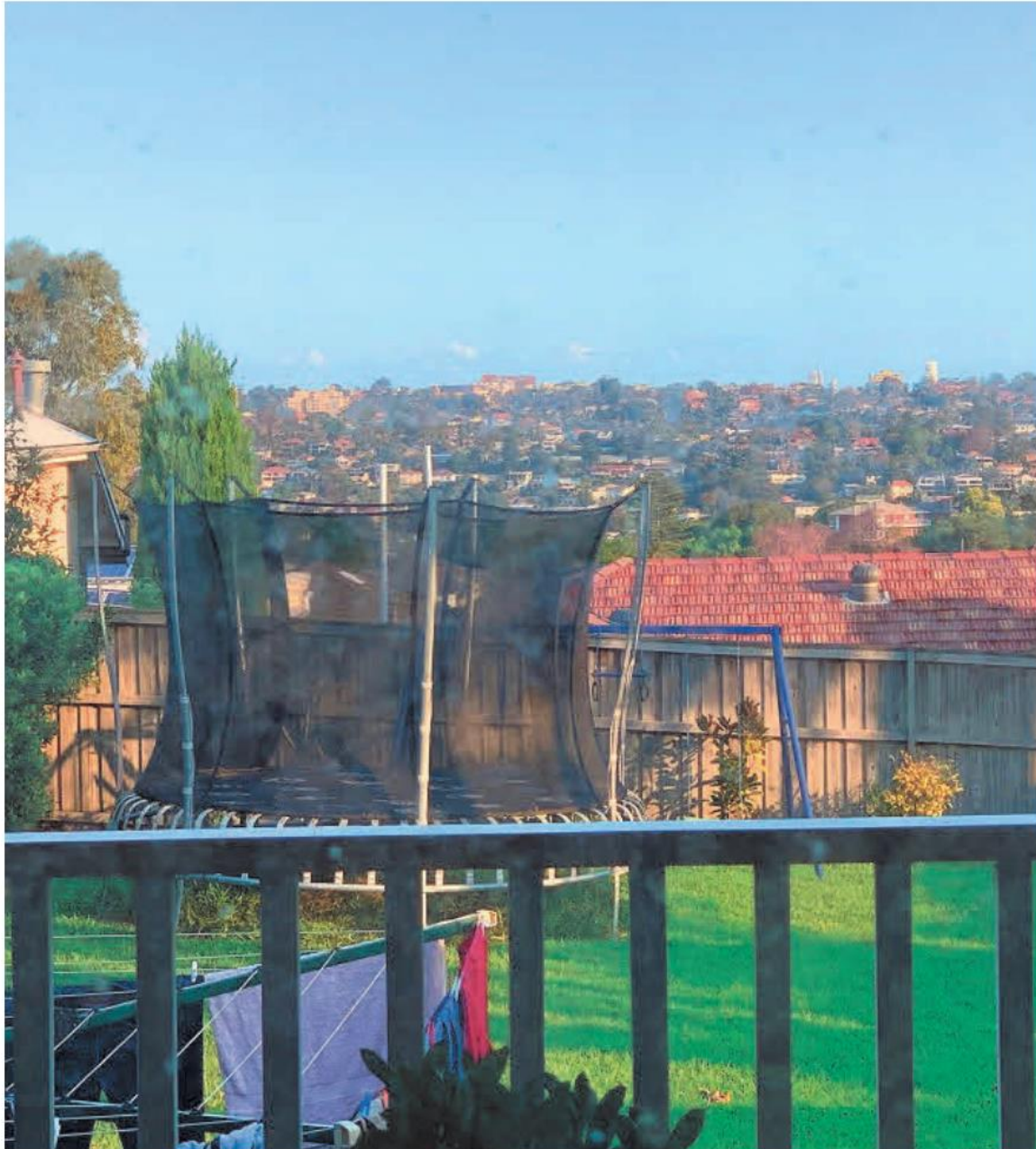


Figure 3. View from kitchen of No. 61 Peacock Street.



Figure 4. View from western side of rear deck of No. 61 Peacock Street.



Figure 5. View from eastern side of rear deck of No. 61 Peacock Street.

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.

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The proposal will block a significant proportion of the existing land views of Mosman from the rear terrace of No. 59 Peacock Street and from the living/dining room, kitchen and rear deck of No. 61. The upper portion/ridge of the land view is retained and the CBD skyline remains unaffected from both properties.

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

Comment:

The proposal is non-compliant in relation to overall building height, wall heights, number of stories, parapet height, and side setbacks. These non-compliances directly contribute to the bulk of the proposed dwelling and the resultant view loss impacts. Taking into consideration the extent of the views to be lost and the number and extent of the non-compliances, the proposed view loss is considered to be severe and is not acceptable.

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

Comment:

The proposal is not considered to be reasonable in relation to view loss or in accordance with other provisions of the Manly DCP.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

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

Description of non-compliance

The proposed wall heights, number of stories and parapet height are non-compliant.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

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



Comment:

The proposed wall heights are not consistent with the topography, prevailing building height or desired streetscape. The side walls do not step with the slope of the land and do not provide adequate visual relief to maintain a consistent height or character with the locality. There are several examples of three-storey dwellings in the surrounding area, however the form and bulk of these existing dwellings is generally more articulated. The proposed parapet height is not unreasonable in itself, but further contributes to the excessive bulk of the dwelling overall.

b) to control the bulk and scale of buildings,

Comment:

The proposed non-compliances result in unreasonable bulk as viewed from the street frontage and adjoining properties.

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 is considered to be unreasonable in relation view impact to and from nearby 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 retains adequate sunlight access to surrounding properties.

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

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

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

Description of non-compliance

The proposed eastern and western side setbacks are non-compliant.

Merit consideration:

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

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

Comment:

Due to the scale of the dwelling and lack of adequate side setbacks, particularly at the street frontage, the proposal does not maintain the desired spatial proportions or landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal results in unreasonable impact to views and streetscape character.

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

Comment:

Flexibility in the siting of the building in this case would result in unreasonable amenity and streetscape impact.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal provides adequate landscaped area and opportunity to accommodate planting.

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

Comment:



N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

4.1.8 Development on Sloping Sites

Merit consideration:

Requirements

- a) The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.
- b) Developments on sloping sites must be designed to:
 - i) generally step with the topography of the site; and
 - ii) avoid large undercroft spaces and minimise supporting undercroft structures by integrating t

Comment:

The proposed dwelling does not respond to the slope of the site and does not provide sufficient articulation to minimise loss of views or amenity.

4.4.5 Earthworks (Excavation and Filling)

The proposal includes excavation to a depth of approximately 3m. No preliminary assessment of site conditions or geotechnical assessment has been submitted with the application. This issue remains unresolved, however, the application is recommended for refusal based on other concerns raised in this report.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/1988 for the Demolition works and construction of a dwelling house on land at Lot 49 DP 7750,54 Ellery Parade, SEAFORTH, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1 Streetscapes and Townscapes of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan .
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings

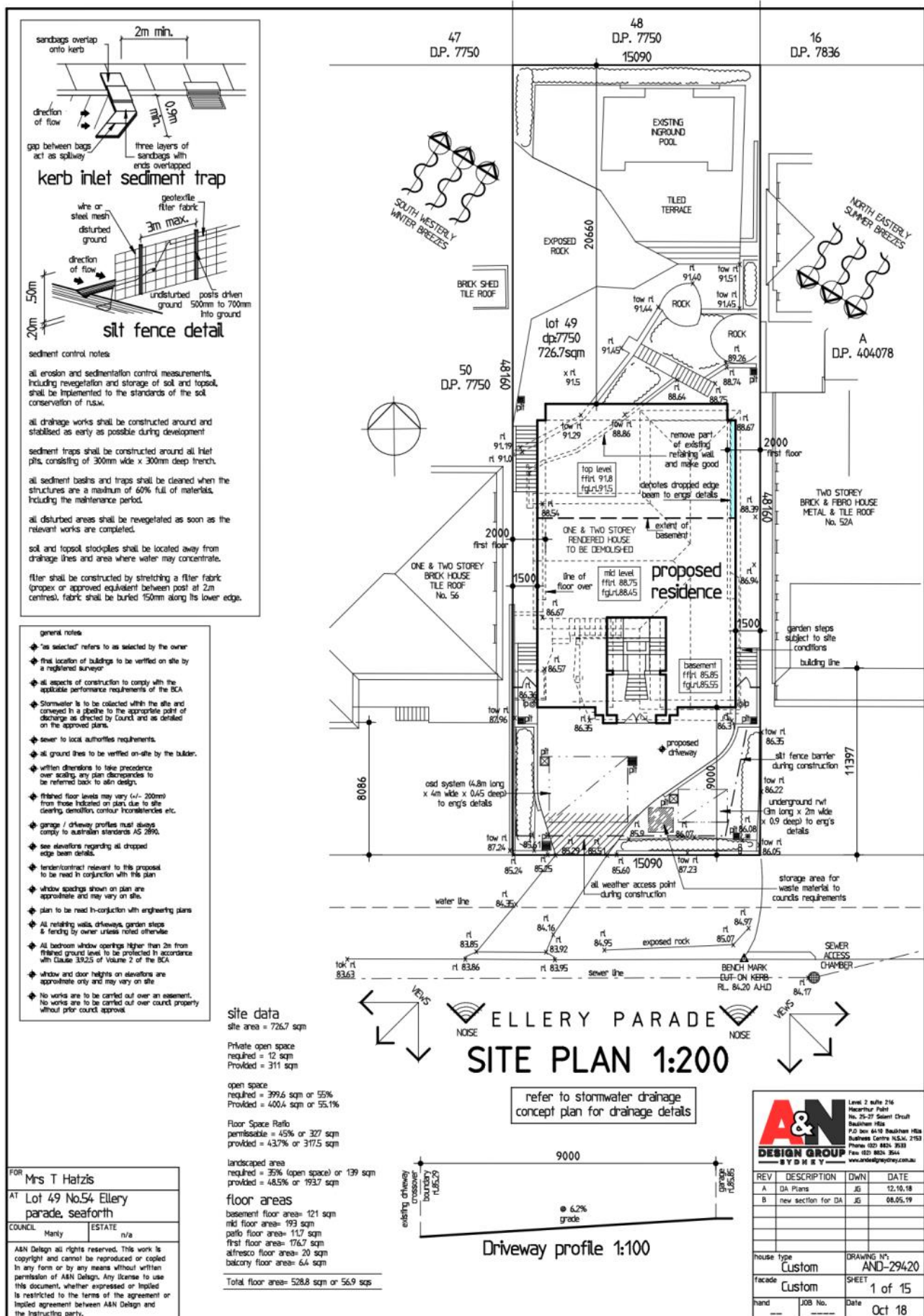
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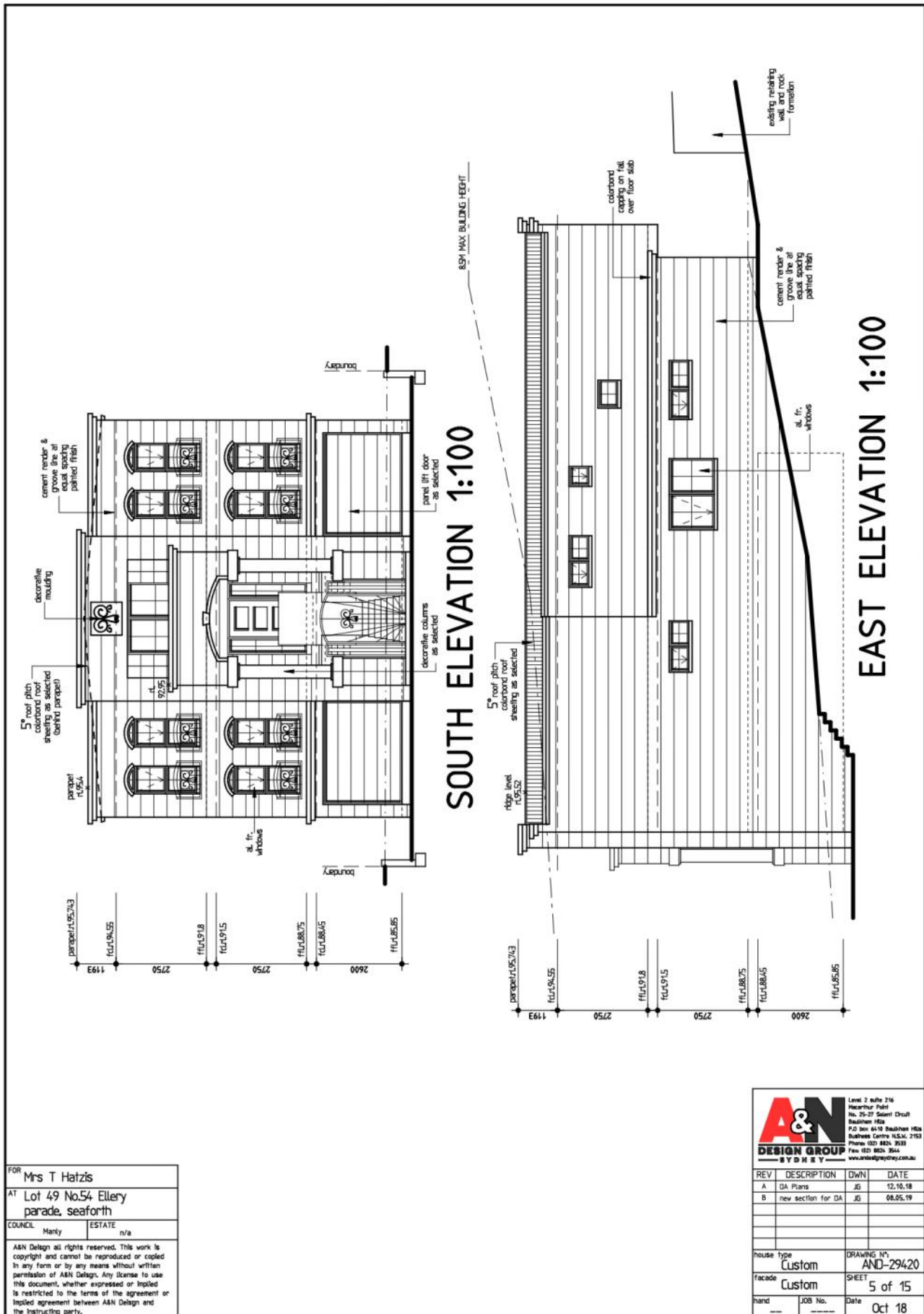
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(Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
10. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.









Clause 4.6 **Variation Request** **(Building Height)**

Proposed dwelling (involving demolition)

at

54 Ellery Parade, Seaforth

to

Northern Beaches Council

CLAUSE 4.6 VARIATION REQUEST – 54 Ellery Parade, Seaforth

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- 4.0 CONCLUSION**

CLAUSE 4.6 VARIATION REQUEST – *54 Ellery Parade, Seaforth*

1 Introduction

This Clause 4.6 Variation Report supports a Development Application submitted to Northern Beaches Council, pursuant to the Environmental Planning and Assessment Act 1979 (EP&A Act). The Development Application is seeking consent for the construction of a dwelling involving the demolition of the existing structure and associated landscaping at 54 Ellery Parade, Seaforth.

This report has been prepared to request a variation to clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013 as it applies to the proposal.

This request responds to NSW Planning & Infrastructure 'guide for varying development standards' which states that development applications seeking to vary a development standard must include a Clause 4.6 written request. The guide outlines all matters that need to be considered in Clause 4.6 written requests. Each of these matters has been diligently addressed in Section 3.0 of this report.

2 Clause 4.6

Clause 4.6 of Manly Local Environmental Plan 2013 enables an exception to the maximum allowable yield standard, subject to consideration of a written request from the applicant justifying the contravention. Relevant extracts of Clause 4.6 of LEP 2013 read as follows:

Clause 4.6 Exceptions to development standards

(1) The objectives of this clause are:

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

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other

CLAUSE 4.6 VARIATION REQUEST – 54 Ellery Parade, Seaforth

environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

(4) Consent must not be granted for development that contravenes a development standard unless:

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

(5) In deciding whether to grant concurrence, the Director-General must consider:

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

3 **Grounds for variation**

This section responds to questions provided in Appendix 3 of the NSW Planning & Infrastructure 'guide for varying development standards.'

1. What is the name of the environmental planning instrument that applies to the land?

The Manly Local Environmental Plan 2013

CLAUSE 4.6 VARIATION REQUEST – 54 Ellery Parade, Seaforth

2. What is the zoning of the land?

The site is within Zone R2 – Low Density Residential

3. What are the objectives of the zone?

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

It is considered that the proposed development meets the objectives of the Zone R2 Low Density Residential. This opinion is justified on the basis that the addition of a new dwelling will provide for the housing needs of the community and the scale of the built form is compatible with the low density environment.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

4. What is the development standard being varied?

Building Height – 8.5m Maximum

5. Under what clause is the development standard listed in the environmental planning instrument?

Manly LEP, 4.3 Height of Buildings

6. What are the objectives of the 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,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

CLAUSE 4.6 VARIATION REQUEST – 54 Ellery Parade, Seaforth

(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 proposal will contribute positively to the streetscape and visual amenity of the area as the dwelling is of a high quality architectural design and is representative of the heritage of the owners.

The design quality and visual aesthetic of development on this site is significantly enhanced as a consequence of the contemporary building design proposed.

The bulk and scale of the dwelling is consistent with the existing dwellings in the streetscape. There are many dwellings along Ellery Parade that have three (3) storey facades with garages. It is characteristic of the streetscape to have greater heights at the front of the site due to the topography. This is visually demonstrated in the photos below of a sample of dwellings along Ellery Parade that are in close proximity to the subject site.



Left: 74A and 74B Ellery Parade. Right: 78A and 78B Ellery Parade



Left: 44 Ellery Parade. Right: 42 Ellery Parade

CLAUSE 4.6 VARIATION REQUEST – 54 Ellery Parade, Seaforth

It is only the façade of the dwelling that does not meet the building height limit due to the slope of the natural ground toward Ellery Parade. The rear part of the dwelling does not extend above the height control which is 8.5m and the predominate part of the dwelling is compliant with the LEP height control. The noncompliance is solely a function of the topography of the site.

As demonstrated in the Statement of Environmental Effects, submitted with this application, the proposal meets FSR, open space controls and landscape controls, thereby demonstrating it is a modest development and the site is suitable for the proposed bulk and scale of the dwelling. In this way, the building bulk is controlled and the existing amenity and character of the streetscape is preserved.

The proposal has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the site having regard to the height, proximity and orientation of adjoining residential development.

It is only the facade of the dwelling which does not meet the building height limit due to the slope of the natural ground to Ellery Parade. The proposal will result in a very minor impact of the available views for the neighbouring property at the rear. The view analysis diagram shows that particular neighbouring property will still predominantly maintain their existing panoramic views. We note that the floor level of the balcony of the property to the rear of the subject site is RL 94.82m, add an eye height of 1.5m, it equals RL 96.32. The proposed building height is RL 95.4m at its highest point which is the façade of the dwelling. Therefore, the proposed dwelling at its highest point is approx. 1m LOWER than the sight line from the balcony at the rear. To summarise this point, standing on the balcony at the rear dwelling, from eye level, the existing panoramic views will be maintained over the roof of the new dwelling.

No other views from neighbouring properties will be affected.

The height, bulk and scale of the development will not give rise to any adverse streetscape impacts and will in fact visually improve the existing amenity.

The development complies with the solar access controls as shown on the shadow diagrams submitted with the application.

7. What is the numeric value of the development standard in the environmental planning instrument?

Max. building height 8.5m - *From Natural ground level*

CLAUSE 4.6 VARIATION REQUEST – 54 Ellery Parade, Seaforth

8. What is proposed numeric value of the development standard in your development application?

The maximum height at the front of the dwelling is 9.893m. It is noted the lowest height at the rear of the dwelling is 3.943m (north-west corner).

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

16.38% in excess of the LEP recommended height limit.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The non-compliance in height is limited solely to the front façade of the house. This is a natural consequence of the slope of the terrain downhill towards Ellery Parade. If it was a flat block then the height would be 8.5m compliant, but the slope dictates a higher façade at the front.

As outlined above, this development is in keeping with the low-density residential character and environment, desired by Council in this area, and the proposal meets all of the objectives of the zone. As demonstrated in the Statement of Environmental Effects, submitted with this application, the proposal generally meets DCP controls, which reflects it is a modest development. It is only the façade of the dwelling which does not meet the building height limit due to the slope of the natural ground to Ellery Parade.

Clause 4.6 allows Council to vary a control where a written request is made by an applicant demonstrating that two criteria are met. The criteria to be satisfied is that:

1. Compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and
2. That there are sufficient environmental planning grounds to justify contravening the standard.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height control given that the resulting extra height at the façade of the dwelling is as a result of the topography of the site, where by the building roof line is compliant at the rear (3.943m at the north-west corner) and the site slopes down to Ellery Parade and the façade height is non-compliant as a result of this.

The minor variation in height makes no substantial impact as it follows the building roof line from the rear which is set at one storey on the north-west side of the dwelling which is significantly lower than the height control of 8.5m.

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The proposed development ultimately results in a planning outcome that undeniably meets council's desired intent for the area.

For the reasons stated above, it is argued that the 16.38% variation deserves support as it has no unreasonable impacts on the streetscape, the surrounding locality and the neighbouring properties.

11. How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) [previously s5(a)(i) and (ii)] of the Act.

1.3 (a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

1.3 (c) To promote the orderly and economic use and development of land.

Comment:

The proposed dwelling is a well-designed and orderly development providing desirable and additional housing while maintaining a low density, built environment.

As such strict compliance in this regard would limit the objects being fully attained.

12. Is the development standard a performance- based control? Give details.

The objectives of the development standard provide the controls to allow a performance based solution. An assessment of a performance based building solution to the immediate and surrounding locality, would mean that the non-compliance is a function of the slope of the land.

The non-compliance has no unreasonable impact on the amenity of adjoining properties or the streetscape. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider "compliance to the standard unreasonable in the circumstances of the development".

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Yes, please refer to answer in 10, 11 and 12 preceding.

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14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation. Please refer to the analysis of the impact on surrounding properties (question 12) due to the height variation at the rear of the property.

The following environmental planning grounds justify contravening the development standard.

- The new dwelling improves the amenity of the streetscape, and reflects the heritage of the owners.
- There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.
- The well- designed building is of a similar bulk and scale to the existing dwellings and in the context of the streetscape.
- It does not adversely affect any public views.
- No unreasonable view loss from neighbouring properties will occur as a result of the addition. The panoramic views from the dwelling to the rear of the subject site will be maintained.
- The additional height has no negative solar access impacts on surrounding sites.
- FSR and site coverage controls are met, thereby reflecting a modest development.
- The proposal provides for additional housing in a way that does not compromise the low- density character of the streetscape and area.

4 Conclusion

CLAUSE 4.6 VARIATION REQUEST – 54 Ellery Parade, Seaforth

The non-compliance to the maximum building height is considered acceptable based on the extensive and accepted planning rationale outlined herein.

Specifically, it is our view that the variation does not:

- Hinder the attainment of the objects specified in 1.3(a) and (c) [previously s5(a)(i) and (ii)] of the *Environmental Planning and Assessment Act 1979*;
- Raise any matter of significance for State or Regional planning; or
- Create any unreasonable precedent.
- Impact unreasonably on adjoining properties given the slope of the terrain. The non-compliance is consistent with the locality.

As shown herein, the development is still capable of satisfying the relevant objectives notwithstanding the minor height variation and having regard to the facts outlined in this submission it is our view that it is both unreasonable and unnecessary for Council to insist upon compliance with the prescribed maximum building height of 8.5m in this instance.

Melissa Neighbour
Town Planner (Hons)
Project Manager

ITEM 3.3**DA2019/0076 - 1 PITT ROAD, NORTH CURL CURL -
DEMOLITION AND CONSTRUCTION OF A DWELLING HOUSE****AUTHORISING
MANAGER****STEVE FINDLAY****TRIM FILE REF****2019/308416****ATTACHMENTS**

- 1 [↓](#) **Assessment Report**
- 2 [↓](#) **Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0076 for demolition and construction of a dwelling house on land at Lot 2 DP 1206790, 1 Pitt Road, North Curl Curl, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0076
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 2 DP 1206790, 1 Pitt Road NORTH CURL CURL NSW 2099
Proposed Development:	Demolition and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Andrew John Gremmo Belinda Gaye Gremmo
Applicant:	Gremmo Homes Pty Ltd
Application lodged:	01/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	04/02/2019 to 20/02/2019
Advertised:	Not Advertised
Submissions Received:	5
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,260,000.00

ASSESSMENT INTRODUCTION

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

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

DA2019/0076

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 2 DP 1206790 , 1 Pitt Road NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Pitt Road.</p> <p>The site is regular in shape with a frontage of 11.195m along Pitt Road and a depth of 54.87m. The site has a surveyed area of 614.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates dwelling house with attached timber deck and outbuilding at the rear.</p> <p>The site has a slope of 13% from the north to south.</p> <p>The site has one tree located at the rear of the existing outbuilding and some exposed nature rock outcrops.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single, double and three storey dwellings with associated outbuildings and landscaped gardens.</p>

Map:



SITE HISTORY

Development Application No. DA2018/1711 - Demolition works, and construction of a dwelling house, including a swimming pool was withdrawn due to concerns in relation to the following:

- Wall height and building bulk
- Rear setback
- Side boundary envelope
- Landscaping
- Views

PROPOSED DEVELOPMENT IN DETAIL

Demolition

The proposal involves the demolition of the following built structures:

- existing dwelling house
- deck
- retaining walls
- driveway
- outbuilding

New Dwelling House

The proposal involves the construction of a new 2-3 storey dwelling house including a swimming pool, pool side shelter and decking as follows:

Lower Ground Floor Plan
DA2019/0076

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- Bedroom 4
- Rumpus room
- Bathroom
- Gym
- Sub floor storage
- Terrace

Ground Floor

- Double garage
- Porch/entry
- Gallery
- Laundry
- Linen
- Bathroom
- Two (2) bedrooms
- Retreat
- Study
- Balcony

First Floor

- Living
- Kitchen with walk in pantry
- Study
- Powder room
- Master bedroom with walk in robe and en-suite
- Deck (rear) with operable roof

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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Section 4.15 Matters for Consideration'	Comments
Provisions of any planning agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was requested in relation to compliance with Clause D1 Landscaping Open Space and Bushland Settings of the Warringah Development Control Plan 2011. A revised landscape plan was submitted from the applicant on 10 April 2019.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.



EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Nick Masters	42 Robertson Road NORTH CURL CURL NSW 2099
Mr Len Gruca	38 Robertson Road NORTH CURL CURL NSW 2099
Mrs Janice Langley Nita Page	44 Robertson Road NORTH CURL CURL NSW 2099
Christine Graham	4 Pitt Road NORTH CURL CURL NSW 2099
Robert Stephen Allan	3 Pitt Road NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- Views
- Building Bulk
- Side boundary envelope
- Wall height
- Landscape open space
- Precedent
- Front setback/streetscape
- Solar panels
- Statement of Environmental Effects
- Final building height is surveyed
- Excavation
- Solar access
- Privacy

The matters raised within the submissions are addressed as follows:

- **Views**

Comment: A detailed analysis was undertaken from surrounding and adjoining properties, including a site inspection from all properties where Council received a submission. A detailed analysis was undertaken from No. 4 Pitt Road and No. 38 Robertson Road and site inspections were completed from No. 3 Pitt Road and Nos. 42 and 44 Robertson Road. Please refer to



assessment under Clause D7 Views section of this report.

In summary, the proposed dwelling is considered to satisfy Clause D7 Views and the view sharing principles (Four (4) point test) of Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140 and it is considered that the issues raised do not warrant refusal of the proposal. However, special conditions have been imposed which require a survey(s) at critical stages of the development to confirm the lowering in the height of the building, including the lower ground level, first floor level and the roof frame to ensure that the dwelling is constructed in accordance with the submitted plans.

- **Building Bulk**

Comment: Issues were raised in relation the visual bulk of the dwelling house, notably the length and height of the building. A review of the relevant built form controls of the Warringah Local Environmental Plan 2011 (WLEP 2011) and the Warringah Development Control Plan 2011 (WDCP 2011) was undertaken and it is noted that the proposal is compliant with the exception of Clause C3 Parking Facilities of WDCP 2011 in relation to the width of the garage exceeding 50% of the building. It is also noted that the side boundary envelopes on the eastern and western elevations are encroached by the eaves and the roof, but which are allowed as exceptions to the rule under Clause B3 Side Boundary Envelope of the WDCP 2011.

Issues were also raised concerning the southern elevation and a lack of stepping of the building as it rises with each progressive level of the building. A detailed review of the Eastern Elevation and Southern Elevation demonstrates that the dwelling steps back 2.8m and the balcony extends out on the first floor level.

Given the location of the site in relation to the Robertson Road properties to the east (in particularly Nos. 38, 40, 42 and 44 Robertson Road), and the additional concerns of privacy, the applicant has installed privacy screens. It is considered that screens will allow for adequate visual relief while ensuring satisfactory amenity to these properties to the east, thus ensuring general compliance with Clause D9 Building Bulk of the WDCP 2011.

Additionally, an amended landscape plan was received from the applicant on 10 April 2019 demonstrating compliance with Clause D1 Landscape Open Space and Bushland Settings of the WDCP 2011.

Given the above, it is considered that the proposed dwelling demonstrates sufficient articulation, relief and spatial separation from adjoining and surrounding dwellings to ensure compliance Clause D9 Building Bulk (WDCP 2011). It is considered that this issue does not warrant refusal and/or further amendment via condition(s).

- **Side Boundary Envelope**

Comment: Issues were raised stating the proposed dwelling is non-compliant with Clause B3 Side Boundary Envelope of the WDCP 2011. An assessment of the proposal, coupled with detailed plans submitted with the current application, demonstrates compliance with this control, with the exception of the eastern and western elevations where there is encroachment by the eaves and the roof, which are allowed as exceptions.

Given the above, it is considered that the proposed dwelling demonstrates compliance with Clause B3 Side Boundary Envelope of the WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).



- **Wall Height**

Comment: Issues were raised stating the proposed dwelling is non-compliant with Clause B1 Wall height of the WDCP 2011. An assessment of the proposal, coupled with detailed plans submitted with the current application, demonstrates compliance with this control. It is noted that the clerestory windows within the roof section at the rear section of the building are not considered to form part of the wall height of the dwelling.

Given the above, it is considered that the proposed dwelling demonstrates compliance with Clause B1 Wall height of the WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).

- **Landscape Open Space**

Comment: Issues were raised that the proposed landscaped open space is non-compliant. It is noted that the Landscape Plan submitted with the application purported to provide 245.2sqm (39.95%) as LOS. This issue was raised with the applicant and the owner submitted an amended Landscape Plan on 10 April 2019 addressing this issue, with a confirmed LOS of 247.6sqm (40.3%), which complies.

Given the above, it is considered that the proposal development demonstrates compliance with Clause D1 Landscape Open Space and Bushland settings of the WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).

- **Precedent**

Comment: Issues were raised that approval of the proposed development would set a precedent within the area. The suburb of North Curl Curl and in particular Pitt Road, Robertson Road and Taylor Street has a significant number of larger dwelling houses with associated structures (swimming pools etc.) with landscaped gardens. It is noted that this proposal will have an excavated level (Lower Ground Floor) which will be the base for the dwelling and the upper levels will be sit above this level (Ground Floor and First Floor).

The dwelling will be located slightly forward (2.57m) and at the rear the first floor part of the dwelling (3.3m) of No. 3 Pitt Road. The dwelling conforms to the building height, wall height, side boundary envelope, side setback, front boundary setback, rear boundary setback and landscape open space controls of the WLEP 2011 and WDCP 2011. Given the scale, size and predominant nature of the existing housing stock in this locality, it is considered that the dwelling and development will be compatible with surrounding dwellings in the locality and will not set a precedent.

Given the above, it is considered that the proposal development is compliant with the relevant built form controls of the WLEP 2011 and WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).

- **Front Setback and Streetscape**

Comment: As stated above, the dwelling is located slightly forward of the dwelling at No. 3 Pitt Road by 2.57m, however, it demonstrates compliance with the front boundary setback control of 6.5m (Clause B7 Front Boundary Setback of the WDCP 2011) with a setback of 6.631m.



The dwelling from the front southern elevation will appear as a two storey dwelling house which is articulated, modulated, spatial separated from the adjoining dwellings and has varying setbacks with landscaped elements (first floor level) ensuring the proposal demonstrates compliance with the front setback, while addressing the streetscape. It is noted that it is non compliance with Clause C3 Parking Facilities of the WDCP 2011 due to the width of the garage exceeding 50% of the width of the building. However, it is considered that the requirement of two (2) vehicles on site is sufficient grounds coupled with the design that a variation to this merit consideration and clause can be supported in this instance.

Given the above, it is considered that the proposal development is compliant with the relevant built form controls of the WLEP 2011 and WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).

- **Solar Panels**

Comment: Issues were raised about the installation of solar panels on the roof of the dwelling and possible impacts of glare/reflection and possible impacts on views. A detailed review of the plans, particularly in relation to the roof plan demonstrates that there are no solar panels to be installed as part of this application.

- **Statement of Environmental Effects (SEE)**

Comment: Issues were raised about comments/statements within the SEE, particularly in relation to D7 Views where it is stated that "*No loss of views is anticipated*". It is agreed that the statement is incorrect. A detailed View Sharing/Loss Assessment was completed by the assessment officer in relation to surrounding and adjoining properties, and it is noted and acknowledged, that there will be some degree of view loss caused by the proposed development. It is noted that a SEE forms a part of application which is required to address the impacts from the applicants point of view. Only a full and detailed assessment of the Development Application by the assessment officer will ensure a comprehensive analysis is undertaken and completed to ensure a satisfactory outcome.

- **Final Building Height is Surveyed to ensure Compliance**

Comment: Concerns were raised about the completed height of the building (RL44.634) being as per any approved plans. A condition will be included to ensure the approved height is complied with, including a survey of the lower ground floor level, first floor level and roof frame (prior to the installation of roof) to ensure the proposal is consistent and compliant with the plans (if approved).

- **Excavation**

Comment: Concerns were raised about the depth and amount of excavation from the site for the proposed dwelling. The proposed depth is 3.4m and the site has been investigated by the applicants Geo technical Engineers with the appropriate reports/assessments and recommendations to ensure the protection of not only the site but that of surrounding properties/dwellings.

It is considered that, given the depth of the excavation and the medium strength rock that is expected to occur at shallow depths [subsurface investigation (auger holes) with results varying from Nil - 1.1m depth according the Geotechnical Investigation by White Geotechnical Group], that a dilapidation survey of the adjacent buildings (No. 3 Pitt Road and No. 38 Robertson Road) be required through conditions and that the recommendations within the assessment by the



Geotechnical Engineer are undertaken to ensure the structural stability and safety.

Given the above, it is considered that subject to the above recommendations and condition(s) that the proposal will have minimal impacts on the adjoining and surrounding properties.

- **Solar Access**

Comment: A number of issues and concerns were raised about solar access for adjoining properties, particularly as this site runs north/south from Pitt Road and the adjoining properties to the east facing Robertson Road (Nos. 38 - 40 Robertson Road) have their private open space adjoining the subject site. A review of the solar access diagrams submitted with the application demonstrates that the solar access to No. 3 Pitt Road will be impacted in the morning hours from 9.00am to 12.00pm and after that time, it will be in compliance. The solar access to the properties to the east (Nos. 38, 40, 42 and 44 Robertson Road) will be impacted from 12.00pm to 3.00pm, however will not be impacted during the morning hours (9.00am - 12.00pm) by the proposed dwelling,

Given the above, it is considered that the proposal will demonstrate compliance with Clause D6 Access to Sunlight in accordance with the WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).

- **Privacy**

Comment: Issues were raised in relation to privacy for adjoining properties to the east and west of the subject property. The adjoining property to the west (No. 3 Pitt Road) had concerns about privacy from the upper balcony on the first floor level on the western elevation. The balcony on the western elevation contains a proposed glass screen running on top of the balustrade for the full length of balcony. A condition will be included that the first three (3) panels adjacent to the dwelling to treated with obscured/frosting to ensure reasonable amenity of both parties.

Issues were raised by the neighbouring properties on the eastern side about the proposed glazing on the eastern elevation, in particular the bank of six (6) windows (W03) adjacent the gallery (on the ground floor) and stairwell (on the first floor). These windows will be conditioned to be obscured/frosted glazing. Additionally, the bank of three (3) windows on the ground floor at the rear (adjacent to the retreat) and the bank of three (3) windows (W21 and W22) on the first floor adjacent to the living room will be conditioned to be obscured/frosted glazing.

It is noted that a privacy screen will run the length on the eastern elevation of the deck on the first floor level ensuring reasonable amenity for the adjoining properties to the east (Robertson Road). It is noted that the property at No. 44 Robertson Road will meet this development at a junction point due to their respective locations (i.e. subject site running north/south and No. 44 Robertson Road running east/west).

During a number of site inspections, it is considered that the situation has been the case for decades due to the configuration of the allotments (Robertson Road properties backing onto the subject site - No. 1 Pitt Road) and it is considered that the applicant has taken reasonable steps, as well as the recommended condition(s), to maintain reasonable amenity of all parties.

Given the above, it is considered that subject to the condition(s) as mentioned above and contained in the recommendation attached to this report, including the measures already incorporated within the proposed development, there will be a satisfactory level of amenity between the proposed development and the adjoining and surrounding properties and that this issues does not warrant refusal subject to condition(s).



REFERRALS

Internal Referral Body	Comments
Landscape Officer	The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.968582S_02 dated 19 January 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0003240025-02 dated 19 January 2019).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	42



Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

10 Development on certain land within coastal wetlands and littoral rainforests area

"(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
- (c) the carrying out of any of the following:
 - (i) earthworks (including the depositing of material on land),
 - (ii) constructing a levee,
 - (iii) draining the land,
 - (iv) environmental protection works,
- (d) any other development."

Comment: Not applicable to the site.



11 Development on land in proximity to coastal wetlands or littoral rainforest

"(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest."

Comment: Not applicable to the site.

12 Development on land within the coastal vulnerability area

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

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

Comment: At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified.

Not applicable.

13 Development on land within the coastal environment area

"(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) coastal environmental values and natural coastal processes,
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,
- (g) the use of the surf zone."



Comment: The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

"(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact."

Comment: The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

14 Development on land within the coastal use area

"(1) (a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and

(b) is satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development."

Comment: The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
DA2019/0076				



Height of Buildings:	8.5m	7.6m	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires consent	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.4m	N/A	Yes
B3 Side Boundary Envelope	5.0m (west)	Within envelope*	N/A	Yes
	5.0m (east)	Within envelope*	N/A	Yes
B5 Side Boundary Setbacks	0.9m (west)	0.95m	N/A	Yes
	0.9m (east)	1.255m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.631m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m (dwelling)	20.009m	N/A	Yes
	50% (outbuildings)	2.0m & 42.4%	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (245.8sqm)	40.3% (247.6sqm)	N/A	Yes

* Minor encroachment by the eaves and the roof (allowable encroachments)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	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
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Description of Non-compliance

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"Council's DCP controls requires a garage door to have a maximum width of 6m or 50% of the dwelling width, whichever is the lesser. The proposed dwelling provides for a garage which is 5.39m or 59.96%, which exceeds the lesser control of 50%. This is in large due to the small lot width, and width of the dwelling being 8.99m. The double garage extends across 48.5% of the site and requires a minor variation of 895mm to allow for appropriate access into the garage."

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Dwelling House	2 spaces per dwelling	2	2	Nil

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

Comment: The applicant addressed the variation in the SEE as follows:

"The proposed garage remains compatible with other developments within the street, and the high level of articulation provided to the front façade will ensure the garage is not a dominate feature. It is not anticipated that the garage will dominate the dwelling or create a visual impact on the streetscape. The garage is considered to be in context to the overall scale of the dwelling and the provision of adequate design features within the front façade ensures the garage is not a dominant feature. The overall high quality design of the front entry and articulation elements work to integrate the proposed garage into the overall design."

Having regard to the above comments, it is considered that the proposed garage is suitably sited, has sufficient setbacks to the streetscape and the proposed design, articulation and spatial separation is such that it will ensure compliance with this merit consideration.

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

Comment: The proposed garage is considered to be well integrated with the design of the dwelling, demonstrating sufficient relief to the street coupled with satisfactory levels of articulation and landscaped elements, it is considered that the proposal will ensure compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011/WDCP 2011 and the objectives specified in S1.3 of the



Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Merit Consideration

View loss was raised as a concern by the owners of the following properties:

- 4 Pitt Road
- 38 Robertson Road
- 42 Robertson Road
- 44 Robertson Road

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

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

4 Pitt Road

Comment: A site inspection was undertaken from this property, which is a two storey dwelling house located on the northern side of Pitt Road. The dwelling currently has water views due to the location/height of the building and the site is elevated above the southern side of Pitt Road. The view is obscured by existing vegetation and existing dwellings which are located to the south.

38 Robertson Road

Comment: A site inspection was undertaken from this property, which is a part single and double storey dwelling house located at the intersection of Robertson Road and Pitt Road (south-west corner). The dwelling currently has water views due to the location/height of the building and the site is elevated. The view is obscured by existing vegetation and existing dwellings which are located to the south. The views to the west and south-west are of the Greendale Creek and district views of John Fisher Park.

42 Robertson Road

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Comment: A site inspection was undertaken from this property, which is a single storey dwelling house located at the western low side of Robertson Road. The dwelling currently has views which are obscured by existing vegetation and existing dwellings which are located to the west and south-west of the Greendale Creek and district views of John Fisher Park.

44 Robertson Road

Comment: A site inspection was undertaken from this property, which is a double storey dwelling house located at the western low side of Robertson Road. The dwelling currently has water views due to the location/height of the building. The view is obscured by existing vegetation and existing dwellings which are located to the south. The views to the west and south-west are of the Greendale Creek and district views of John Fisher Park.

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

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

Comment to Principle 2:

4 Pitt Road

Comment: The view is achieved over the southern front boundary from a standing and sitting position.

38 Robertson Road

Comment: The view is achieved over the western and southern side boundary from a standing and sitting position.

42 Robertson Road

Comment: The view is achieved over the western rear boundary from a standing and sitting position.

44 Robertson Road

Comment: The view is achieved over the western rear boundary and southern side boundary from a standing and sitting position.

3. Extent of impact

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



Comment to Principle 3:

4 Pitt Road

Comment: The view is achieved over the southern front boundary from a standing and sitting position from the lounge/living room and from the kitchen to the rear portion of the first floor.

38 Robertson Road

Comment: The view is achieved over the western and southern side boundaries from a standing and sitting position from the lounge/living room and the kitchen of the first floor.

42 Robertson Road

Comment: The view is achieved over the western rear boundary from a standing and sitting position. An external assessment of the dwelling was undertaken from the rear deck which at the same level as the living areas within the dwelling house (single storey).

44 Robertson Road

Comment: The view is achieved over the western rear boundary and southern side boundary from a standing and sitting position from the lounge/living room and the kitchen and rear balcony on the first floor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

4 Pitt Road

Comment: As stated above, the view is achieved over the southern front boundary from a standing and sitting position from the lounge/living room and from the kitchen to the rear portion of the first floor. The view loss is assessed as **minor** given the proposed dwelling is compliant with the relevant controls of the WLEP 2011 and WDCP 2011, the view is obscured by existing vegetation and buildings. It is noted that views of Curl Curl Beach (including the interface with the ocean), views of Manly, headland views including iconic views of St Patricks Cathedral will be maintained.

Given the above, it is considered that view sharing is reasonable.

38 Robertson Road

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Comment: As stated above, the view is achieved over the western and southern side boundaries from a standing and sitting position from the lounge/living room and the kitchen of the first floor. The view loss is assessed as **minor/moderate** given the proposed dwelling is compliant with the relevant controls of the WLEP 2011 and WDCP 2011. It is noted that views will be lost of Curl Curl Lagoon/Greendale Creek and John Fisher Park, however views of Curl Curl Beach (including the interface with the ocean), views of Manly, headland views and partial iconic views of St Patrick Cathedral will be maintained.

Given the above, it is considered that view sharing is reasonable.

42 Robertson Road

Comment: The view is achieved over the western rear boundary from a standing and sitting position. A external assessment of the dwelling was undertaken from the rear deck which at the same level as the living areas within the dwelling house (single storey). The view loss is assessed as **minor to moderate** given the proposed dwelling is compliant with the relevant controls of the WLEP 2011 and WDCP 2011. It is noted that some views will be lost of Curl Curl Lagoon/Greendale Creek and John Fisher Park, however views of these area will be maintained to the southwest.

Given the above it is considered that view sharing is reasonable.

44 Robertson Road

Comment: As stated above, the views are achieved over the southern side boundary and rear western boundary from a standing and sitting position from the lounge/living room and from the kitchen of the first floor. The view loss is assessed as **negligible to minor** given the proposed dwelling is compliant with the relevant controls of the WLEP 2011 and WDCP 2011. It is noted views of Curl Curl Lagoon/Greendale Creek, John Fisher Park and Curl Curl Beach (including the interface with the ocean) will be maintained.

Given the above, it is considered that view sharing is reasonable.

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

Comment:

The proposal demonstrates innovative design solutions to ensure the overall proposal will improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposal will be sited below the existing canopy trees within the vicinity, ensuring compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011/WDCP 2011 and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.



THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 1,260,000		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 11,970
Section 7.12 Planning and Administration	0.05%	\$ 630
Total	1%	\$ 12,600

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

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- 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 DA2019/0076 for Demolition and construction of a dwelling house on land at Lot 2 DP 1206790, 1 Pitt Road, NORTH CURL CURL, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
N01	18 December 2018	Urban Harmony
N02 Elevs 1	18 December 2018	Urban Harmony
N02 Elevs 2	18 December 2018	Urban Harmony
DA2 Site Plan & Elevations	18 December 2018	Urban Harmony
DA2 Floor Plans 1	18 December 2018	Urban Harmony
DA2 floor Plans 2	18 December 2018	Urban Harmony
DA2 Sections	18 December 2018	Urban Harmony
BASIX	18 December 2018	Urban Harmony
Demolition Plan	18 June 2018	Summit Geomatic
External Finishes	August 2018	Gremmo Homes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
1 Pitt Road North Curl Curl	30 January 2019	White Geotechnical Group
Geotechnical Investigation	17 October 2018	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:



Landscape Plans		
Drawing No.	Dated	Prepared By
L 100 F (Revision F)	10 April 2019	Grant Clement Landscape Architect & Pool Designer
L 101 F (Revision F)	10 April 2019	Grant Clement Landscape Architect & Pool Designer

Waste Management Plan	
Drawing No/Title.	Prepared By
Demolition Waste Management Plan	Gremmo Homes

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

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

2. Prescribed Conditions

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

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



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

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

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

Reason: Legislative Requirement

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.



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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.



- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 1,260,000.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 11,970.00
Section 7.12 Planning and Administration	0.05%	\$ 630.00
Total	1%	\$ 12,600.00

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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

Reason: To provide for contributions in accordance with Northern Beaches Council Contributions Plan 2018.

5. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a

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result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **Stormwater Disposal from Low Level Property**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's "[DELETE ONE – PITTWATER DCP21, WARRINGAH WATER MANAGEMENT POLICY PL850]. Warringah Water Management Policy PL 850" in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Warringah Water Management Policy PL 850" are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **On-site Stormwater Detention Compliance**

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850 and the concept drawing by Engineering Studio, drawing number 18659 dated Sep 2018. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

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

8. **On-site Stormwater Detention**

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850 and the concept drawing by Engineering Studio, drawing number 18659 dated Sep 2018.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer. The drainage plans must address the following:

- i) The atlantis cells shall not be used as the storage tank.

Detailed drainage plans, including engineering certification confirming the above requirements



have been satisfied and complying with Council's requirements, are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.
Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

9. **Structural Adequacy and Excavation Work**

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

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

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

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

Reason: To provide public and private safety.

10. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

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 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.

13. **Obscured Glazing - Eastern Elevation Windows and Western Elevation Panels on First Floor Deck**

The windows on ground and first floor (W03) adjacent to the stairwell, (W07) adjacent to the retreat on the ground floor and (W21 & W22) adjacent to the living room on the first floor are to be either permanently frosted and/or treated with obscured glazing /treatment to ensure privacy



and amenity of the adjoining properties to the east (Nos. 38, 40, 42 and 44 Robertson Road, North Curl Curl).

Additionally, the first three (3) glazed panels on the deck adjacent to the kitchen/living room on the first floor on the western elevation are to be either permanently frosted and/or treated with obscured glazing /treatment to ensure privacy and amenity of the adjoining property to the west (No. 3 Pitt Road, North Curl Curl).

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

14. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

15. **Dilapidation Survey**

A dilapidation survey of adjacent buildings (No. 38 Robertson Road and No. 3 Pitt Road, North Curl Curl) must be conducted prior to any site work. The lateral extent of the survey must cover the likely "zone of influence" of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Proper management of records.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

17. **Tree protection**

(a) Existing trees which must be retained

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

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ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. Vehicle Crossings

The provision of one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EL and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

19. Protection of rock and sites of significance

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

20. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) At lower ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (b) At first ground level to ensure the finished floor levels are in accordance with the approved levels, prior to flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

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

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

Reason: To create encumbrances on the land.
22. **Registration of Encumbrances for On-site Stormwater Detention**
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.
23. **On-Site Stormwater Detention Compliance Certification**
Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)
24. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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



restriction.

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

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

25. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

26. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings. (DACPLF04)

27. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

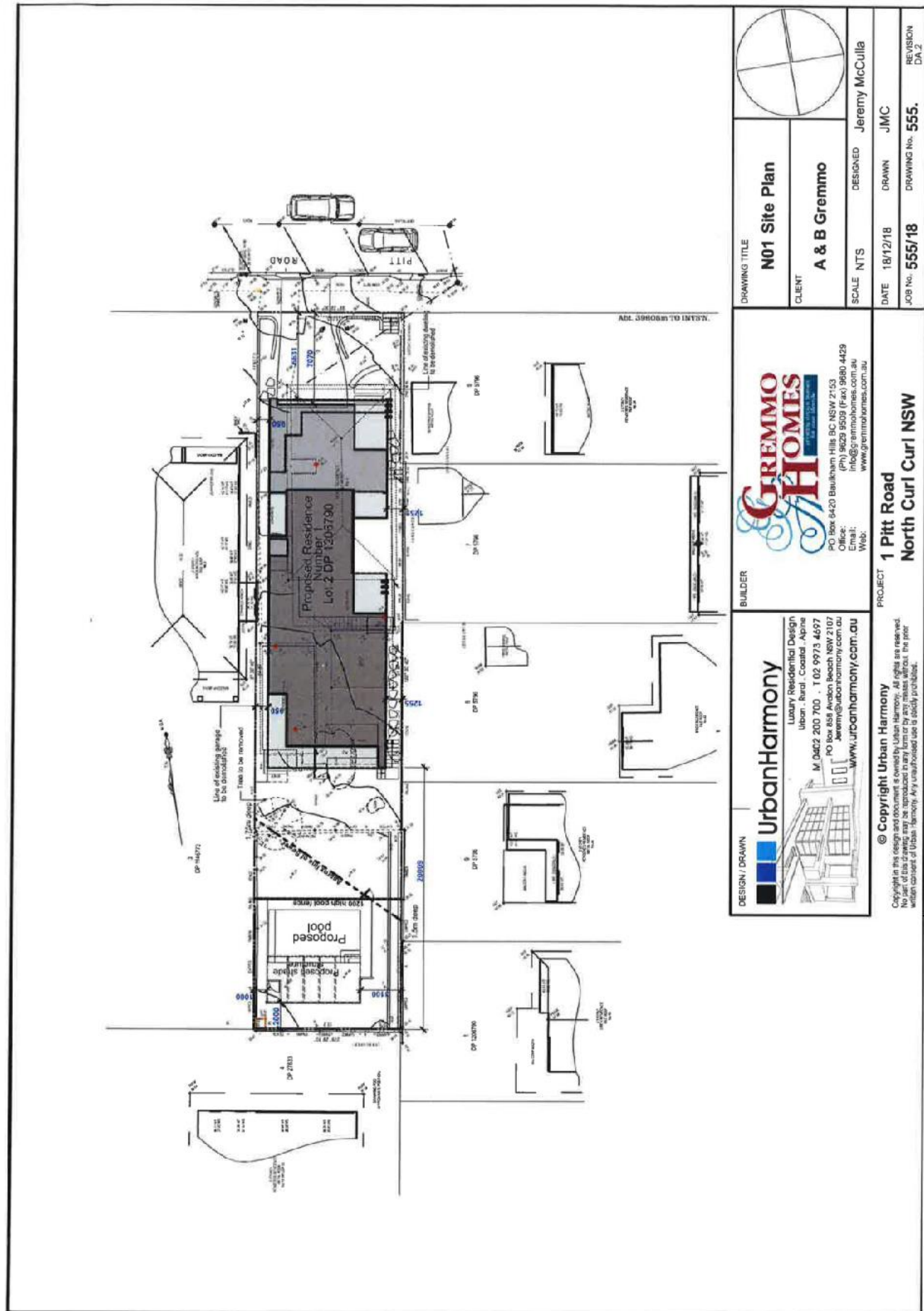
(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

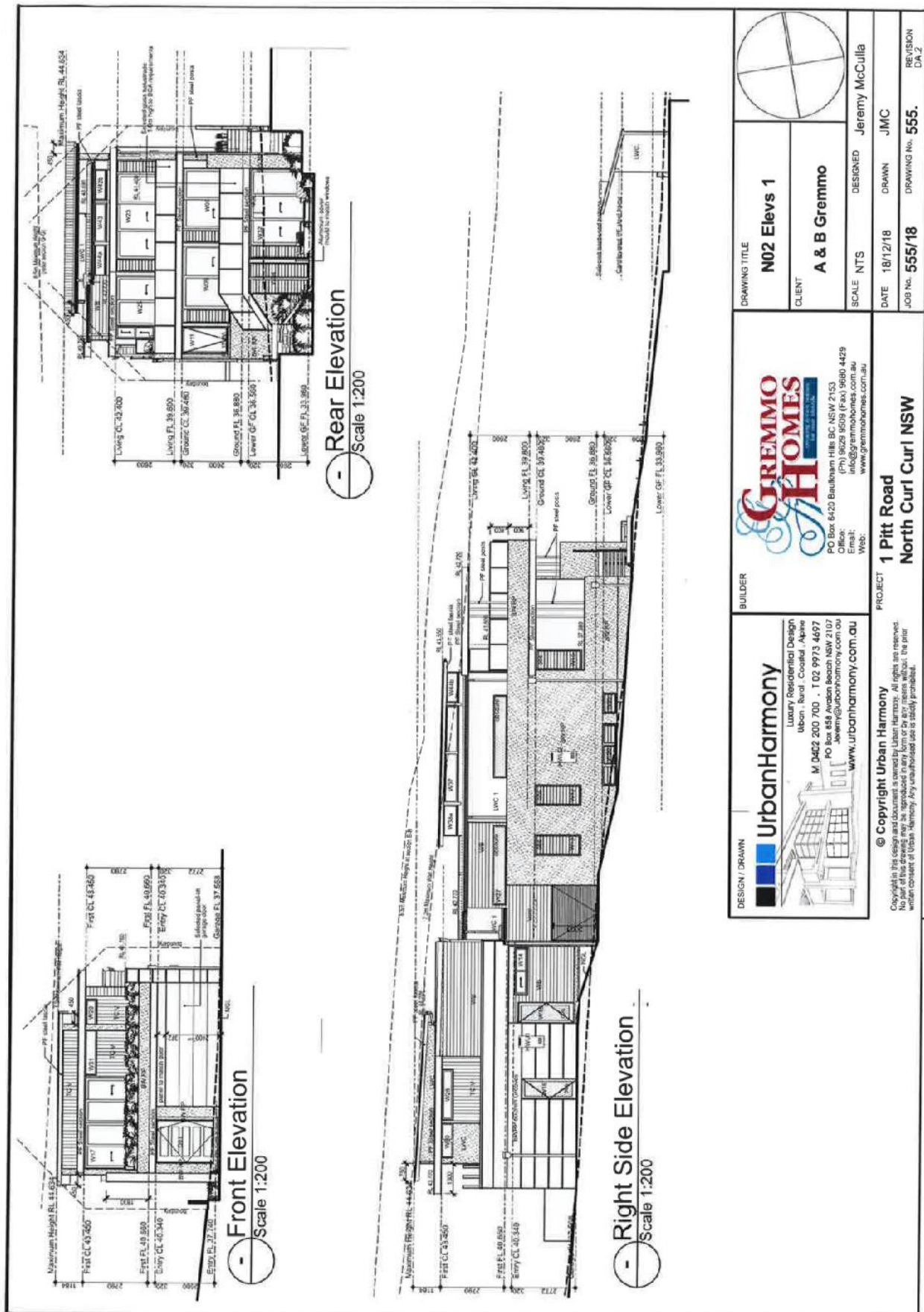


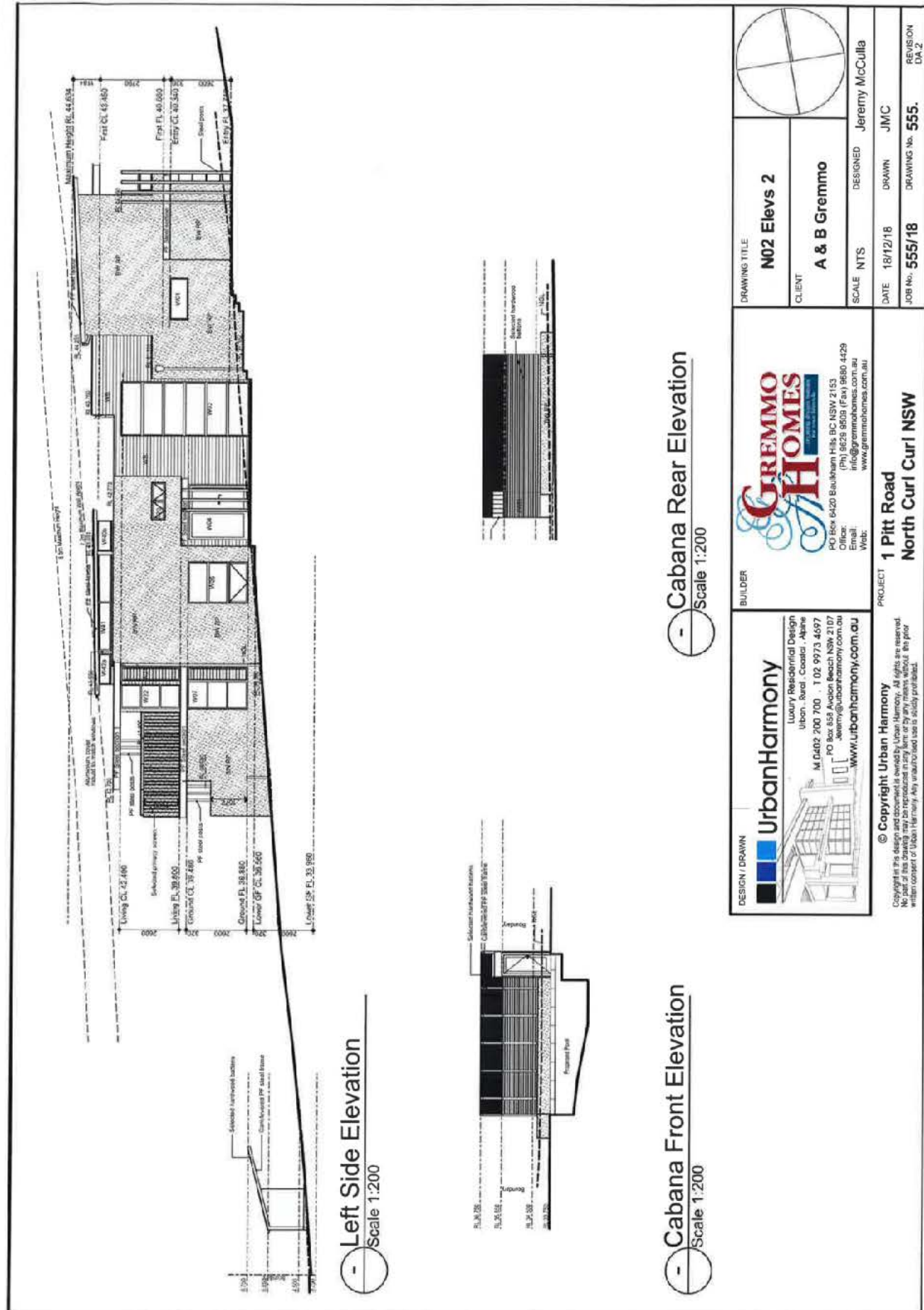
- (e) Signage showing resuscitation methods and emergency contact
- (f) All signage shall be located in a prominent position within the pool area.
- (g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)







ITEM 3.4	DA2019/0107 - 44 ROSE AVENUE, WHEELER HEIGHTS - CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT
AUTHORISING MANAGER	DANIEL MILLIKEN
TRIM FILE REF	2019/308464
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0107 for construction of a Seniors Housing Development on land at Lot 4 DP 203378, 44 Rose Avenue, Wheeler Heights, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0107
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 4 DP 203378, 44 Rose Avenue WHEELER HEIGHTS NSW 2097
Proposed Development:	Construction of a Seniors Housing Development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under SEPP (HSPD) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Bayview Links Pty Ltd
Applicant:	Wheeler Heights Developments Pty Ltd
Application lodged:	08/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	20/02/2019 to 09/03/2019
Advertised:	Not Advertised
Submissions Received:	7
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,933,831.00

ASSESSMENT INTRODUCTION

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

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



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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 4 DP 203378 , 44 Rose Avenue WHEELER HEIGHTS NSW 2097
Detailed Site Description:	<p>The subject site consists of one lot located on the northern side of Rose Avenue.</p> <p>The site is a battle axe shaped site with a frontage of 4.57m along Rose Avenue, and a surveyed area of 1569m².</p> <p>The site is in excess of 20 metres in width when measured outside of the access handle.</p> <p>The site benefits from a right of carriageway access to the street frontage.</p> <p>The site is located within the R2 Low Density Residential zone. The site falls from the Rose Avenue frontage to the rear (south to north) by approximately 3 metres (not including the access handle).</p> <p>The site does not contain any significant topographical features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of single and two storey dwelling houses in landscaped settings.</p> <p>The site is located within walking distance to Wheeler Heights shops which provides a range of services. The site is well serviced by public transport with bus stops located along Rose Avenue and further east along Veterans Parade.</p>



To the east of the subject site is St Rose Catholic School and Wheeler Heights Public School. To the north is a retirement village (RSL Anzac Village 'War Vets'). Another senior's housing development has recently been constructed to the east (34 Rose Avenue).

Map:



SITE HISTORY

Application DA2017/0662 for Demolition works, Construction of a Seniors Housing Development, Strata Subdivision and access works was approved by the Northern Beaches Local Planning Panel on 07/05/2018. This application was for a development across the subject site and the adjoining site to the rear (43 Lantana Avenue) with driveway access from both Rose Avenue and Lantana Avenue. This application was recommended for refusal due solely to issues surrounding owners consent for the proposed intensification of use of the shared driveways from Rose Avenue to 44 and 46 Rose Avenue, and from Lantana Avenue to 43 and 45 Lantana Avenue. The Panel did not concur with the recommendation of the report on this issue, and subsequently approved the application.

The current application has essentially deleted the portion of the development that was approved on 43 Lantana Avenue, and reapplied for the portion confined to 44 Rose Avenue (i.e. the application is for half of the previously approved development). Minimal changes have been made to the overall design as previously approved over the 44 Rose Avenue portion of the development.

Application CDC2018/0597 for Demolition of existing cottage and associated development excluding shared driveway was approved on 22/06/2018 by Private Certifiers.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves construction of 6 x 3 bedroom in-fill self-care dwellings, basement car parking and strata subdivision, pursuant to State Environmental Planning Policy (Housing for Seniors or People
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with a Disability) 2004 ("SEPP HSPD"). The proposal will be comprised of the following elements:

Basement Level

- 11 car spaces (including 2 visitor spaces)

Ground Floor / First Floor Level

- 4 x 2 storey dwellings
- 2 x single level dwellings
- All dwellings provided with ground level private open space orientated towards western and northern boundaries
- All primary living areas provided on Ground Floor Level.
- First Floor Level of all 4 two storey dwellings is comprised of two bedrooms and bathroom

Surrounds

- Dwellings accessed from basement by lift and stairs centrally located, and path running adjacent to eastern boundary
- This path also runs adjacent to the driveway to access Rose Avenue.
- Bin storage area and letter boxes located near entry/exit to Rose Avenue
- Driveway to provide access to both the subject site and 46 Rose Avenue (northern neighbour), replacing existing shared driveway
- Landscaping along each side of driveway and surrounding the proposed dwellings

Amended Plans

Amended plans and flood report were submitted by the applicant to address Council's Engineer's concerns in relation to stormwater and overland flows. The amended plans also increased the setback of the upper level to the rear boundary, due to concerns regarding non-compliance with single storey development in the rear 25% of the site under SEPP (HSPD). The amended plans comply with this requirement.

In accordance with clause A7 *Exhibition, Advertisement and Notification of Applications* of the Warringah DCP, re-notification of the amended plans was not considered necessary as the amendments to the built form were minor, decreased the overall size of the development, and increased compliance with the relevant controls.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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



Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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 matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This 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> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>



Section 4.15 Matters for Consideration'	Comments
	<p>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 7 submission/s from:

Name:	Address:
Mrs Dorothy Susan Waterhouse	56 Rose Avenue WHEELER HEIGHTS NSW 2097
Mr Robert Guy Barnes	10 Berith Street WHEELER HEIGHTS NSW 2097
Ms Joan Elizabeth Catherine Croydon	5 Berith Street WHEELER HEIGHTS NSW 2097
Mrs Linda Anne Kemp	46 Rose Avenue WHEELER HEIGHTS NSW 2097
Craig Robert Gilmour	58 Rose Avenue WHEELER HEIGHTS NSW 2097
Mr Rodney James Millichamp Mrs Helen Elizabeth Millichamp	29 Rose Avenue WHEELER HEIGHTS NSW 2097
Peter Leslie Knoechel	38 Rose Avenue WHEELER HEIGHTS NSW 2097

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



- Density
- Traffic congestion / visibility / hazards / parking
- Bins
- Vibrations causing damage
- Footpaths
- Tree removal
- Character
- Construction disruptions
- Landscaped area
- Cumulative impact study

The matters raised within the submissions are addressed as follows:

- **Density**

Concerns were raised with regard to the increased density of the proposal compared to the existing dwelling on site, and particularly with regard to other seniors housing development in the area at the War Vets and at 34 Rose Avenue, and the cumulative impacts of this density.

Comment:

As assessed throughout this report, the proposal is generally consistent with the requirements of SEPP (HSPD), WLEP and WDCP, with minor non-compliances for the side and rear setback controls under the WDCP. These non-compliances (caused by a bin storage area, rear pergola, and the rear of the underground parking area) would not affect the density of the development if deleted. Given the general level of compliance achieved with the relevant planning controls the density of the development is considered to be within the general expectation for development of the site. None of the relevant planning controls allow for Council to assess the development cumulatively in relation to other approved developments, and the proposal must be assessed on its own merits against the relevant controls as they currently apply.

The submissions are not supported in this regard.

- **Traffic increase / visibility / hazards / parking**

Concerns were raised regarding the increase in traffic caused by the proposal, lack of visibility, increased traffic hazards in the area, and the lack of on street parking available. The cumulative impacts of this development combined with other recent approvals of seniors housing developments in the area was also a major concern in the submissions.

Comment:

As discussed above, the proposal must be assessed on its own merits with reference to the relevant planning controls. In this regard, the application has provided an Assessment of Traffic and Parking Implications (dated January 2019, prepared by Transport and Traffic Planning Associates). This report concludes that *the traffic generation of the proposed development will not present any adverse traffic implications* and that *the proposed parking provision will adequately serve the demand associated with the development*.

Further concerns were raised by one submission that the traffic report provided was conducted during school holidays, and as such was not a true representation of the traffic in Rose Avenue. However, Council's Traffic Engineer has assessed the proposal and stated that *the traffic volumes from the site are deemed negligible*. Further, the parking provided is compliant with the minimum requirements under SEPP (HSPD), and as such Council is prohibited by Clause 50 from refusing the development based on parking.



Given the comments from the traffic report provided, and that Council's Traffic Engineer considers the traffic generation of the development to be negligible, the submissions are not supported in this regard. The proposal is considered to be acceptable, and no updated traffic report is required.

- **Bins**

Concerns were raised regarding extra bins and the space required for these bins on the kerb on garbage collection days.

Comment:

The proposal is consistent with the general expectation for density of development of the site, as expressed by the general level of compliance with all relevant planning controls under SEPP (HSPD), WLEP and WDCP. Given this consideration, the extra bins required are considered to be a necessary requirement, and are not a reason for refusal of the development.

- **Vibrations causing damage**

Concerns were raised that the geotechnical report provided with the application states that the development may cause damage to neighbouring buildings due to vibrations.

Comment:

The geotechnical report (prepared by Crozier Geotechnical Consultants, dated January 2019) states the following:

The excavation of medium to high strength bedrock will require the use of rock excavation equipment which has the potential to create significant ground vibrations, but the probability of vibration damage to the neighbouring houses is reduced due to the nature of the geology and the separation distances. However care will need to be taken to ensure that the excavation works do not create a vibration hazard for the neighbouring properties.

Given these comments, a condition is recommended requiring that dilapidation reports are carried out on adjoining neighbour's properties prior to commencement of works, and prior to issue of an occupation certificate. Subject to this condition, the submission is considered to be reasonably satisfied.

- **Footpaths**

Concerns were raised that the applicant should have to construct new footpaths in the road reserve.

Comment:

The plans indicate a *New Concrete Path to Council Requirements*. Council's Development Engineers have provided a condition of consent requiring that this footpath be constructed in accordance with the relevant engineering requirements, and up to connect with the existing footpath to the east of the site. The submission is considered to be reasonably satisfied in this regard.

- **Tree removal**

Concerns were raised with the proposed tree removal on site.

Comment:

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The plans indicate that the existing major trees on site are to be removed, while the major trees in close proximity on neighbouring lots are to be protected. The major trees on site sit generally within the developable area under the SEPP (HSPD). Council's Landscape Officer has assessed the proposal and due to the similarity of the development to the existing approval under DA2017/0662, has recommended approval subject to conditions of consent. It is also recommended that the landscape plans provided form part of the approved plans, to ensure adequate replacement planting is implemented.

Subject to the above conditions, the submission is considered to be reasonably satisfied.

- **Character**

Concerns were raised regarding the development being out of character with the surrounding area.

Comment:

The character of the development and how it relates to the existing character of the area is addressed in more detail under the SEPP (HSPD) section of this report. In general, the area is characterised by one and two storey dwellings and other senior's living developments. The proposal is considered to be generally consistent with the higher density development, and with regard to the lower density dwellings, the proposal has provided for two distinct two storey elements, separated by single storey elements, that will enable the appearance of detached dwellings when viewed from a distance.

Given these considerations, the submission is not supported.

- **Construction disruptions**

Concerns were raised that the construction would provide further traffic issues with on street parking and blocking of the road.

Comment:

Temporary disruption to the area in terms of noise and traffic issues are an unfortunate but unavoidable impact of development. Standard conditions of consent will be imposed in relation to hours of construction and excavation, and a condition is also recommended requiring lighting, fencing, traffic control and advanced warning signs, and that traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works. The submission is considered to be reasonably satisfied in this regard.

- **Landscaped area**

Concerns were raised regarding the level of non-compliance with the landscape requirements of the WDCP.

Comment:

The proposal complies with the requirements of Clause 50 of SEPP (HSPD), which does not allow Council to refuse the development based on landscaping grounds provided it complies with those requirements. No further consideration is required in this regard.

- **Cumulative impact study**

One of the submissions stated that the SEPP requires that the applicants must submit a cumulative impact study where the land is within one kilometre of two or more similar sites.



Comment:

Clause 25(2A) of the SEPP states the following:

25 Application for site compatibility certificate

(2A) Land is next to proximate site land for the purposes of this clause if the land (or any part of the land) is located within a one kilometre radius of 2 or more other parcels of land (the proximate site land) in respect of each of which either:

(a) there is a current site compatibility certificate, or

(b) an application for a site compatibility certificate has been made but not yet determined.

This clause is a requirement only for applications for site compatibility certificates. The subject application does not require a site compatibility certificate, as the site is zoned R2, and as such, the SEPP makes the development permissible with consent, without any requirement for a site compatibility certificate. The clause is not therefore relevant to the subject development.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	There are no objections from the Building Certification Team to the proposed development subject to conditions to ensure compliance with the National Construction Code/ Building Code of Australia.
Landscape Officer	<p>The plans provided are largely similar to those already approved over this site.</p> <p>As such, subject to similar conditions of consent, no objections are raised to approval.</p> <p>It is further recommended that the Landscape Plans provided be included in the approved drawings if consent is to be granted.</p>
NECC (Development Engineering)	<p>Reference is made to Development Engineering Referral Response dated 6/3/19 and 15/4/19 and additional information provided by the Applicant.</p> <p><u>Stormwater:</u></p> <p>The proposed stormwater connection to the existing drainage easement requires variation to the terms of the easement. This shall be appropriately conditioned as deferred commencement.</p> <p><u>Access Driveway:</u></p> <p>Please refer to comments and/or conditions from Traffic Engineering section in regard to any potential treatments of the access ramp to the basement carpark.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>

Internal Referral Body	Comments
	<p><u>Planner's Comment</u> The Development Engineers have recommended two Deferred Commencement conditions in relation to creation of a stormwater drainage easement through the downstream property (43 Lantana Avenue), and that the terms of the existing easement through the same property be varied to benefit the subject site. The applicant has requested that these deferred commencement conditions instead be made operational conditions. This is due to the owner's of the 44 Rose Avenue also being owner's of 43 Lantana Avenue. Additionally, the applicants have already provided owner's consent for the creation of the easement through 43 Lantana Avenue benefiting 44 Rose Avenue. Given this documentation has been submitted, the request is considered reasonable, and the two conditions have been moved to the 'prior to commencement of works' section of the recommended conditions.</p>
Strategic and Place Planning (Urban Design)	<p>It is noted that there has been a previous approval for a proposed development over two lots (DA 2017/0662) fronting both Rose Avenue and Lantana Avenue. The current development proposal represents half the previously approved DA and consists of the lot fronting 44 Rose Avenue only. The proposed development as submitted has not deviated from the previously approved design and thus represents a development proposal that can be supported.</p>
Traffic Engineer	<p>The proposal is for a Seniors Housing Development comprising 6 x 3 bedroom dwellings and 14 car parking spaces including 2 visitor spaces.</p> <p>Traffic: The traffic volumes from the site are deemed negligible.</p> <p>Parking: Parking numbers are deemed compliant with the SEPP and Council DCP.</p> <p>Pedestrian: The applicant will be required to upgrade the pedestrian footpath from the site connecting to the Bus Stop to the West of the site. This will be conditioned.</p> <p>Servicing: No change to servicing arrangements are proposed.</p> <p>Access: The driveway is deemed compliant with passing bay opportunities in accordance with AS2890.1:2004.</p>
Waste Officer	<p><u>Planner's comment</u> Council's Waste Officer has not responded to the referral request. However, the waste bin area is the same size and in the same location as previously approved under DA2017/0662, servicing the dwellings previously approved on the 44 Rose Avenue portion of that development. The bulky good storage area has been relocated</p>

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Internal Referral Body	Comments
	beneath the driveway, but remains a similar size as previously approved. As such, the previous conditions of consent have been included in the recommendation with regard to waste removal.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 986567M).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

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



SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care dwellings. Given the similarity of the development to the previously approved development under DA2007/0662 (confined to 44 Rose Avenue), the assessment below differs in only minor respects from the previous assessment.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

The proposed development is considered to be consistent with the aims of the Policy as set out above for the following reasons:

- (a) The development will increase the supply and diversity of residences that meet the needs of seniors or people with a disability.
- (b) The proposed development also makes efficient use of existing infrastructure and services, in that the site is well serviced by existing public transport and is located within 400m of the nearest bus stop. The site is located approximately 300m - 350m from a local retail centre (Wheeler Heights Shops) which provides a mix of essential retail and commercial services.
- (c) When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP. In particular, that development pursuant to this SEPP is to be of scale and so that is able to fit reasonably within its local context.

In this regard, this assessment has found that the built form of the development maintains a reasonable level of amenity and is compatible with the area in which it will sit. The development does not give rise to any unreasonable adverse amenity impacts in terms of privacy, view loss or overshadowing and will fit reasonably within its local context. This assessment remains consistent with the previous assessment under DA2007/0662, which approved a development which differed in only minor respects on the 44 Rose Avenue portion of the proposal from the development now proposed solely on 44 Rose Avenue.

Chapter 2 – Key Concepts

Comment:

The development comprises self-contained dwellings, which are to be occupied by seniors or people with a disability. On this basis, it is considered that the proposed development is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the



occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The subject site has satisfactory access to these services.	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	These services are located within walking distance from the subject site at Wheeler Heights local centre 300 metres - 350 metres walking to the east and bus services located within 400 metres of the subject site on Rose Avenue and Veterans Parade. Pathways are provided along Rose Avenue and Veterans Parade, though the path on the northern side of the road does not extend all the way to the subject site from Veterans Parade. A condition of consent has been provided by Council's Engineers to ensure a footpath is constructed in accordance with Council requirements, to link up to the existing path.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not located within Bushfire Prone Land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Given the existing residential use of the site and documentation provided the site has access to reticulated water and sewerage infrastructure.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25	The development is compatible with the surrounding natural environment and existing residential use of land within the vicinity of the proposed development. The site is served by existing infrastructure (electricity, water and sewerage) that is	Yes

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Development Criteria			
Clause	Requirement	Proposal	Complies
	(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	capable of meeting the demands that will arise from the development. For the reasons outlined within this report, the development is considered to be compatible with the bulk, scale, built form and character of the surrounding area.	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A detailed site analysis in plan form and within the Statement of Environmental Effects has been provided which satisfactorily addresses the requirements of this control.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment –	Generally, the development follows the pattern of the existing residential neighbourhood in terms of its built form. The established built form in the

Section	Requirements	Comment
	Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	neighbourhood is characterised by a mix of detached style dwelling houses, one to two storeys in height within landscaped settings, and other higher density housing for seniors. The design of the proposal breaks up the two storey elements to make the development more visually similar from a distance to two storey detached dwellings.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	The development will present as a building of part single and part two storey elements when viewed from surrounding properties. The built form is consistent with the bulk and scale of surrounding buildings which are predominantly sited on battle axe allotments. The bulk and scale of the development has been effectively minimised by appropriate building setbacks, articulation and landscaping.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	The proposed buildings will not be readily viewable from the street frontage by virtue of the battle axe lot configuration. The access handle contains areas of landscaping, bin stores and hard surface driveway/pathways. The combination of landscape treatments throughout the access handle and meandering of the driveway effectively minimises the dominance of the driveway and basement car park entry on the Rose Avenue streetscape.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	The development has been assessed with regards to privacy, overshadowing, building bulk and view sharing. <u>Privacy</u> The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of

Section	Requirements	Comment
		<p>privacy to adjoining properties.</p> <p>The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011 under the WDCP 2011.</p> <p><u>Overshadowing</u> The shadow diagrams provided by the applicant indicate that the development will not result in any unreasonable overshadowing of the neighbouring residential properties.</p> <p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p><u>Building bulk</u> As detailed throughout this report, the bulk of the building and its impacts on neighbouring properties have been effectively minimised by way of appropriate building setbacks, articulation and varied building height.</p> <p>The development satisfies the requirements and objectives of Clause 4.3 - Height of Buildings Development Standard under WLEP 2011 and Clause D9 - 'Building Bulk' under WDCP 2011.</p> <p><u>View sharing</u> The development will not have any adverse impact on view sharing and satisfies the Planning Principle established in Tenacity Consulting v Warringah [2004] NSWLEC 140 and Clause D7 – 'Views' under the WLEP 2011. No unreasonable view loss was identified, and no submissions have been received in this regard.</p>
5. Internal site amenity	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Provide safe and distinct pedestrian routes to all dwellings and communal 	<p>The development is served by pathway, lift and stairwell access/egress that provides safe and distinct pedestrian routes to all levels of the building, individual</p>



Section	Requirements	Comment
	facilities.	dwellings and to the communal facilities of the development.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p>The subject site is located within the R2 Low Density Residential zone. Surrounding land is similarly zoned with the exception of land to the north ('War Vets' Seniors Housing) which is zoned SP1 Special Activities.</p> <p>The character of the area can be described as predominantly battle axe allotments with a mix of single and two storey dwelling houses and detached garages. There are a number of dual occupancies located along Rose Avenue. As discussed above, to the north is a large seniors living/care facility (War Vets). More recently, a seniors housing development has been constructed to the west of the subject site on Rose Avenue.</p> <p>The development recognises the desirable elements of the subject sites current character and adopts a design that is consistent in built form with that of detached style housing in the local area, by varying the height of the building, in particular including one and two storey elements, and by varied setbacks, generally greater than the minimum requirements under the Warringah DCP.</p> <p>The buildings have been well designed through appropriate</p>	Yes

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Control	Requirement	Proposed	Compliance
		<p>building separation, setbacks and articulation which includes the two storey elements being separated by single storey elements through the building foot print.</p> <p>The development is well served by areas of landscaping which will enhance and soften the visual appearance of the development when viewed from surrounding properties.</p>	
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	<p>The subject site is not located within close proximity to a heritage conservation area or any heritage items identified under WLEP 2011.</p> <p>Item No. I30 (ANZAC War Memorial) is located to the north of the subject site however the proposed development now only relates to 44 Rose Avenue, and will be well separated from the War Vets site by the neighbouring properties to the north, and so will have no impacts in this regard.</p>	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,	<p>The development maintains a reasonable level of neighbour amenity and appropriate residential character.</p> <p>The development has been designed having regard to maintaining a reasonable level of privacy to adjoining properties and for future dwelling occupants. Appropriate building separation, setbacks and articulation have been adopted in the design of the building to ensure the visual bulk and scale is appropriately minimised.</p>	Yes

Control	Requirement	Proposed	Compliance
	(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.	<p>The development allows for a reasonable level of solar access to be provided to adjoining properties and for future dwelling occupants in accordance with the requirements of the SEPP and Clause D6 - Access to Sunlight under WDCP 2011.</p> <p>The siting and design of the buildings appropriately relates to the sites land form and local topography.</p> <p>The development will not be readily viewable from the street and fits comfortably within the building envelope and maximum height of buildings.</p>	
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The design of the development is sympathetic with the front boundary setback of development on other battle axe allotments in the surrounding area.	Yes
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	<p>32.3% (506.1sqm) of the total site area is deep soil landscaped area. Landscaped areas are provided around the perimeter of the site, including within the access handle to the site.</p> <p>The areas identified as soft landscaping provide a satisfactory level of landscaping through the provision of trees and shrubs which will assist in softening the appearance of the development when viewed from the street and neighbouring properties.</p> <p>Council's Landscape Officer has reviewed the landscape</p>	Yes
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Control	Requirement	Proposed	Compliance
	f. retain , wherever reasonable, major existing trees, and	plans provided, and not raised any concerns. The landscape plans are recommended for approval as part of the set of approved plans. The proposal includes the removal of a number of major trees which are located within the developable area of each subject site. However, the application has been reviewed by Council's Landscape Officer who raises no objections to the removal of trees, retention of trees and provision of landscaping proposed subject to conditions which have been included in the recommendation of this report.	Yes
	g. be designed so that no building is constructed in a riparian zone.	The site is not located within a riparian zone.	N/A
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties. The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011. The development satisfies this Principle.	Yes
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the	The individual clauses are addressed as follows: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and	Yes

Control	Requirement	Proposed	Compliance
	vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<p>residents and adequate sunlight to substantial areas of private open space,</p> <p><u>Comment</u> 100% of apartments will receive a minimum of two hours direct sunlight between 9am and 3pm in mid-winter. The shadow diagrams provided by the applicant (see Plan No. A12 dated 29/01/2019 prepared by Barry Rush & Associates Pty Ltd) indicate that the development will not result in any unreasonable overshadowing over the neighbouring residential properties to the south and west.</p> <p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p> <p><u>Comment:</u> The development is accompanied by NatHERS Certificates which indicates that the development will have a rating of between 5.3 Stars and 5.6 Stars with an average of 5.2 stars under the Nationwide House Energy Rating Scheme which is considered satisfactory for the location of the site.</p> <p>The environmental performance of the</p>	
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Control	Requirement	Proposed	Compliance
		<p>development is also guided by the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The development is defined under cl.3(1) of the Environmental Planning and Assessment Regulation, 2000 as BASIX Affected Development because it involves the erection of a BASIX Affected Building.</p> <p>A BASIX certificate has been submitted with the application which demonstrates the development will achieve compliance with the minimum targets.</p> <p>Therefore, the development satisfies the requirements of the SEPP.</p>	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	<p>The applicant has submitted amended stormwater plans which have been reviewed by Council's Development Engineer.</p> <p>The plans demonstrate that the development will adequately manage stormwater run off on site in accordance with Council's requirements. The proposal is recommended for approval by Council's Development Engineer subject to conditions which have been included in the recommendation of this report.</p>	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a	<p>The development accommodates 6 units and is therefore not subject to an assessment under the principles of Crime Prevention Through Environmental Design (CPTED).</p> <p>Notwithstanding the above, the proposed development</p>	Yes

Control	Requirement	Proposed	Compliance
	dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	has been designed to meet the requirements of CPTED.	
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<p>The development is capable of providing for obvious and safe pedestrian links to bus stops on Rose Avenue and Veterans Parade through the provision of a public pathway located adjacent to the main pedestrian entrance to the site which will provide a continuous path to the surrounding local facilities (Wheeler Heights local centre) and public transport. A condition of consent is included in the recommendation requiring the footpath to be constructed along the northern side of Rose Avenue to connect with the existing path to Veterans Parade to the east.</p> <p>The development provides for a safe environment for pedestrians and motorists with convenient access and on-site parking for residents and visitors.</p>	Yes
CL 39 Waste DA2019/0107	The proposed	Waste facilities are provided at	Yes Page 24 of 53



Control	Requirement	Proposed	Compliance
management	development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	ground level at the front of the site in the form of a bin storage area and within the basement car park. A Waste Management Plan has been provided with the application and accepted by Council's Waste Management Department.	

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1569sqm	Yes
Site frontage	20 metres	20.115m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	6.6m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	The building is no more than two storeys in height.	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	The plans originally submitted with the application included the northern most two storey unit (unit 5) projecting into the rear 25% of the site by 1.23m. The applicant subsequently amended the plans to reduce the width of unit 5 to comply in full with this requirement.	Yes

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development.

The application is supported by an Access Report (refer to Access Report prepared by Accessibility Solutions dated 29 January 2019) that demonstrates the development is capable of achieving the



requirements of Clause 41.

In this regard, compliance with the recommendations and requirements contained within the Access Report is included as a condition of consent within the Recommendation of this Report.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	6.6m	Yes
Density and scale	0.5:1	0.49:1	Yes
Landscaped area	30% of the site area is to be landscaped	32.3% (506.1sqm)	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should preferably be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	15.1% (236.5sqm). Approximately 50% of this area is located in the rear 25% of the site. Given the length of the site and required setbacks, and that the proposal achieves the overall minimum requirements for landscaped area, this is considered acceptable.	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	100% of the apartments living rooms and private open spaces receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.	Yes
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square	All apartments provide adequate areas of private open space.	Yes

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Control	Required	Proposed	Compliance
	metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	0.5 car spaces for each bedroom	18 bedrooms = 9 car spaces required. The proposal provides 9 car spaces allocated to the dwellings, and another 2 car spaces allocated to visitor parking.	Yes
Visitor parking	None required if less than 8 dwellings	6 dwellings = 0 spaces required. 2 car spaces have been provided for visitor parking.	Yes

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.

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

Comment:

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	6.6m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

The proposal is permissible under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6m	N/A	Yes
B3 Side Boundary Envelope	4m	Within envelope both sides	N/A	Yes
B5 Side Boundary Setbacks	E 0.9m	Basement: 3.2m - 4.22m Ground level: 3m - 4.22m First floor: 3m - 4.22m	N/A	Yes

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		Bin Storage area - Nil	100%	No
	W 0.9m	Basement: Nil - 3.305m Ground level: 3m - 6.12m First floor: 4.65m - 6.12m	100%	No
B7 Front Boundary Setbacks	6.5m	6m to bin room 64.2m to building (3.2m to southern neighbour's rear boundary)	N/A - exception N/A - merit assessment	Yes Yes
B9 Rear Boundary Setbacks	6m	Basement: 5.085m - 6m Ground level: 3m (pergola) - 6m (building) First floor: 16.02m	50%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	19.8% (310.5sqm)	50.5%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposed bin storage area is located on a nil side setback to the eastern side boundary of the access handle, 6m from the front boundary. The basement carparking and driveway access will also be on a nil setback to the western side boundary for a small portion.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposal provides for deep soil landscaping consistent with the requirements of the SEPP (HSPD), as assessed within this report. As provided by the SEPP, deep soil landscaping cannot be used as a reason for refusal where it meets those requirements.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed bin storage is small in area, sufficient in size to neatly contain the bins for the property, and will not cause any unreasonable visual dominance of the area. The basement parking and access area is generally below ground, and will have no significant visual impacts in this regard.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The proposed bin storage structure is small and will not have an unreasonable bulk or scale. The basement parking and access is generally below ground.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy.*

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amenity and solar access is maintained.

Comment:

The proposed bin storage area is an essential utilitarian element of the development, and will not cause any unreasonable amenity impacts. The non-compliance caused by the basement is generally limited to the access where its location is dictated by the battle axe access, and given the access quickly descends below ground level, it will not have any unreasonable amenity impacts.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The bin storage area and basement parking area will not impact on any views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The proposed building is setback over 60m from the part of the boundary that fronts to the road, and therefore complies with the control. Given the site is a battle axe lot, the boundary which is the common boundary with the southern neighbour (number 42 Rose Avenue) does not qualify as a rear or side boundary, and so a merit assessment has been undertaken below against the objectives of the front setback control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

Overall the proposal will not be readily visible from the road given the distance and structures in between. The building will maintain a 3.2m setback to the southern boundary, and will not unreasonably detract from the sense of openness in the area.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal separates the two storey elements of the building by use of single storey elements, and in this regard will maintain the appearance of detached two storey dwellings when viewed from a distance. In terms of setback to the southern boundary, the proposal is generally consistent with other development in the area on battle axe lots, particularly number 46 Rose Avenue immediately adjacent to the west.

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- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal will not be readily visible from the street due to the length of the access handle, and will have no unreasonable impacts on the streetscape or any public spaces.

- *To achieve reasonable view sharing.*

Comment:

No views will be unreasonably impacted by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed basement will be 5.085m from the rear boundary. The proposed building will be 6m at ground level and 16.02m at first floor level from the rear boundary. There is a pergola proposed at the rear of the ground level which will be 3m from the rear boundary.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposal achieves the requirements of the SEPP (HSPD) with regard to deep soil landscaped area, and deep soil area cannot therefore be used to refuse the development.

- *To create a sense of openness in rear yards.*

Comment:

The proposed basement is below ground, and the pergola within the rear setback is an open structure at the ground floor level, which will not unreasonably restrict the sense of openness in the rear of the site. The much larger setback to the first floor will also help to maintain a sense of openness.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The proposal is not considered to result in any unreasonable amenity impacts, as assessed



throughout this report. The non-compliant structures are at or below the ground level, and will not cause any unreasonable privacy impacts.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

Overall, the proposal generally complies with the rear setback requirement. The minor non-compliances caused by the underground basement parking and pergola off the rear of unit 6 will not cause any significant visual inconsistency with the pattern of development in the area.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

Privacy is considered to be maintained to a reasonable level by the development, as assessed throughout this report. The minor non-compliances caused by the underground parking area and the pergola will not cause any significant privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal provides for 19.8% (310.5sqm) of the site to be landscaped in accordance with the measurement requirements of this clause. However, SEPP (HSPD) precludes Council from refusing the development on landscaping grounds provided it complies with the requirements of the SEPP. As assessed in this report, the proposal achieves the requirements of the SEPP with regard to landscaping, and therefore no further consideration is necessary with regard to this clause.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:



Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 2,933,831		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 27,871
Section 7.12 Planning and Administration	0.05%	\$ 1,467
Total	1%	\$ 29,338

CONCLUSION

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

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

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

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

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

In summary, the proposal differs in only minor respects from the previous approval on site (DA2017/0662), for the 44 Rose Avenue portion of that development, and in this regard the assessment is generally consistent with the assessment carried out under that application.

The proposal remains generally consistent with the requirements of SEPP (HSPD), and other relevant controls under WLEP2011 and WDCP, with minor non-compliances with the side and rear boundary setbacks as assessed in this report. The submissions received focused mainly on the cumulative impacts of higher density development, particularly with regard to traffic. However, as assessed within this report, the development is permissible under SEPP (HSPD), and the density and associated impacts are considered to be in accordance with the general expectations for development under the SEPP.

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 DA2019/0107 for Construction of a Seniors Housing Development on land at Lot 4 DP 203378, 44 Rose Avenue, WHEELER HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A02	23/04/2019	Barry Rush & Associates Pty Ltd
A03	23/04/2019	Barry Rush & Associates Pty Ltd
A04	23/04/2019	Barry Rush & Associates Pty Ltd
A05	23/04/2019	Barry Rush & Associates Pty Ltd
A06	23/04/2019	Barry Rush & Associates Pty Ltd
A07	23/04/2019	Barry Rush & Associates Pty Ltd
A08	23/04/2019	Barry Rush & Associates Pty Ltd
A09	23/04/2019	Barry Rush & Associates Pty Ltd
A11	23/04/2019	Barry Rush & Associates Pty Ltd
A02	23/04/2019	Barry Rush & Associates Pty Ltd
1901/DA-L01	24.1.19	Trish Dobson Landscape Architecture
1901/DA-L02	24.1.19	Trish Dobson Landscape Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
W-11-266888-1B Amendment B	23/04/2019	Civil & Structural Engineering Design Services Pty Ltd

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W-11-266888-2B Amendment B	23/04/2019	Civil & Structural Engineering Design Services Pty Ltd
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Development Impact Assessment Report	24.1.19	Trish Dobson Landscape Architecture
Access Report	29th January 2019	Mark Relf
Report on Geotechnical Site Investigation Project No: 2017-083.1	January, 2019	Crozier Geotechnical Consultants

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	30 January 2019	Wheeler Heights Development Pty Ltd

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

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

2. Prescribed Conditions

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

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



following information:

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

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

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

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

Reason: Legislative Requirement

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are



breaking up/removing materials from the site).

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

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

Relevant legislative requirements and relevant Australian Standards (including



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

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

4. Occupation of Seniors Housing or Housing for Persons with a Disability

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and / or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.

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Reason: Statutory requirements. (DACPLB11)

5. Sewer / Water Quickcheck (Crown Land Only)

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 2,933,831.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 27,871.39
Section 7.12 Planning and Administration	0.05%	\$ 1,466.92
Total	1%	\$ 29,338.31

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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

Reason: To provide for contributions in accordance with Northern Beaches Council Contributions Plan 2018.



7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Footpath)**

The applicant is to lodge a Bond of \$15,000 as security against any damage or failure to complete the construction of footpath works as part of this consent. Details demonstrating payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

9. **On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) The following soil depths are required in order to be counted as landscaping:
 - 300mm for lawn
 - 600mm for shrubs
 - 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

10. **Pump-Out System Design for Stormwater Disposal**

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The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

11. 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 interallotment stormwater drainage pipeline which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

It shall be ensured that the interallotment drainage line is designed to have adequate capacity to cater for any emergency overflows in the case of blockage of the internal OSD system.

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

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

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

The Applicant is to submit an application for approval for Infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve within this development consent are 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 design of 1.5 metre wide footpath to connect to the existing footpath at 34 Rose Avenue which shall be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

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

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

13. On-site Stormwater Detention

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Civil & Structural Engineering Design Services, drawing number W-11-266888-1B and 2B, amendment B, dated 23/04/19. Detailed drainage plans are to be prepared by a suitably

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qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Emergency overflows from the OSD system shall be directed to the interallotment drainage line.
- ii. An additional pit shall be provided at the north-east corner of the site to capture any emergency overflows before connecting to Pit 1 of the interallotment drainage line.
- iii. It shall be ensured that the interallotment drainage line is designed to have adequate capacity to cater for any emergency overflows in the case of blockage of the internal OSD system.

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

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

14. **Structural Adequacy and Excavation Work**

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

- a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

15. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining(s) with engineering drawings of the proposed shoring works for their consideration and approval.

An application to Council for approval under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Councils road reserve. Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate



Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

16. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

17. **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.

18. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. 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.

19. **Requirements for Seniors Housing or Housing for Persons with a Disability**

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "*Standards concerning accessibility and useability for hostels and self-contained dwellings*".

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

Reason: To ensure public safety and equitable access for seniors or people with a disability. (DACPLC16)

20. **Submission of Engineering Plans**

The submission is to include four (4) copies of Civil Engineering plans for the design of:

- Footpath Upgrades from the site connecting to the bus stop to the west.
- DDA compliance of the bus stop to the west

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These are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.

Reason: To ensure compliance with Council's specification for engineering works.
(DACTRCPC1)

21. **Construction Traffic Management Plan.**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to issue of any Construction Certificate.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Specify that, due to the proximity of the site adjacent to St Rose School and Wheeler Heights Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones,

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anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming 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. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. Public Liability Insurance - Works on Public Land

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

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

23. Tree protection DA2019/0107



- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
- (b) Tree protection
 - i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
 - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
 - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
 - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
 - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

24. 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 private properties. A copy of the report must be provided to Council, and the owners of adjoining private properties.

Reason: Protection of neighbouring buildings and infrastructure during construction.

25. Stormwater Drainage Easement and Variation to Existing Stormwater Drainage Easement

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by Civil & Structural Engineering Design Services, drawing number W-11-266888-1B and 2B, amendment B, dated 23/04/19. A stormwater drainage easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the creation of the easement in order to activate the consent.

The terms of the existing stormwater drainage easement within 43 Lantana Avenue is to be varied to benefit the subject development in accordance with the requirements of the NSW Land Registry Services. The applicant must provide Council with evidence that the existing easement is varied to benefit the subject development in order to activate the consent.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. Road Reserve

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



Reason: Public Safety.

27. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Construction Certificate for interallotment drainage and Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

28. **Vehicle Crossings**

The Applicant is to construct a normal low standard vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

29. **Waste Management During Development**

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

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

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

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

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

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

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

31. **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

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Reason: Public Safety

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

32. Landscape Certification

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

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

33. Stormwater Disposal

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

34. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.



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

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater detention structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for on-site storm water detention is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard.

36. Required Planting

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
All trees	As indicated on the approved Landscape Plans	As indicated on the Landscape Plans	As indicated on the Landscape Plans

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

Reason: To maintain environmental amenity.

37. Certification of Civil Works and Works as Executed Data on Council Land

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

38. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

39. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

40. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and/or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.

Reason: Statutory requirements. (DACPLF11)



41. Certification of completion of requirements for Seniors Housing or Housing for Persons with a Disability

Details demonstrating that all stipulated requirements of this development consent for Seniors Housing or Housing for Persons with a Disability have been completed.

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

Reason: To ensure statutory requirements have been completed, public safety, and equitable access for seniors of people with a disability. (DACPLF12)

42. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

43. Post-Construction Dilapidation Report

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, and the owners of adjoining private properties

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

44. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

45. Positive Covenant for Waste Services

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

46. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (Department of Lands standard form 13PC) must be



submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

47. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.



